



**Government of Pakistan
National Tariff Commission**

REPORT

ON

**FINAL DETERMINATION AND LEVY OF DEFINITIVE ANTIDUMPING DUTIES ON IMPORTS OF
BIXIALLY ORIENTED POLY PROPLYENE FILM INTO PAKISTAN ORIGINATING IN AND/OR
EXPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA, SULTANATE OF OMAN, KINGDOM OF
SAUDI ARABIA AND UNITED ARAB EMIRATES**

A.D.C No.22/2012/NTC/BOPP

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

2. The Commission has conducted this investigation on imports of Bixially Oriented Poly Propylene Film, (hereinafter referred to as "BOPP Film") originating in and/or exported from People's Republic of China ("China"), Sultanate of Oman ("Oman"), Kingdom of Saudi Arabia ("Saudi Arabia") and United Arab Emirates ("UAE") (hereinafter collectively referred to as the "Exporting Countries") under the Ordinance and the Rules. 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 in Official Gazette on August 14, 2012.

A. PROCEDURE

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

5. Receipt of Application

5.1 On April 12, 2010, the Commission received a written application under Section 20 of the Ordinance from Tripack Films Limited Plot No. G-1 to G-4, North Western Industrial Zone Port Qasim Authority, Karachi (the "Applicant"). The Applicant have alleged that BOPP Film originating in and/or exported from the Exporting Countries is being dumped into Pakistan, which has caused and is causing material injury to the domestic industry manufacturing BOPP Film.

5.2 The investigation was initiated on September 27, 2010. However, after initiation of investigation, Metatex (Pvt.) Ltd. Karachi, an importer/user of BOPP Film filed a writ petition No 2098 dated July 06, 2011 in the Islamabad High Court, Islamabad ("IHC"). On the same day, IHC issued stay order on proceedings of investigation till further orders. On March 06, 2012, the Honorable Court directed that the Commission to proceed with the complaint pending before it on the grounds of

conceding by the respondent that the earlier orders of the initiation was not made by properly constituted Commission.

5.3 To comply with the order of IHC the Commission decided to proceed with the application dated April 12, 2010, filed by the domestic industry. Accordingly, the investigation was re-initiated on April 23, 2012.

5.4 The Commission again informed the Embassies of China, Oman, Saudi Arabia and UAE in Islamabad through note verbale dated (March 27, 2012), of the receipt of application in accordance with the requirements of Section 21 of the Ordinance.

6. Evaluation and Examination of the Application

The examination of the application showed that it met the requirements of Section 20 of the Ordinance as it contained sufficient evidence of dumping of BOPP Film into Pakistan from the Exporting Countries and material injury to the domestic industry caused therefrom. Requirements of Rule 3 of the Rules, which relate to the submission of information prescribed therein were also found to have been met.

7. The Domestic Industry

7.1 Section 2(d) of the Ordinance defines domestic industry as:

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

Explanation.- For the purposes of this clause, producers shall be deemed to be related to exporters or importers only if –

- (i) one of them directly or indirectly controls the other;
- (ii) both of them are directly or indirectly controlled by the same third person; or
- (iii) together they directly or indirectly control a third person:

Provided that there are grounds for believing or suspecting that the effect of the relationship is such as to cause the producer concerned to behave differently from non-related producers and for that purpose one shall be deemed to control another when the former is legally or operationally in a position to exercise restraint or direction over the latter.

7.2 The domestic industry manufacturing BOPP Film comprises of the following two units:-

- i. Tri-Pack Films Ltd.
- ii. Mac-Pac Films Ltd.

The importers have objected the initiation of the investigation on the grounds that the Applicant did not qualify as domestic industry in view of the exceptions contained in the definition of the term '*domestic industry*' in Section 2(d) of the Ordinance. They have referred to provision of Section 2(d) of the Ordinance and Article 4 of the Agreement in order to explain the requirements of control for exclusion from the definition of domestic industry. The law read as follows;

"Producers shall be deemed to be related to exporter or importer only if:

- (a) One of them is directly or indirectly controls the other;*
- (b) Both of them are directly or indirectly controlled by a third person; or*
- (c) Together they directly or indirectly control a third person,*

Provided that there are grounds for believing or suspecting that the effect of the relationship is such as to cause the producer concerned to behave differently from non-related producers. For the purpose of this paragraph, one shall be deemed to control another when the former is legally or operationally in a position to exercise restraint or direction over the later."

7.3 In this regard it is held that the exclusion of any producer from domestic industry is dependent upon the expected behavior of the firm concerned. In case it is suspected that the firm would jeopardize the interest of other domestic producers by way of its interests in imports, only then such firm would be excluded from the domestic industry. It is also important to note that the expected behavior of the firm concerned is in relation to anti-dumping application and not the marketing behavior of the firm. In this regard the practice and standards being followed by other traditional users of anti-dumping law and the history of the WTO negotiations has been considered by the Commission. In this regard a famous lawyer in the field of antidumping with the name of Van Beal & Bellis in his book titled "Antidumping and other Trade Protection Laws of the EC" has clarified this issue of imports by related companies with reference to the EC (European Commission) practice. As per page 202 of the book, **"A community producer is held to be an importer regardless of whether it imports directly or through related trading companies. However, when assessing its conduct, indirect imports are relevant only as long as the related importer supplies the community producer or acts in coordination with it".** A reference is also made to EU antidumping investigation of "Quarto Plates" in which the Commission found that none of the producers had themselves imported the products. All imports were carried out by a trading company belonging to the same corporate group as one complaining producer. However, this company was found to act independently. Based on the structure of the group, each company would maintain its own financial accounts, submit separate annual reports and have no profit or loss transfer agreement with the holding company. Furthermore, the two companies filed separate income tax returns, has its own

board of directors and conduct business relations with other companies at arm's length. The Commission therefore, concluded that the imports could not affect the status of the producers concerned.

7.4 In this regard a reference to "A Handbook of Anti-Dumping Investigations" by Judith Czako, John Human and Jorge Miranda would not be out of place. The handbook lists following factors for deciding upon the exclusion of producer/related producer from the domestic industry:

7.5 "The basis of whether related parties should be excluded typically arises in the context of (a) multinational enterprises with both foreign and domestic production of goods at issue in the investigation, or (b) the entities that import the allegedly dumped goods."

"Among the criteria that have been considered by members in deciding whether to exclude related parties are:

- i. Whether imports of the product in question by the related producers allow them to benefit, or serve to shield them, from the effects of dumping.
- ii. Whether exclusion of related parties would unduly skew the data for the remaining members of the industry.
- iii. The level of long-term nature of the commitment shown by the producer to domestic production, as opposed to importing activities.
- iv. The ratio of import shipments to domestic production for the related producers.

7.6 It is also to be noted that the expected behavior is dependent upon the interest of the producer concerned. In this regard it is held that this provision may hold good when the related party of the applicant has imported the product concerned at lower prices from the dumped sources and has sold either to the applicant or in the domestic market under the instructions of the applicant. Packages has not imported the product concerned under the instruction from Tripack nor sold the imported product to Tripack or in the domestic market. Tripack is an independent entity maintaining its own financial accounts, submits separate income tax returns, has no profit and loss transfer agreement with Packages Limited, has its own board of directors and all the sale to Packages Limited were at arm's length as disclosed in its Annual Report. Therefore, there are no grounds to exclude Tripack from the definition of the domestic industry. Above all, Tripack Ltd. is the major producer and its share in domestic production during POI was 92%. Surely it cannot work differently than the other producers of the BOPP film.

7.7 For the purposes of excluding certain producer from the definition of domestic industry due to its relationship with any exporter or importer or when the Applicant is itself importer of the product concerned is **conditional upon a proviso stipulated by the Ordinance as under:**

“Provided that there are grounds for believing or suspecting that the effect of the relationship is such as to cause the producer concerned to behave differently from non-related producers and for that purpose one shall be deemed to control another when the former is legally or operationally in a position to exercise restraint or direction over the later.”

7.8 While the Metatex Pvt. Ltd. has requested the Commission for excluding the Applicant from the definition of the domestic industry with reference to the definition of the domestic industry given in the Ordinance, they have not given attention to the relevant provision that **in such a situation there should be grounds for believing or suspecting** that the effect of the relationship is such as to **cause the producer concerned to behave differently from the non-related producers.**

7.9 Based on the above referred proviso, any related producer will only be excluded from the definition of the domestic industry when there are grounds to believe that the relationship has caused the related producer to behave differently from non-related producer. When it is established that related producer has not behaved differently from non-related producer, it cannot be excluded from the definition of the domestic industry. The proviso given in the Section is of great importance as the relevant Section only becomes operative when the given proviso holds good.

7.10 Hence by ignoring the provisions given in a particular section, the respective Section itself remains inoperative in a particular situation. Therefore, while defining the definition of the domestic industry, one cannot ignore the proviso given in Section 2(d) of the Ordinance. Had there been no importance of such proviso, different Antidumping Authorities would not have developed comprehensive criteria for the evaluation of whether the related producer behaves differently from non-related producer or not.

7.11 It is therefore, held that in spite of the fact that Tripack is assumed as associated producer, even then, the Commission has, determined that it cannot be excluded from the definition of the domestic industry in the light of the above and foregoing explanations.

8. Standing of the Application

8.1 In terms of Section 24(1) of the Ordinance,

“... an application shall be considered to have been made by or on behalf of the domestic industry only if it is supported by those domestic producers whose collective output constitutes more than fifty percent of the total production of a domestic like product produced by that portion of the domestic industry expressing either support for or opposition to the application.”

Furthermore, Section 24(2) of the Ordinance provides that:

"..... no investigation shall be initiated when domestic producers expressly supporting an application account for less than twenty five percent of the total production of the domestic like product produced by the domestic industry."

8.2 The Applicant, who is major producer of BOPP Film in Pakistan, has filed application. The Applicant stated that the other unit namely Mac-Pac Films Limited is indifferent for purposes of this investigation. After initiation of investigation, the Commission asked other unit to provide necessary information for the purposes of this investigation and its support for or opposition to the application. After re-initiation of the investigation, Mac-Pac Films stated that it "want to remain associated with M/s Tri-Pack Films Ltd for anti-dumping efforts and may submit our point of view with documentary evidence within stipulated period ...". However, the Commission has not received any information from Mac-Pac for purposes of this investigation. The Commission has treated Mac-Pac Films Limited, as supporting producer in this investigation.

8.3 The Applicant produced 92 percent of the total domestic production of BOPP Film during the year 2009. Details of the production of BOPP Film by the domestic industry are as follows:

Table-I
Unit-wise Production of BOPP Film during the period Jan 09 to Dec 09

Name of the Unit	Status	Share in total production (%)
Tri-Pack Films Ltd.	Applicant	92
Mac-Pac Films Ltd.	Supporting	8
Total		100

8.4 The above table shows that the Applicant and supporting producer accounted for 100 percent of the total production of BOPP Film during the period January 2009 to December 2009. Thus, the application is supported by producers who accounted for 100 percent of the total production of BOPP Film during the period January 2009 to December 2009.

8.5 On the basis of the above information and analysis, the Commission has determined that the application has been made on behalf of domestic industry, as it fulfills the requirements of Section 24 of the Ordinance.

9. **Applicant' Views**

The Applicant, *inter alia*, raised the following issues in the application regarding alleged dumping of BOPP Film and material injury to the domestic industry caused therefrom:

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- i. BOPP Film imported from the Exporting Countries into Pakistan and BOPP Film produced in Pakistan by the domestic industry are like products;
- ii. Exporters/producers from the Exporting Countries are exporting BOPP Film to Pakistan at dumped prices; and
- iii. Exports of BOPP Film by the exporters/producers from Exporting Countries to Pakistan at dumped prices has caused and is causing material injury to the domestic industry producing BOPP Film mainly through:
 - a) Increase in volume of dumped imports;
 - b) decline in market share;
 - c) decline in capacity utilization;
 - d) negative effect on inventory;
 - e) price undercutting;
 - f) price depression;
 - g) decline in profits & profitability;
 - h) negative effects on cash flow;
 - i) decline in productivity per worker;
 - j) decline in return on investment;
 - k) negative effect on salaries & wages; and
 - l) negative effect on growth.

10. Exporters/Foreign Producers of BOPP Film

The Applicant identified twenty-three exporters/foreign producers (with complete addresses of nineteen exporters/foreign producers) involved in alleged dumping of BOPP Film from Exporting Countries (list of exporters/foreign producers is placed at Annexure-I). The Applicant stated that there may be other producers and exporters but it did not have the names and addresses of those exporters/foreign producers. Therefore, the Applicant has requested for imposition of antidumping duties on all imports of BOPP Film originating in and/or exported from the Exporting Countries instead of the identified exporters/foreign producers.

11. Initiation of Investigation

11.1 The Commission upon examining the accuracy and adequacy of the evidence provided in application established that there is sufficient evidence of alleged dumping of BOPP Film into Pakistan

and consequent material injury to the domestic industry to justify initiation of an investigation. Accordingly, the Commission issued a Notice of Initiation in accordance with Section 27 of the Ordinance, which was published in the Official Gazette¹ of Pakistan and in two widely circulated national newspapers² (one in English language and one in Urdu Language) on April 23, 2012. Investigation concerning alleged dumped imports of BOPP Film into Pakistan {classified under PCT³ Nos. 3920.2010 and 3920.2030 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 April 23, 2012.

11.2 The Commission notified the Embassies of China, Oman, Saudi Arabia and UAE in Islamabad, of initiation of investigation (by sending a copy of the notice of initiation) on April 23, 2012 with a request to forward it to all exporters/producers involved in production, sales and export of BOPP Film from the Exporting Countries. Copies of the notice of initiation were sent to exporters/foreign producers of BOPP Film of the Exporting Countries whose complete addresses were available with the Commission. For the exporters/foreign producers whose addresses were not available with the Commission, the Embassies of the Exporting Countries in Islamabad were requested to forward the same to all exporters/producers involved in production and/or export of BOPP Film to Pakistan. Copies of the notice of initiation were also sent to known Pakistani importers, Pakistani producer of BOPP Film and the Applicant on April 23, 2012 in accordance with the requirements of Section 27 of the Ordinance.

11.3 In accordance with Section 28 of the Ordinance, on April 27, 2012, the Commission sent copies of full text of the written application (non-confidential version) to all exporters/foreign producers of the Exporting Countries, whose complete addresses were available with the Commission. On April 27, 2012, copies of the full text of the written application were also sent to the Embassies of the Exporting Countries in Pakistan with a request to forward it to all exporters/producers involved in production and/or export of BOPP Film from the Exporting Countries.

12. Investigated Product, Like Product and Domestic Like Product

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

i. Investigated Product:

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

¹ The official Gazette of Pakistan (Extraordinary) dated April 23, 2012.

² The ‘Daily Dawn’ and the ‘Daily Express’ of April 23, 2012 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.

ii. **Domestic Like Product:**

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

iii. **Like Product:**

"a product which is alike in all respects to an investigated product or, in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the investigated product".

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

12.2.1 **Investigated Product:**

The investigated product as defined in notice of initiation was Bixially Oriented Poly Propylene Film ("BOPP Film") imported from the Exporting Countries. It is classified under HS Code Nos. 3920.2010 (BOPP film, plain), 3920.2030 (BOPP film, metallized). Investigated product is used for large number of end-use applications for the purpose of packaging including confectionery, biscuits, soap, processed food items, tobacco, ice bars, candies, gift wrappers and tea industries. After preliminary determination, importers and users of specific grades of BOPP Film approached the Commission and submitted that following grades of BOPP film are not produced by the domestic industry.

- BOPP Film – Capacitor Grade
- BOPP Film – having thickness from 1-15 microns

The Commission sought clarifications on the above mentioned specific grades of investigated product from the domestic industry. The Applicant informed that it is not producing BOPP Film – Capacitor Grade however it can produce BOPP Film having thickness of 8 microns and above. In the lights of the above facts, the Commission has decided to exclude BOPP Film – Capacitor Grade and BOPP Film having thickness from 1 to 7 microns from the scope of investigated product. Excluded grades of BOPP Film are primarily used in electronics industry.

12.2.2 **Domestic Like Product**

The domestic like product is also BOPP Film produced by the domestic industry. It is classified under PCT Heading Nos. 3920.2010 (BOPP film, plain), 3920.2030 (BOPP film, metallized). Domestic like product is mainly used for large range of end-use applications for the purpose of packaging only in confectionery, biscuits, soap, processed food items, tobacco, ice bars, candies, gift wrappers and tea industries.

12.2.3 **Like Product:**

The like product is BOPP Film produced and sold by the foreign producers/exporters of the Exporting Countries in their domestic markets, and export market to countries other than Pakistan and BOPP Film imported into Pakistan from countries other than the Exporting Countries. The like product is

classified under PCT/H.S heading Nos. 3920.2010 and 3920.2030. Major uses of the like product are identical to those of the investigated product and domestic like product.

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

- i. basic raw materials used in the production of the investigated product, the domestic like product, and the like product are the same/similar;
- ii. all the three products (the investigated product, the domestic like product and the like product) are produced with a similar manufacturing process;
- iii. all the three products have similar appearance;
- iv. all the three products are substitutable in use. They are mainly used for large number of end-use applications for the purpose of packaging including confectionery, biscuits, soap, processed food items, tobacco, ice bars, candies, gift wrappers and tea industries.
- v. all the three products are classified under the same PCT/HS heading Nos. 3920.2010 and 3920.2030.

The Commission has determined that the investigated product, the domestic like product and the like product are alike products.

13. Period of Investigation

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

- i. *"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."*
- ii. *"for the purposes of an investigation of injury, the investigation period shall normally cover thirty-six months:
"Provided that the Commission may at its sole discretion, select a shorter or longer period if it deems it appropriate in view of the available information regarding domestic industry and an investigated product".*

13.2 Application in this investigation was received on April 12, 2010. The investigation was not initiated due to the fact that quorum of the Commission was not complete in the light of Supreme Court of Pakistan's decision in Civil Petition Nos. 1608, 1654, 1686, 1687, 1706, 1707 and 1708 of 2009 in Tiles antidumping investigation. The investigation was initiated on September 27, 2010 upon completion of quorum of the Commission. Data upto December 31, 2009 was submitted along with the Application. The Commission decided that POI for determination of dumping and injury should cover more recent information and it is therefore, POI for determination of dumping and injury was selected as eighteen months and forty-two months respectively.

13.3 POI selected for dumping and injury are, therefore, as follows:

For determination of dumping:	From January 1, 2009 to June 30, 2010
For determination of material injury:	From January 1, 2007 to June 30, 2010

14. Information/Data Gathering

14.1 The Commission sent questionnaires, on April 27, 2012 to nineteen exporters/producers of the Exporting Countries (whose complete addresses were available with the Commission) for submission of data and information, and were asked to respond within 37 days of the dispatch of the questionnaires. On April 27, 2012 copies of the questionnaires were also sent to the Embassies of the Exporting Countries in Islamabad with a request to forward it to all producers/exporters of the investigated/like product.

14.2 The following three exporters/foreign producers supplied the information to the Commission on the exporter questionnaire in the earlier initiation of investigation:

- i. Gulf Packaging Industries Limited Jubail Industrial P. O. Box 1503, Al Jubail 31951 Saudi Arabia ("Gulf Packaging");
- ii. Taghleef Industries LLC, P. O. Box 56391 Dubai – United Arab Emirates ("Taghleef LLC")
- iii. Taghleef Industries SAOG, P. O. Box 38, Postal Code 327, Sohar Industrial Estate – Sohar, Oman ("Taghleef SAOG");

14.3 After re-initiation of investigation, three exporters/foreign producers mentioned above were requested to ratify the information already submitted or add any information to already submitted information. Taghleef Industries LLC and Taghleef Industries SAOG ratified already submitted information.

14.4 Filled-in exporter's questionnaires from these exporters were received at the Commission on December 07, 2010 from Taghleef LLC and Taghleef SAOG and on December 10, 2010 from Gulf

Packaging. Upon examination of the information received from these foreign producers/exporters, certain deficiencies were found in the information supplied. These deficiencies were communicated to the exporters/foreign producers and were requested to supply the deficient information. Further details are given at paragraph 15 infra.

14.5 No other exporter/foreign producer, who were requested for information directly or through Embassies of the Exporting Countries in Islamabad, responded to the Commission's request for supplying information. Non-responding exporters/foreign producers, whose addresses were available with the Commission, were informed through a letter dated June 12, 2012 that the Commission would be constrained to rely on best information available to determine dumping of the investigated product for them, if they do not provide information in response to the questionnaires.

14.6 On April 27, 2010 questionnaires were sent to 23 Pakistani importers of the investigated product known to the Commission and these importers were asked to respond to the Commission within 37 days of dispatch of the questionnaires. Following three Pakistani importers responded to the Commission's questionnaire and ratified the information provided by them during earlier initiation of investigation:

- i. Metatex Private Limited, Karachi
- ii. Saima Packaging, Karachi
- iii. Khan Match (Pvt) Ltd., Peshawar

14.7 On April 27, 2012 questionnaire to domestic producer other than the Applicant was sent requesting it to provide information within 37 days of the issuance of the questionnaire. Other domestic producer namely Mac-Pac Films Limited supported the request of the Applicant but did not provided data for purposes of this investigation.

14.8 The Commission has access to database of import statistics of Pakistan Revenue Automation Limited ("PRAL"), the data processing arm of the Federal Board of Revenue, Government of Pakistan. For the purpose of this final determination the Commission has used import data obtained from PRAL in addition to the information provided by the Applicant and the exporters/foreign producers.

14.9 Thus, the Commission has sought, from all available sources, the relevant data and information deemed necessary for the purposes of final determination of dumping and injury caused therefrom in this investigation. In terms of Sections 35, 32(4) of the Ordinance and Rule 12 of the Rules, the Commission has satisfied itself to the accuracy of information supplied by the interested parties to the extent possible for the purposes of this final determination.

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

15.1 Questionnaire Response by M/s Gulf Packaging Industries Limited, Saudi Arabia

15.1.1 The Commission sent questionnaire to Gulf Packaging Industries Limited, Al Jubail, Saudi Arabia ("Gulf Packaging") on September 28, 2010. Gulf Packaging in its letter dated November 10, 2010 requested for an extension by December 15, 2010 for submission of response to the Commission's questionnaire and further stated that *"Gulf Pack is not involved in exporting material to Pakistan as per the import list published by your custom authority. We would be grateful if you could supply to us the reasons for which Gulf Pack Industries has been involved in this investigation"*. The Commission in its letter dated November 22, 2010 clarified that "as per the import data available with the Commission, Gulf Packaging has exported investigated product to Pakistan during POI for dumping. The importer of the investigated product is M/s Converters Pvt. Ltd, Plot No. 129 Street No. 6, Industrial Estate, GadoonAmazai, Swabi, Pakistan." The Commission also granted extension to Gulf Packaging upto December 10, 2010.

15.1.2 Its response was received in the Commission on December 10, 2010. According to the information provided in response to the questionnaire, Gulf Packaging is a limited company incorporated in Saudi Arabia. It has been involved in the manufacture, sale and export of BOPP Film to Pakistan as well as to other countries and in its domestic market during POI.

15.1.3 The information submitted by Gulf Packaging in response to the questionnaire was analyzed at the Commission and it was found that Gulf Packaging has not provided the non-confidential version of the exporter's questionnaire. Accordingly, the same was communicated to it vide Commission's letter dated December 20, 2010. Gulf Packaging was asked to provide the non-confidential version of exporter's questionnaire no later than December 23, 2010, so as to enable the Commission to place the non-confidential information in the public file. Gulf Packaging responded to the Commission's letter vide its letter dated December 26, 2010 and requested the Commission to extend the deadline by 4-5 days.

15.1.4 The information submitted by Gulf Packaging was analyzed at the Commission and certain deficiencies were identified, which were communicated to it vide Commission's letter dated January 06, 2011 and requested to respond within one week of issuance of that letter. Gulf Packaging responded on January 16, 2011 and stated that it is in process of compilation of data however, it pointed out that most of the information requested vide Commission's letter dated January 06, 2011 does not relate to it. The Commission issued a letter dated January 19, 2011 stating that information requested vide its letter dated January 06, 2011 is in line with the exporter questionnaire submitted by Gulf Packaging and information requested may be submitted at earliest possible as deadline for submitting information has already lapsed on January 12, 2011. A letter was received from Gulf Packaging on January 28, 2011 requesting for an extension of 60 days for submission of information. The Commission noted that the

company has failed to submit requisite information within due time, therefore, the Commission would be constrained to use best information available for purposes of final determination. However, the information would be considered at the time of final determination if it is submitted by or before March 14, 2011. The company in its letter dated March 05, 2011 stated that it will submit information for the purposes of final determination. The company never submitted information after March 05, 2011. After re-initiation of investigation, the company was asked to ratify the information already provided or add any information to already submitted information. The company did not respond to the Commission.

15.1.5 The Commission has not accepted information supplied by Gulf Packaging for the purposes of this final determination. Export price, normal value and dumping margin for Gulf Packaging is determined on the basis of best information available.

15.2 Questionnaire Response by Taghleef Industries LLC, UAE

15.2.1 The Commission sent questionnaire to Taghleef Industries LLC, UAE on September 28, 2010. Its response was received at the Commission on December 07, 2010. According to the information provided, Taghleef Industries is a private owned company belonging to the Al Ghurair Group. Its headquarter is in Dubai, UAE. In 2006, Taghleef LLC was formed by merging Technopack, Egypt, AKPP, Oman, Dubai Poly Film, Dubai, UAE. The company manufactures and sells BOPP film.

15.2.2 The information submitted by Taghleef LLC in response to the questionnaire was analyzed at the Commission and it was found that Taghleef LLC has not provided the non-confidential version of the exporter's questionnaire and appendices. Accordingly, the same was communicated to it vide Commission's letter dated December 15, 2010. Non-confidential version of the questionnaire and appendices were received on December 23, 2010.

15.2.3 The information submitted by Taghleef LLC was analyzed at the Commission and certain deficiencies were identified, which were communicated to it vide Commission's letter dated January 17, 2011.

15.2.4 According to the information, Taghleef LLC is involved in production and sale of the investigated/like product in its domestic market. It is also involved in export of the investigated product.

15.2.5 Taghleef LLC was asked to provide the deficient information/data no later than January 24, 2011. Taghleef LLC responded to the deficiencies vide its letter dated January 24, 2011. However, its response did not contain all the required information. The Commission asked Taghleef LLC vide its letter dated February 22, 2011 to provide the deficient information by February 27, 2011. Its response was received at the Commission on March 01, 2011. Taghleef LLC has not provided copy of audited accounts. Copy of audited accounts is required for cross checking the cost of production investigated product

ofwhile determining ordinary course of trade for domestic sales. After re-initiation of the investigation, Taghleef LLC has ratified the information supplied by it.

15.2.6 The Commission has accepted information supplied by Taghleef LLC for the purposes of this final determination. Normal value, export price and dumping margin (paragraphs 24.4, 25.5 and 26.4 infra) for Taghleef LLC has been determined on the basis of information supplied by the company.

15.3 Questionnaire Response by Taghleef SAOG, Oman

15.3.1 The Commission sent questionnaire to Taghleef SAOG, Oman on September 28, 2010. Its response was received in the Commission on December 07, 2010. According to the information provided in response to the questionnaire, Taghleef SAOG is registered in the Sultanate of Oman as a joint stock company and commenced commercial operations from January 1, 1998. The company is engaged in the manufacture of polypropylene related products. The company is subsidiary of Taghleef LLC. It has been involved in the manufacture, sale and export of BOPP Film to Pakistan as well as to other countries and in its domestic market during POI.

15.3.2 The information submitted by Taghleef SAOG in response to the questionnaire was analyzed at the Commission and it was found that Taghleef SAOG has not provided the non-confidential version of the exporter's questionnaire and appendices. Accordingly, the same was communicated to it vide Commission's letter dated December 15, 2010. Non-confidential version of the questionnaire and appendices were received on December 23, 2010.

15.3.3 The information submitted by Taghleef SAOG was analyzed at the Commission and certain deficiencies were identified, which were communicated to it vide Commission's letter dated January 17, 2011.

15.3.4 Taghleef SAOG was asked to provide the deficient information/data not later than January 24, 2011. Taghleef SAOG responded to the deficiencies vide its letter dated January 24, 2011. However, its response did not contain all the required information. The Commission asked Taghleef SAOG vide its letter dated February 22, 2011 to provide the deficient information by February 27, 2011. Its response was received at the Commission on March 01, 2011. After re-initiation of the investigation, Taghleef SAOG has ratified the information supplied by it.

15.3.6 The Commission has accepted information supplied by Taghleef SAOG for the purposes of this final determination. Normal value, export price and dumping margin (paragraphs 24.4, 25.5 and 26.4 infra) for Taghleef SAOG has been determined on the basis of that information supplied by the company.

16. Verification of the Information

16.1 In terms of Sections 23, 32(4) and 35 of the Ordinance and Rule 12 of the Rules, during the course of an investigation, the Commission shall satisfy itself as to the accuracy of the information and verify/examine the accuracy of the information supplied by the interested parties.

16.2 In order to verify the information/data provided by the Applicant and to obtain further information (if any), officers of the Commission conducted on-the-spot investigation at the offices and plant of the Applicant from October 20, 2010 to October 22, 2010.

16.3 The Commission could not conduct on-the-spot investigations in respect of cooperating exporters/foreign producers of the investigated product due to unavoidable circumstances.

17. Public File

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

18. Confidentiality

In terms of Section 31 of the Ordinance, any information, which is marked confidential by the interested parties in their submissions and considered confidential by the Commission, shall, during and after the investigation, be kept confidential. Furthermore, any information, which is by nature confidential in terms of Section 31 of the Ordinance, shall also be kept confidential. However, in accordance with Section 31(5) of the Ordinance, interested parties submitting confidential information are required to submit non-confidential summary(ies) of the confidential information, which shall permit a reasonable understanding of the substance of information submitted in confidence. Non-confidential summaries submitted by different interested parties have been placed in the public file and are available to all interested parties (paragraph 17 supra).

19. Preliminary Determination

The Commission made its preliminary determination in this case on August 10, 2012 and in terms of Section 37 of the Ordinance, the Commission issued a notice of preliminary determination which was published on August 14, 2012 in official Gazette of Pakistan and in two widely circulated national newspapers (one English "Daily Express Tribune" and one Urdu Language ("Daily Express"))

Final Determination and levy of Definitive antidumping duties on import of Bixially Oriented Poly Propylene Film into Pakistan Originating in and/or Exported from the People's Republic of China, Sultanate of Oman, Kingdom of Saudi Arabia and United Arab Emirates

notifying preliminary determination and imposition of provisional antidumping duties at following rates for the period of four months effective from August 14, 2012:

**Table-II
Provisional Antidumping Duty Rates**

Country	Exporter Name	Provisional Antidumping Duty
UAE	Taghleef	29.70%
	All other exporters	57.09%
Oman	Taghleef	22.92%
	All other exporters	22.92%
China	All exporters	62.70%
Saudi Arabia	All exporters	26.91%

The Commission also sent notice of preliminary determination and imposition of provisional antidumping duties to the Embassies of China, Oman, Saudi Arabia and United Arab Emirates in Islamabad, the exporters, the importers and the Applicant in accordance with the requirements of Section 37(4) of the Ordinance. The findings of the Commission in the preliminary determination were as follows:

- i. the application was filed on behalf of domestic industry as the Applicant represent major proportion of the production of domestic like product;
- ii. the investigated product and the domestic like product are alike products;
- i. 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/producers of the investigated product from the Exporting Countries are above the negligible and *de minimis* levels respectively;
- v. the dumping margins expressed as a percentage of C&F Export Price at ex-factory level is ranging between 22.92 percent to 62.70 percent for exporters/foreign producers from the Exporting Countries;

- vi. the domestic industry suffered material injury during POI on account of Increase in volume of dumped imports, price undercutting, price depression, decline in market share, decline in domestic sales, decline in profit negative effect on cash flow, negative effect on productivity, negative effect on salaries & wages, negative effect on return on investment, and negative effect on growth.
- vii. there is a causal relationship between dumped imports of the investigated product and the material injury suffered by the domestic industry.

20. Disclosure after Preliminary Determination

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

20.2 All exporters for whom the individual dumping margin was determined requested the Commission for disclosure meeting. Disclosure meeting with representatives of the exporters/foreign producers was held on September 28, 2012 at the office of the Commission. The exporters/foreign producers have submitted their views/comments on dumping calculation methodology and calculations. The Commission has considered views/comments in final determination of dumping for cooperating exporters/foreign producers.

21. Hearing

Upon request of Taghleef Industries, Oman, Taghleef Industries, UAE, Gulf Packaging Industries, Saudi Arabia and Khawaja Electronics (Pvt.) Ltd, a hearing in this investigation was held on November 19, 2012 under Rule 14 of the Rules. List of participants who attended the hearing is placed at Annexure - II. The information submitted by the participants during the hearing, whether orally (oral statements were subsequently confirmed in writing as per Rules 14 of the Rules) or in writing and record note of the hearing prepared by the Commission are available in the public file (paragraph 17 supra).

22. Views/Comments of the Interested Parties on the Preliminary Determination

22.1 The Commission received comments on its preliminary determination made in this investigation from following interested parties:

- i. Taghleef Industries, UAE

- ii. Taghleef Industries, Oman
- iii. Gulf Packaging Industries Limited
- iv. Tri-Pack Film Industries Limited
- v. Khawaja Electronics (Pvt.) Ltd.
- vi. Amber Capacitors
- vii. GFC Fan

22.2 Comments received and germane to this investigation under the Ordinance are placed at Annexure – III.

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 December 24, 2012 to all interested parties including the known exporters/foreign producers, the Applicant, the known Pakistani importers, and to the Embassies/Mission of the Exporting Countries in Islamabad.

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. Tri-Pack Film Industries Limited
- ii. Taghleef Industries
- iii. Khawaja Electronics Pvt. Ltd.
- iv. Government of Sultanate of Oman

23.3 The comments received on essential facts and germane to this investigation under the Ordinance are placed at Annexure – IV.

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 Further, 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 “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 10 supra) the Applicant identified twenty-three exporters/foreign producers from Exporting Countries involved in alleged dumping of the investigated product. The Commission sent questionnaires directly to nineteen exporters/foreign producers whose complete addresses were available with the Commission (paragraph 14.1 supra) to gather information necessary for this investigation. Questionnaires were 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 based in Exporting Countries to submit information to the Commission.

27.2 Only three exporters/foreign producers, Gulf Packaging, Taghleef LLC, Dubai and Taghleef SAOG, Oman, provided information in response to the questionnaires, (paragraphs 14.2 and 15 supra). Information provided by Gulf Packaging was not complete therefore individual dumping margin has been calculated for only two exporters i.e. Taghleef LLC, Dubai and Taghleef SAOG, Oman in this final determination on the basis of the information provided by them. However, a residual dumping margin/duty rate has been determined for all other exporters/foreign producers of the Exporting Countries who did not cooperate with the Commission in this investigation.

28. Determination of Normal Value

28.1 The Commission received information on domestic sales and cost of production etc. of the like product from the two exporters/foreign producers, Taghleef LLC, UAE, and Taghleef SAOG, Oman in response to the questionnaires. Normal value for above said exporters/producers in this final determination has been determined on the basis of that information (paragraphs 28.2 and 28.4 infra). Normal value for other non-cooperating exporters/foreign producers from China, Oman, Saudi Arabia and UAE has been determined on the basis of best information available in accordance with Section 32 and Schedule to the Ordinance (paragraphs 28.3, 28.5, 28.6 and 28.7 infra).

28.2 Determination of Normal Value for Taghleef LLC, UAE

28.2.1 Normal value for Taghleef LLC has been determined on the basis of the information provided by it on its domestic sales and cost to make and sell during POI.

28.2.2 According to the information, Taghleef LLC sold two types of BOPP Film, Non-Metallized and Metallized, in its domestic market during POI. It exported these types of the investigated product to Pakistan during POI. For the purposes of like to like comparison, normal value is determined separately for each type to be compared with the export price of respective type of the investigated product.

28.2.3 Taghleef LLC sold *** MT of the like product in its domestic market during POI. It sold like product to un-related customers in its domestic market. Section 7 of the Ordinance requires the Commission to determine ordinary course of trade for domestic sales to determine normal value. Investigation has revealed that out of total sales, Taghleef LLC sold *** MT of metallized BOPP Film and *** MT of non-metallized Film. Out of total non-metallized BOPP Film sales, ***MT were at loss while *** MT were profitable sales. The metallized BOPP film sold at loss was *** MT while *** MT were profitable sales. Below costs sales were in substantial quantities in terms of Section 7(2) of the Ordinance. Furthermore, below costs sales were in extended period of time and its prices did not provide for recovery of all costs within a reasonable period of time. Thus, in determination of normal value for the above-mentioned types (paragraph 28.2.2 supra), the Commission has disregarded sales, which were not in the ordinary course of trade in accordance with provisions of Section 7 of the Ordinance.

28.2.4 According to Taghleef LLC, during POI, it sold like product in its domestic market on credit at delivered basis. To arrive at the ex-factory price, Taghleef LLC has claimed adjustments for final determination on account of credit cost, discount, rebate, freight, technical assistance, sales promotions (exhibitions), sales promotions (others) and packing cost. The Commission has accepted these adjustments for final determination. Normal value at ex-factory level for the like product is worked out by deducting values of these adjustments. Summary calculation of normal value for these types is placed at Annexure-V.

28.3 Determination of Normal Value for Other Non-cooperating Exporters/Producers from UAE

28.3.1 The Commission has determined normal value for non-cooperating exporters/producers from UAE on the basis of best information available in accordance with Section 32 of the Ordinance.

28.3.2 For the purposes of determination of normal value for non-cooperating exporters of the investigated product from UAE, the information provided by Taghleef LLC, in response to the questionnaire, on its cost of production plus admin, selling and general costs, and financial expenses is

used. The Commission is of the view that it is the best available information for normal value for other non-cooperating exporters from UAE which, has been kept at the level of Taghleef LLC, on the following grounds that:

- i. Taghleef LLC is a major producer of BOPP Film in Dubai;
- ii. Taghleef LLC is the largest exporter of the investigated product from UAE to Pakistan during POI;
- iii. Taghleef LLC is manufacturing BOPP Film with same/similar technology and inputs i.e. homopolymer, copolymer and additives as is manufactured by other exporters/producers of the Exporting Countries and the Applicant; and
- iv. This is the only reliable information available with the Commission on cost to make and sell of BOPP Film in UAE.

28.4 Determination of Normal Value for Taghleef SAOG, Oman

28.4.1 Normal value for Taghleef SAOG has been determined on the basis of the information provided by it on its domestic sales and cost to make and sell during POI.

28.4.2 According to the information, Taghleef SAOG sold two types of BOPP Film, Non-Metallized and Metallized, in its domestic market during POI. It exported same types of the investigated product to Pakistan during POI. For the purposes of like to like comparison, normal value is determined separately for each type to compare with the export price of respective type of the investigated product.

28.4.3 Taghleef SAOG sold *** MT of the like product in its domestic market during POI. It sold like product to un-related customers in its domestic market. Section 7 of the Ordinance requires the Commission to determine ordinary course of trade for domestic sales to determine normal value. Investigation has revealed that out of total sales, Taghleef SAOG sold ***MT of non-metallized BOPP Film and ***MT of metallized Film. Out of total non-metallized BOPP Film sales, ***MT were at loss while ***MT were at profitable sales. The metallized BOPP film sold at loss was ***MT while ***MT were at profit. Below costs sales were in substantial quantities in terms of Section 7(2) of the Ordinance. Furthermore, below costs sales were in extended period of time and its prices did not provide for recovery of all costs within a reasonable period of time. Thus, in determination of normal value for the above-mentioned types (paragraph 28.4.2 supra), the Commission has disregarded sales, which were not in the ordinary course of trade in accordance with provisions of Section 7 of the Ordinance.

28.4.5 Sales in ordinary course of trade are less than five percent of the sales of the investigated product to Pakistan. Therefore, the Commission has constructed normal value for the company on the basis of information provided by it. Summary calculation of normal value for these types is placed at Annexure-VI.

28.5 Determination of Normal Value for Other Omani Exporters/Producers

28.5.1 The exports from other Omani exporters are only 1.13 percent of total exports to Pakistan. No other exporter has cooperated in this investigation, therefore, dumping margin calculated for Taghleef SAOG has been applied to all exports. There is no need for determination of normal value for other Omani exporters.

28.6 Determination of Normal Value for Chinese Exporters/Producers

28.6.1 No exporter/producer of the investigated product from China cooperated with the Commission to provide requisite information (paragraph 14 supra). Thus, the Commission is constrained to rely on best information available in accordance with Section 32 and Schedule to the Ordinance to determine normal value for Chinese exporters/ producers.

28.6.2 For the purposes of determination of normal value for Chinese exporters/producers of the investigated product, the information provided by the Applicant in application is used. In application, the Applicant has based normal value for China on the comparable price of BOPP Film for consumption in domestic market of China. For this purpose, the Applicant has relied upon a market research study undertaken by DNS Investment Management Co. Ltd., on request of the Applicant. The Applicant has submitted report of the Chinese Consultant to the Commission. The Commission is of the view that it is the best available information for this purpose, as no other information on Chinese domestic prices of like product, Chinese export prices of the like product for countries other than Pakistan, or Chinese producers' cost to make and sell of the like product is available with the Commission.

28.6.3 The Commission is of the view that prices in the market research study undertaken by DNS Investment Management Co. Ltd are market prices. To arrive at ex-factory level, these prices have been adjusted for inland freight, handling cost and insurance. (Determined on the basis of adjustments provided by the Applicant). Calculation of constructed normal value for Chinese exporters/producers is placed at Annexure-VII.

28.7 Determination of Normal Value for Saudi Arabian Exporters/Producers

28.7.1 No exporter/producer of the investigated product from Saudi Arabia cooperated with the Commission after re-initiation of investigation to provide requisite information (paragraph 14 supra). Thus, the Commission is constrained to rely on best information available in accordance with Section 32 and Schedule to the Ordinance to determine normal value for Saudi Arabian exporters/ producers.

28.7.2 M/s Gulf Packaging cooperated with the Commission during earlier initiation of investigation. However, it did not provide information on its domestic sales. No other exporter/producer of the

investigated product from Saudi Arabia cooperated with the Commission and did not provide requisite information (paragraph 14 supra). Thus, the Commission is constrained to rely on best information available in accordance with Section 32 and Schedule to the Ordinance to determine normal value for Saudi Arabian exporters/ producers.

28.7.3 The normal value for Saudi Arabian exporters/producers has been taken on average cost of manufacturing including selling, administrative and general expenses of Taghleef LLC and Taghleef SAOG for POI. Calculation of constructed normal value for Saudi Arabian exporters/producers is placed at Annexure-VIII.

29. Determination of Export Price

29.1 The Commission received information on export sales of the investigated product from two exporters/foreign producers (Taghleef LLC, UAE and Taghleef SAOG, Oman) in response to the questionnaires sent to various exporters/foreign producers of the Exporting Countries (paragraphs 14.3 and 15 supra). Export price of investigated product for these two 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 of the Exporting Countries who did not cooperate with the Commission is determined on the basis of the information obtained from PRAL.

29.2 Determination of Export Price for Taghleef LLC, UAE

29.2.1 Export price for Taghleef LLC is determined on the basis of the information provided by it on its export sales of the investigated product to Pakistan made during POI.

29.2.2 According to the information, Taghleef LLC exported two types, Non-Metalized and Metalized of the investigated product to Pakistan during POI. Its total exports of the investigated product to Pakistan during POI were *** MT. All export sales to Pakistan, during POI, were made to un-related customers. Export price is determined separately for each type mentioned above.

29.2.3 During POI, Taghleef LLC exported investigated product on C&F basis. Taghleef LLC has categorized its sales of investigated product to Pakistan at three level i.e. Distributors, Convertors and end users. To arrive at the ex-factory level, it has reported adjustments on account of credit cost, inland freight, ocean freight and level of trade. The Commission has accepted adjustments for credit cost, inland freight and ocean freight. However, the Commission has rejected the level of trade adjustment. The Commission has rejected the level of trade adjustment on the ground that same level of trade adjustment has not been offered for domestic sales. The level of trade adjustment is given in view of saving in the cost of transactions. The Commission asked as to what price differential is available in domestic market, which justify the level of trade adjustment in export price. In reply it was stated that

there is no differential in level of trade in the domestic market. However, different price is given to different categories of importers in view of their additional cost hence this adjustment is claimed. But no evidence of additional cost of importer has been given by the exporter. The adjustment of level of trade is given for reasons of cost saving of the exporters and not on account of additional cost of importers. The Commission has disregarded the adjustment on the grounds, if it is accepted that adjustment is given on the account of additional cost, it should be supported by essential data plus it cannot be different for different exporters as shown below.

Table – III
Difference Level of Trade claimed

Distributor Name	Taghleef SAOG		Taghleef LLC	
	Status	Per Unit Adjustment Claimed (US\$/KG)	Status	Per Unit Adjustment Claimed (US\$/KG)
Multi Traders	Distributor	100.00	Distributor	41.82
Adnan Brothers	Distributor	100.81	Distributor	48.28
Glamour International	Distributor	---	Distributor	48.28
Trade Line International	Distributor	100.00	---	---
Sony Trading Co	Distributor	100.00	---	---

Note: Actual figures have been indexed with reference to the figure of per unit adjustment claimed by Taghleef SAOG for Multi Traders by taking it equal to 100.

29.2.4 It is also added that the cost of distributors have not been established through evidence. The export price at ex-factory level is worked out by deducting values reported for accepted adjustments from the gross value of sales transactions. Summary calculations of export price are placed at Annexure-IX.

29.3 Determination of Export Price for Other Non-cooperating Exporters from UAE.

29.3.1 Export price for exporters from UAE other than Taghleef LLC, 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 UAE. This is the only information available with the Commission on export sales of the investigated product by the non-cooperating exporters from UAE.

29.3.2 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, adjustments on account of inland freight, ocean freight and insurance have been made in the C&F price. Information submitted by Taghleef LLC on these

adjustments has been used for non-cooperating exporters/foreign producers. Calculations of export price for non-cooperating exporters/foreign producers from UAE are placed at Annexure-X.

29.4 Determination of Export Price for Taghleef SAOG, Oman

29.4.1 Export price for Taghleef SAOG is determined on the basis of the information provided by it on its export sales of the investigated product to Pakistan made during POI.

29.4.2 According to the information, Taghleef SAOG exported metalized and non-metalized types of the investigated product to Pakistan during POI. Its total exports of the investigated product to Pakistan during POI were *** MT. All export sales to Pakistan, during POI, were made to un-related customers. Export price is determined separately for each type mentioned above.

29.4.3 During POI, Taghleef SAOG exported investigated product on C&F basis. Taghleef SAOG has sold investigated product to Pakistan at three level i.e. Distributors, Convertors and end users. To arrive at the ex-factory level, it has reported adjustments on account of credit cost, commission, inland freight, ocean freight, insurance and level of trade. The Commission has accepted adjustments for credit cost, commission, inland freight, insurance and ocean freight. However, the Commission has rejected the level of trade adjustment for the reasons similar to that mentioned in case of Taghleef LLC. The export price at ex-factory level is worked out by deducting values reported for accepted adjustments from the gross value of sales transactions. Summary calculations of export price are placed at Annexure-XI.

29.5 Determination of Export Price for Other Non-cooperating Omani Exporters

29.5.1 The quantity of investigated product exported by non-cooperating Omani exporters is only 1.13 percent of the quantity exported by cooperating Omani exporters. Dumping margin calculated for cooperating exporter from Oman has been applied to all other non-cooperating Omani exporters.

29.6 Determination of Export Price for Chinese Exporters/Producers

29.6.1 No Chinese exporter/producer of the investigated product cooperated with the Commission in providing information (paragraph 14 supra). Thus, the Commission has relied on best information available and export price for imports of the investigated product from China has been determined in accordance with Section 32 and Schedule to the Ordinance. Information obtained from PRAL is used for the purposes of determination of export price for imports of the investigated product from China. This is the only information available with the Commission on export sales of the investigated product imported from China.

29.6.2 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, adjustments on account of ocean freight, inland freight and insurance have been made in C&F price. Information submitted by the Applicant on these adjustments has been used for this purpose. Calculation of export price for imports of the investigated product from China is placed at Annexure-XII.

29.7 Determination of Export Price for Gulf Packaging Saudi Arabian Exporters/Producers

29.7.1 Gulf Packaging Industries Limited provided information on its export sales of the investigated product to Pakistan made during POI. However, upon cross checking the export sales of the investigated product with PRAL's information, it was found that there are some transactions which have not been reported by Gulf Packaging Industries Limited. The Commission in its letter dated March 09, 2011 asked Gulf Packaging to provide clarification in this regard to which it did not respond.

29.7.2 After re-initiation investigation, the Commission has requested to ratify information it already submitted or add any information to already submitted information. The Commission then further wrote to the exporter that the Commission will accept already submitted information if it is willing to verify the information during on-the-spot investigation. Gulf Packaging did not responded to the Commission. Meanwhile, for the purposes of export price, the Commission has relied on best information available and export price for imports of the investigated product from Saudi Arabia has been determined in accordance with Section 32 and Schedule to the Ordinance. Information obtained from PRAL is used for the purposes of determination of export price for imports of the investigated product from Saudi Arabia. This is the only reliable information available with the Commission on export sales of the investigated product imported from Saudi Arabia.

29.7.3 Values in PRAL's information are reported at C&F level. C&F export price has been adjusted to the ex-factory level. For this purpose, adjustments on account of ocean freight and inland freight/handling cost have been made in C&F price. Information submitted by the Applicant on these adjustments has been used for this purpose. Calculation of export price for imports of the investigated product from Saudi Arabia is placed at Annexure-XIII.

30. Dumping Margin

30.1 The Ordinance defines "dumping margin" in relation to a product to mean "*the amount by which its normal value exceeds its export price*". 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. In this final determination, the Commission has determined individual dumping margin for the two exporters who cooperated with the Commission and supplied necessary information and the definitive antidumping duty rate for these exporters is established on the basis of individual

dumping margin determined for each exporter. However, residual dumping margins/antidumping duty rates have been determined for non-cooperating exporters/foreign producers of the Exporting Countries.

30.2 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.

30.3 The Commission has also complied with the requirements of Section 11 of the Ordinance which states that *“the Commission shall, where possible, compare export price and normal value with the same characteristics in terms of level of trade, time of sale, quantities, taxes, physical characteristics, conditions and terms of sale and delivery at the same place”*.

30.4 Taking into account all requirements set out above, the dumping margins have been determined as follows. Calculations of dumping margin are placed at Annexure-XIV:

**Table-IV
Dumping Margin**

Country	Exporter Name	Dumping margin as % of	
		Export price	C & F price
UAE	Taghleef	30.49%	29.70%
	All others	58.89%	57.09%
Oman	Taghleef	24.32%	22.95%
	All others	24.32%	22.95%
China	All exporters	59.67%	56.80%
Saudi Arabia	All exporters	28.04%	26.91%

31. Negligible Volume of Dumped Imports

31.1 In terms of Section 41(3) (b) of the Ordinance, volume of dumped imports shall normally be regarded as negligible if the volume of dumped imports of an investigated product is found to account for less than 3 percent of total imports of the like product unless imports of the investigated product from all countries under investigation which individually account for less than three percent of the total imports of a like product collectively account for more than seven percent of imports of a like product.

31.2 In this regard, data and information available with the Commission on volume of dumped imports of the investigated product from Exporting Countries and like product from other sources during POI from January 01, 2009 to June 30, 2010 is given in the following table:

Table-V
Volume of Imports during POI

Imports from:		Imports in:
		% of total imports
Dumped sources	China	4.01
	Oman	55.54
	Arabia	4.30
	UAE	24.66
Other sources		11.49
Total		100.00

Source: PRAL and Cooperating Exporters

31.3 The above table shows that the volume of dumped imports of the investigated product from Exporting Countries was well above the negligible threshold during POI.

C. INJURY TO DOMESTIC INDUSTRY

32. Determination of Injury

32.1 Section 15 of the Ordinance sets out the principles for determination of material injury to the domestic industry in the following words:

“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...”*

32.2 Section 15 of the Ordinance further provides that:

“ No one or several of the factors identified shall be deemed to necessarily give decisive guidance and the Commission may take into account such other factors as it considers relevant for the determination of injury”.

32.3 The Commission has taken into account all factors in order to determine whether the domestic industry suffered material injury during POI. Material injury to the domestic industry has been analyzed in the following paragraphs in accordance with Part VI of the Ordinance.

33. Domestic Industry

33.1 For the purposes of this final determination, the Commission has determined (paragraph 7 supra) domestic industry manufacturing domestic like product consists of the following two units:

- i. Tri-Pack Films Limited, Karachi;
- ii. Macpac Films Limited, Karachi;

33.2 Application has been filed by one unit i.e. Tri-Pack Films Limited, Karachi. Mac-Pac Films Limited is supporting the application but has not provided information in response to the questionnaire sent on April 27, 2012. The Applicant has furnished financial reports of Mac-Pac Films Limited for the year 2008-09. It is also worth noting that financial year of Mac-Pac Films, for which operating results are available, ends in June while POI is a calendar year. Besides the operating results of Mac-Pac Films Ltd. reflect distorted position due to fire that broke in the industrial unit of company during 2007-08. It is also added that the production of applicant constitutes a major proportion of the total domestic production of the domestic like product.

33.3 The analysis of injury factors carried out in this final determination in the following paragraphs is, therefore, based on the Applicant information. Any inference derived in this regard from the data of the Applicant would apply to the entire domestic industry.

34. Cumulation of Dumped Imports

Section 16 of the Ordinance states that:

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

“(a) dumping margin in relation to an investigated product from each country is more than the negligible amount as specified....., and volume of dumped imports from each investigated country is not less than the negligible quantity as specified.....; and

“(b) a cumulative assessment of the effects of the imports is appropriate in the light of

- (i) the conditions of competition between the imports; and*
- (ii) the conditions of competition between the imports and a domestic like product”.*

34.2 Investigation by the Commission has revealed that the volume of dumped imports during the POI from the Exporting Countries was above the negligible quantity (paragraph 27 supra). Furthermore, dumping margins for each country was also more than the negligible amount.

34.3 Weighted average export price charged by the exporters from the Exporting Countries during the POI is given below. The C&F price from China is although lower than other Gulf Countries, its volume is so low that it is not affecting the competition between imports of like product. Therefore, there was a price competition between imports of the investigated product. Weighted average export price of the investigated product during the POI is given in a table below:

Table-VI
Weighted Average C&F Price of the Investigated Product

Country	Weighted Average C&F Price
China	100.00
Oman	128.54
Saudi Arabia	126.11
UAE	119.67

Sources: PRAL and cooperating exporters

Note: Actual figures have been indexed with reference to the figure Ofweighted average C & F price for China by taking it equal to100.

34.4 The investigation revealed that there was a competition between investigated product and the domestic like product in terms of price, market share, and sales etc. Conditions of competition between imports of the investigated product and the domestic like product are discussed in detail in paragraphs 31 to 42 infra.

34.5 For the reasons given above, the Commission has cumulatively assessed the effects of dumped imports from the Exporting Countries on the domestic industry in following paragraphs:-

35. Volume of Dumped Imports

Facts

35.1 With regard to the volume of dumped imports, in terms of Section 15(2) of the Ordinance, the Commission considered whether there has been a significant increase in dumped imports, either in absolute terms or relative to the production of the domestic like product.

35.2 In order to ascertain the volume of dumped imports of the investigated product and production of the domestic like product, information submitted by the Applicant, exporters/foreign producers and obtained from PRAL has been used. The following table shows imports of the like product during the

years 2006-07, 2007-08 and 2008-09 and production of the domestic like product by the domestic industry for the aforementioned years:

**Table-VII
Volume of Imports and Domestic Production**

Year*	Increase in imports from exporting countries from previous year	Increase in domestic production from previous year	Import as percentage of Domestic Production
	Percentage	Percentage	
2007	--	--	11.80
2008	-12.96	-0.25	10.30
2009	56.86	1.22	16.41
Jan – Jun 2009	---	---	28.59
Jan – Jun 2010	-47.91	0.29	14.84

*Year is from 1st January to 31st December

Sources: PRAL and cooperating exporters

Analysis

35.3 Imports of the investigated product from Exporting Countries decreased by 12.96 percent in the year 2008. However, imports of the investigated product increased significantly by 56.86 percent during the year 2009 over the imports of the year 2008.

35.4 Production of the domestic like product decreased by 0.25 percent in the year 2008 and increased by 1.22 percent during the year 2009 over the production of the year 2008. The above table shows an increase in production of the domestic like product during the POI.

35.5 Imports of the investigated product were 11.80 percent, 10.30 percent, 16.41 percent and 14.84 percent of the production of domestic like product during the years 2007, 2008, 2009 and last six months of the POI respectively.

35.6 The imports in absolute terms in the year 2008 decreased by *** MT over the year 2007 while imports in absolute terms increased by *** MT in 2009. However imports of investigated product decreased by *** MT during the last six months of POI. Increase in imports of investigated product during the first twelve months was at higher rate than the decrease in the imports of investigated product during the last six months of POI.

Conclusion

35.7 On the basis of the above information and analysis, the Commission has concluded that the dumped imports of the investigated product increased significantly in absolute terms as well as relative to production of the domestic like product during POI.

36. Price Effects

Effect of dumped imports on sales price of domestic like product in the domestic market has been examined to establish whether there was significant price undercutting (the extent to which the price of the investigated product was lower than the price of the domestic like product), price depression (the extent to which the domestic industry experienced a decrease in its selling prices of domestic like product over time), and price suppression (the extent to which increased cost of production could not be recovered by way of increase in selling price of the domestic like product). Price effects have been determined on Applicant's information as information on prices of the other producers is not available with the Commission.

36.1 Price undercutting**Facts**

36.1.1 Weighted average ex-factory price of the domestic like product has been calculated from the information submitted by the Applicant on quantity and value of sales during POI. Landed cost of the investigated/dumped product has been calculated from the information obtained from PRAL. Calculations of domestic sales price of the domestic like product and landed cost of the investigated product are placed at Annexure XV and Annexure XVI respectively. Comparison of weighted average ex-factory price of the domestic like product with the weighted average landed cost of the investigated product during POI is given in following table:

**Table-VIII
Calculations of Price Under-cutting**

Year*	Domestic Price**	Landed Cost**	Price under-cutting	
			Absolute	Percentage
2007	100.00	103.58	---	---
2008	127.44	138.75	---	---
2009	110.56	105.62	4.81	4.35
Jan – Jun 2009	111.56	100.85	10.71	9.60
Jan – Jun 2010	124.39	128.29	---	---

* Year is from 1st Jan to 31st Dec * Price/landed cost without sales tax
Sources: Applicant and cooperating exporters

Note: The actual figures domestic price and landed cost have been indexed w.r.t weighted average ex-factory price of domestic like product for 2007.

Analysis

36.1.2 The above table shows that the landed cost of the investigated product and prices of the domestic like product registered an increase in year 2008. However, prices of investigated product undercut prices of domestic like product during POI for dumping. Domestic price was less than landed

cost during the last six months of POI but magnitude of the price undercutting during the first twelve months was overwhelming.

Conclusion

36.1.3 On the basis of the above facts and analysis, the Commission has concluded that the domestic industry has suffered material injury on account of price undercutting during POI due to dumped imports of the investigated product.

36.2 Price Depression

Facts

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

**Table-IX
Calculation of Price Depression**

Year*	Domestic price**	Price depression
2007	100.00	---
2008	127.44	---
2009	110.56	16.88
Jan – Jun 2009	111.56	---
Jan – Jun 2010	124.39	---

* Year is from 1st Jan to 31st Dec

** Price exclusive of sales tax

The actual figures have been indexed w.r.t weighted average ex-factory price of domestic like product for 2007.

Analysis

36.2.1 The above table shows that the price of domestic like product increased by 27.44 percent in year 2008 over prices of domestic like product in year 2007. However, price of domestic like product decreased by 13.24 percent during the year 2009. Domestic price recovered during the last six months of POI but magnitude of the decrease during the first twelve months was overwhelming.

Conclusion

32.2.4 The Commission has concluded on the basis of the above information and analysis that the domestic industry has suffered material injury on account of price depression during the POI for dumping due to dumped imports of the investigated product. The prices of the investigated product and the inputs reduced in the year 2009, however, the reduction in prices was more than reduction in cost. Therefore, it is held that price depression was partly due to decrease in cost and partly due to dumping.

36.3 Price Suppression**Facts**

36.3.1 Weighted average cost to make and sell of the domestic like product has been calculated from the information submitted by the Applicant on cost to make and sell during POI. The following table shows the weighted average cost to make and sell and the weighted average ex-factory sales price of the domestic like product during POI:

**Table-X
Calculations of Price Suppression**

Year*	Cost of goods sold	Ex-factory price**	Increase/(decrease) in:		Price Suppression
			Cost of goods sold	Price	
2007	100.00	119.11	---	---	---
2008	131.57	151.79	31.57	32.69	---
2009	113.95	131.68	(17.63)	(20.11)	---
Jan – Jun 2009	113.59	132.87	(0.36)	1.19	---
Jan – Jun 2010	132.78	148.15	19.19	15.28	3.91
2009-10 Annualized	120.27	137.22	(11.30)	(14.58)	---

* Year is from 1st Jan to 31st Dec ** Price exclusive of sales tax

Note: The actual figures have been indexed w.r.t cost of goods sold of domestic like product for 2007.

Analysis

36.3.2 The above table shows that the weighted average cost of sales of the domestic like product increased by Rs. ***/MT (31.57 percent) and by ***/MT (16.90 percent) in the year 2008 and last six months of POI respectively over the same period of previous year. Weighted average ex-factory price of the domestic like product increased by Rs. ***/MT (27.44 percent) and by ***/MT (11.50 percent) in the years 2008 and last six months of POI respectively. Thus, the domestic industry recovered increased cost of production in the year 2008 and by way of an increase in selling price. However, in the last six months of POI for dumping, domestic industry could not recover increased cost of sales through increased price because increase in price was lower than the increase in cost of sales. An analysis was done on the annualized basis for POI of dumping and it was found that the domestic industry did not experienced price suppression.

Conclusion

36.3.3 On the basis of the above information and analysis, the Commission has concluded that the domestic industry did not suffer material injury on account of price suppression during POI for dumping, as it was able to recover cost of sales by selling domestic like product.

37. Effects on Market Share**Facts**

37.1 During POI, domestic demand for BOPP Film in Pakistan was met through sales by the domestic industry and by imports. The domestic consumption of BOPP Film is arrived at by combining the domestic industry's sales and total imports, and this is referred as the total domestic market or domestic consumption. The Applicant supplied information on total sales of the domestic like product in domestic market. Information on imports of BOPP Film is ascertained on the information obtained from PRAL and submitted by the cooperating exporters/foreign producers of the Exporting Countries. The total domestic market for BOPP Film during POI is given in following table:

**Table - XI
Market Share**

Year	Applicant	Exporting Countries	Other Sources	Total Domestic Market
2007	82.87	9.93	7.19	100.00
2008	83.37	8.65	4.79	96.81
2009	81.65	13.95	2.16	97.76
Jan – Jun 2009	74.77	22.03	3.21	100.00
Jan – Jun 2010	74.71	11.46	0.85	87.02

* Year is from 1st Jan to 31st Dec

Note: The actual figures have been indexed w.r.t total domestic market for year 2007 and Jan – Jun 2009.

Analysis

37.2 The above table shows that domestic market of BOPP Film decreased by 3.19 percent in the year 2008. It increased by 0.98 percent during the year 2009 as compared to previous year.

37.3 Domestic industry's market share increased from 82.86 percent in the year 2007 to 86.12 percent in the year 2008. It decreased to 83.52 percent during the 2009. The decrease in market share of the domestic industry during 2009 was due to increased imports from alleged dumped sources.

37.4 Market share of imports of the investigated product from exporting countries decreased to 8.93 percent in the year 2008 from 9.93 percent in the year 2007. It sharply increased to 14.27 percent during the year 2009. Share of imports of the like product from countries other than Exporting Countries continuously decreased over POI for injury.

Conclusion

37.5 On the basis of above information and analysis, the Commission has concluded that the domestic industry suffered on account of market share due to dumped imports of the investigated product during POI.

38. Effects on Sales

Facts

38.1 As per information obtained from Applicant, total sales of the domestic like product by the domestic industry in domestic market during POI was as follows:

**Table -XII
Sales of the Domestic Like Product**

Year*	Domestic Sales	Increase/decrease
2007	100.00	---
2008	100.60	0.60%
2009	98.53	(2.06%)
Jan – Jun 2009	100.00	---
Jan – Jun 2010	99.92	(0.08%)

* Year is from 1st Jan to 31st Dec

Note: The actual figures have been indexed w.r.t domestic sales for year 2007 and Jan – Jun 2009.

Analysis

38.2 The above table shows that the sales of the domestic like product by the domestic industry increased by 0.60 percent in the year 2008. However the sales of domestic like product decreased by 2.06 percent during year 2009 over the sales during the year 2008. Sales of domestic like product decreased by 0.08 percent during first six months of 2010 as compared to same period of 2009.

Conclusion

38.3 On the basis of above information and analysis, the Commission has concluded that sales of the domestic like product decreased during POI, hence domestic industry suffered material injury on account of sales.

39. Effects on Production and Capacity Utilization

Facts

39.1 The installed production capacity of the domestic industry to produce domestic like product is *** MT per annum on three-shift basis. Quantity produced and the capacity utilized by the domestic industry during POI was as follows:

**Table-XIII
Production and Capacity Utilization**

Year *	Installed Capacity	Capacity Utilization (%)
2007	100.00	103.00
2008	99.75	99.04
2009	100.97	100.25
Jan – Jun 2009	100.00	100.47
Jan – Jun 2010	100.29	99.57

* Year is from 1st Jan to 31st Dec

Source: the Applicant

Note: The actual figures have been indexed w.r.t quantity produced for year 2007 and Jan – Jun 2009.

Analysis

39.2 Investigation of the Commission showed that the Applicant enhanced its capacity to produce domestic like product from *** MT per annum to *** MT in the year 2008. Applicant further enhanced its installed capacity to *** MT in 2010 on annual basis.

39.3 Above table showed that the production of domestic like product decreased by 0.25 percent in year 2008. However, quantity produced increased by 1.22 percent in year 2009 over year 2008. Capacity utilization decreased by 0.9 percent in first six months of 2010 as compared to same period of 2009.

Conclusion

39.4 On the basis of the above information and analysis, the Commission has concluded that the domestic industry did not suffer material injury on account of production and capacity utilization during POI for dumping.

40. Effects on Inventories

Facts

40.1 The Applicant provided data relating to its inventories of the domestic like product during POI. Data for opening and closing inventories for the domestic like product of the Applicant during POI is given in the following table:

**Table-XIV
Inventories of Domestic Like Product**

Year*	Opening Inventory	Production for domestic sales	Sales	Closing Inventory	Change in Inventory
2007	2.01	100.00	99.41	2.60	0.59
2008	2.60	99.26	100.01	1.84	-0.76
2009	1.84	97.99	97.95	1.89	0.05
Jan-Jun 2009	3.60	100.00	97.05	6.55	2.95
Jan-Jun 2010	3.69	96.59	96.97	3.32	-0.37

* Year is from 1st Jan to 31st Dec ** Closing inventory as on 30th June 10

Note: The actual figures have been indexed w.r.t production for domestic sales for year 2007 and Jan – Jun 2009.

Analysis

40.2 The data given in the table above shows that the closing inventory level of the domestic like product decreased from *** MT in Year 2008 to *** MT at the end of POI (30th June 2010). Intermediate results are, however, contrary and with increase in volume of dumped imports in first half of 2009, there was significant increase in inventories from *** MT to *** MT. The domestic industry was however, able to counter the effects.

Conclusion

40.3 On the basis of the above facts and analysis, the Commission has concluded that the domestic industry did not suffer material injury on account of increase in inventories of the domestic like product during POI for dumping.

41. Effects on Profits/Loss

Facts

41.1 Applicant is manufacturer of BOPP Film and CPP Film. The profit & loss on the basis of BOPP Film duly adjusted (explained in on-the-spot investigation report of domestic industry) is given below:

**Table -XV
Profit/(Loss) of the Applicant**

Year *	Net Profit/(Loss)
2007	100.00
2008	105.66
2009	89.55
Jan – June 2009	100.00
Jan – June 2010	82.44

* Year is from 1st Jan to 31st Dec

Note: The actual figures have been indexed w.r.t.net profit for year 2007 and Jan – Jun 2009.

Analysis

41.2 The above table shows that the domestic industry earned net profit on production of the domestic like product during POI of injury. Net profit during year 2008 increased over year 2007. However, net profit earned by domestic industry decreased during POI for dumping.

Conclusion

41.3 On the basis of the above facts, the Commission has concluded that the domestic industry has suffered material injury on account of profits during POI for dumping.

42. Effects on Cash Flow

Facts

42.1 The Applicant in the application took the cash inflow/cash outflow on the basis of net profit/(loss) and adding to it depreciation for the year. Such an approach towards cash flow was adopted for the reason that cash flow cannot be measured with the products i.e. BOPP Film and CPP Film separately. However, such approach towards cash flow ignores the substantial effect of dumping on the elements of cash flow like debtors, stocks, stores and spares etc. This aspect was discussed with the management and it was agreed that cash flow from operating activities as appearing in the audited reports may be taken as verified figures using the approach given in proviso to Section 17 of the Ordinance in terms of which, if separate identification is not possible, the Commission shall assess the effects of dumped imports by examination of production of narrowest group or range of products which includes a domestic like product for which necessary information is available. Total net cash flow position of the Applicant during POI is given in the following table:

**Table -XVI
Cash FlowPosition**

Year*	Net cash flow
2007	100.00
2008	27.24
2009	99.69
Jan-Jun 2009	100.00
Jan-Jun 2010	41.14

* Year is from 1st Jan to 31st Dec

Source: the Applicant

Note: The actual figures have been indexed w.r.t net cash flow for year 2007 and Jan – Jun 2009.

Analysis

42.2 The above table shows that the net cash flow of the domestic industry recovered during year 2009. However, there is significant decrease in cash inflow in the last six months of POI i.e. Jan – Jun 2010.

Conclusion

42.3 On the basis of the above, the Commission has concluded that the domestic industry suffered material injury on account of cash flows.

43. Effects on Employment, Productivity and Salaries & Wages

Facts

43.1 Effects on employment, productivity and salaries & wages are ascertained on the basis of the Applicant's information. Applicant's employment, productivity, salaries and wages for production of the domestic like product were as follows during POI:

**Table -XVII
Employment, Productivity and Salaries & Wages**

Year	**No. of Employees	Salaries & Wages	Production	Productivity per worker**	Salaries & Wages Rs. Per KG
2007	100	100	100	100	100
2008	105	133	100	95	133
2009	116	170	101	87	169
Jan-Jun 2009	100	100	100	100	100
Jan-Jun 2010	106	123	97	92	127

Source: Applicant ** Employees working on BOPP Plant

Note: The actual figures have been indexed w.r.t no. of employees, salaries & wages, production, productivity per worker and salaries & wages per kg for year 2007 and Jan – Jun 2009.

Analysis

43.2 The above table shows that the employment in the domestic industry increased by ***, ***, *** number of employees in the year 2008, 2009, 2010 respectively. Productivity per worker decreased from *** KG in the year 2007 to *** KG in year 2008. It further decreased to *** KG per worker during the year 2009.

43.3 Salaries and wages per KG of production of the domestic like product increased from Rs. ***/KG in the year 2007 to Rs. ***/KG in the year 2008. It further increased to Rs. ***/KG during the year 2009.

Conclusion

43.4 Based on the above information and analysis, the Commission has concluded that the domestic industry did not suffer on account of employment. However, the productivity per worker reduced from *** kg in year 2007 to *** kg in the year 2009. The salaries & wages per kg of output increased from Rs. *** in year 2007 to Rs. *** in year 2009. Productivity per worker reduced during first six months of year 2010 as compared to corresponding period of 2009 and salaries & wages per kg of output increased during first six months of year 2010 as compared to corresponding period of 2009.

44. Effects on Return on Investment

Facts

44.1 Return on investment realized by the domestic industry during POI is determined on Applicant's information. Following table shows return on investment of the Applicant during POI:

Table -XVIII
Return on Investment

Year*	Return on Investment (%)
2007	37
2008	43
2009	28
Jan-Jun 2009	20
Jan-Jun 2010	18

* Year is from 1st Jan to 31st Dec

Source: Applicant

Analysis

44.2 The above table shows that the return on investment of the domestic industry increased during year 2009 however, return on investment decreased during the POI as compared to earlier two years 2007 and 2008.

Conclusion

44.3 On the basis of the above, the Commission has concluded that the domestic industry suffered material injury on account of return on investment.

45. Effects on Growth

Table -XIX
Growth of Fixed Assets

Period	Growth (%)
2007	18.82
2008	29.07
2009	4.72
Jan-Jun 2009	---
Jan-Jun 2010	1.23

* Year is from 1st Jan to 31st Dec

Source: Applicant

Facts/analysis

45.1 As evident from the table above, the growth of fixed assets of domestic industry decreased substantially during the POI. The reason seems to be installation of new plant of CPP in 2007 and 2008. One cannot expect a steady growth rate in assets as it is always linked to expansion plans.

Conclusion

45.2 On the basis of the above, the Commission has concluded that the domestic industry did not suffer material injury on account of growth and investment during POI.

46. Ability to Raise Capital

Facts/analysis

46.1 The Applicant alleged difficulties in raising capital due to dumping of the investigated product. In application, the Applicant has stated, *“Since the Applicant is a public limited company formed as a result of Joint Venture between a Japanese and a Pakistani Company, hence excessive deterioration in its profitability due to continued dumping has adversely affected the confidence of foreign investors and financial institutions. Therefore, it is likely to face difficulty in raising investment in future.”* However, it did not submit any documentary evidence in support thereof.

Conclusion

46.2 The Commission has concluded that the domestic industry did not suffer material injury in respect of its ability to raise capital due to imports of the investigated product.

47. Summing up of Material Injury

47.1 The facts and analysis in the table above and preceding paragraphs (paragraphs 35 to 46 supra) shows that the domestic industry has suffered material injury during POI on account of:

- i. Increase in volume of dumped imports;
- ii. price undercutting;
- iii. price depression;
- iv. decline in market share;
- v. decline in domestic sales;
- vi. decline in profit;
- vii. negative effect on productivity;
- viii. negative effect on salaries & wages;
- ix. negative effect on return on investment; and
- x. negative effect on cash flow.

47.2 Dumped imports of investigated product from the Exporting Countries significantly increased in absolute terms and relative to domestic production of domestic like product during the POI.

47.3 The landed cost of investigated product undercut and depressed the sales price of domestic like product in Pakistan's market during the POI.

47.4 The domestic industry's domestic sales declined and it lost its market share due to increase in volume of dumped imports of investigated product during the POI. Profit of the domestic industry declined and there was negative effect on cash flow.

47.5 On the basis of foregoing, the Commission has concluded that the domestic industry suffered material injury due to dumped imports of investigated product in terms of Section 15 and 17 of the Ordinance.

D. CAUSATION

48. Effect of Dumped Imports

48.1 The causation analysis, as required by Section 18 of the Ordinance is based on all relevant evidence before it. This included consideration of factors other than dumped imports and the time correlation between dumping and injury. It may be pointed out no other factor was pointed out by any interested party which may be causing injury to domestic industry except the international crisis during 2008 and 2009. It may be noted from Table – XI that market share of BOPP Film reduced marginally but it increased during 2009. Hence this factor cannot be considered effecting domestic market. The Commission examined the factors mentioned in Section 18(3) of the Ordinance. It was found that:-

- i. Volume of imports from non-dumped sources were 76% of imports in year 2007 which reduced to 13% in 2009 and 7% in last six months of POI. This reveals that volume of imports from non-dumped sources did not cause injury to domestic industry.
- ii. The average prices of imports other than dumped sources were higher than average prices of dumped sources.
- iii. Total domestic demand of the investigate product remained with-in a narrow range (***)MT in 2007 to (***)MT in 2009). Hence contraction in demand was not a factor injuring domestic industry.
- iv. There were no significant changes in trade restrictive policies and there was competition between foreign and domestic producers.
- v. There was no significant changes in development of technology; and

- vi. Export performance of the domestic industry was better in 2009 and 2010. Therefore, this to some extent diluted the effects of dumping and was not a factor causing injury to domestic industry.

48.2 In the absence of any known factor causing injury to domestic industry, the injury suffered by domestic industry was because of dumping. Besides, there was strong time correlation found between increased volume of dumped imports and the injury caused to domestic industry. The dumped imports share as percentage of total imports increased from 58 percent in 2007 to 87 percent in 2009. This resulted in reduction of market share of domestic industry from 86.12 percent in 2008 to 83.52 percent in 2009. There was reduction in domestic sales from ***MT in 2007 to ***MT in 2009. The reduction in sales and the depressing effect of dumped imports resulted into reduced profitability of the domestic industry. The investigation revealed that the following happened simultaneously during POI:

- i. Domestic industry experienced price depression due to dumped imports of the investigated product;
- ii. Domestic industry's market share declined due to increase in dumped imports of the investigated product during POI for dumping; and
- iii. Domestic industry's domestic sales decreased during the POI for dumping due to dumped imports of the investigated product.

48.3 On the basis of the analysis and conclusions, the Commission has concluded that there was a causal link between dumped imports of the investigated product and material injury suffered by the domestic industry.

49. Other Factors

49.1 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 cause injury to the domestic industry, in order to ensure that possible injury caused by other factors is not attributed to the dumped imports.

49.2 The Commission's investigation showed that the domestic industry did not suffer injury due to imports of the like product from sources other than the Exporting Countries during POI as imports from sources other than Exporting Countries were reducing. Prices of imports from sources other than Exporting Countries were well above the prices of investigated product imported from Exporting Countries. Following table shows the volume and weighted average C&F prices of dumped and other imports during POI (from January 01, 2009 to June 30, 2010):

**Table -XXI
Volume and C&F Prices of Imported BOPP Film**

	Weighted average C&F prices	% share in total imports
Dumped Imports	100.00	88.51%
Other sources	135.87	11.49%

Source: PRAL and Cooperating Exporters

Note: Weighted average C&F price of dumped imports has been indexed as 100.

49.3 The factors mentioned in Section 18(3) of the Ordinance were also examined and it was determined that:

- i. There was no contraction in demand.
- ii. There was no change in competition between foreign producers/exporters of the Exporting Countries, producers/exporters from other sources and domestic producers; and
- iii. There was no considerable change in technology to produce BOPP Film.

E. CONCLUSIONS

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

- i. the application was filed on behalf of domestic industry as the Applicant represent major proportion 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/producers of the investigated product from the Exporting Countries are above the negligible and *de minimis* levels respectively;
- v. the dumping margins expressed as a percentage of weighted average adjusted export price at ex-factory level is ranging between 24.32 percent to 59.67 percent for exporters/foreign producers from the Exporting Countries;

- vi. the domestic industry suffered material injury during POI on account of Increase in volume of dumped imports, price undercutting, price depression, decline in market share, decline in domestic sales, decline in profit negative effect on cash flow, negative effect on productivity, negative effect on salaries & wages and negative effect on return on investment.
- vii. there is a causal relationship between dumped imports of the investigated product and the material injury suffered by the domestic industry.

F. IMPOSITION OF DEFINITIVE ANTIDUMPING DUTY

51. In view of the analysis and conclusions with regard to dumping, material injury, and causation, the Commission is required to impose antidumping duty on dumped imports of the investigated product equal to dumping margin under Section 50 of the Ordinance.

52. Individual dumping margins have been determined for exporters/foreign producers of the investigated product who cooperated and supplied information necessary for the purposes of this investigation and rate of definitive antidumping duty for these exporters is determined on the basis of their individual dumping margins (paragraphs 28 to 30 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 (paragraphs 28 to 30 supra).

54. 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 for a period of three years effective from August 15, 2012. The definitive antidumping duty rates are determined on C&F value in *ad val.* terms. Definitive antidumping duties at C&F value are equivalent to the final dumping margins determined at ex-factory price level. The dumped investigated product is classified under PCT heading Nos. 3920.2010 and 3920.2030 excluding the Capacitor Grade BOPP Film and BOPP Film having thickness from 1 micron to 7 micron.

**Table-XXII
Definitive Antidumping Duty Rates**

Country	Exporter Name	Definitive Antidumping Duty
UAE	Taghleef	29.70%
	All other exporters	57.09%
Oman	Taghleef	22.95%
	All other exporters	22.95%
China	All exporters	56.80%
Saudi Arabia	All exporters	26.91%

55. BOPP Film imported from sources, other than the Exporting Countries shall not be subject to definitive antidumping duties.

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

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

58. The 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.

59. The Commission had imposed following provisional antidumping duties on the investigated product vide Official Gazette (extra ordinary) dated August 14, 2012 for a period of four months effective from August 15, 2012:

**Table-XXIII
Provisional Antidumping Duty Rates**

Country	Exporter Name	Provisional Antidumping Duty
UAE	Taghleef	29.70%
	All other exporters	57.09%
Oman	Taghleef	22.92%
	All other exporters	22.92%
China	All exporters	62.70%
Saudi Arabia	All exporters	26.91%

60. In terms of Section 55(2) of the Ordinance, if 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. The Commission has imposed definitive antidumping duties in case of China lower than the provisional antidumping duty. Claims for refund of difference between provisional antidumping duty and final antidumping duty with respect to the import of the investigated product would be entertained, if claimed within the stipulated time period under Section 55(2) of the Ordinance.

61. The scope of the investigated product was changed and the BOPP Film Capacitor Grade and BOPP Film having thickness from 1 micron to 7 micron have been excluded from the purview of the investigation and antidumping duty. Accordingly, antidumping duty paid by the importers of the BOPP Film Capacitor Grade and BOPP Film having thickness from 1 micron to 7 micron would be refunded to the importers of said product.

(Niamatullah Khan)
Member
February 04, 2013

(Zamir Ahmed)
Member
February 04, 2013

(Prince Abbas Khan)
Chairman
February 04, 2013

Final Determination and levy of Definitive antidumping duties on import of Bixially Oriented Poly Propylene Film into Pakistan Originating in and/or Exported from the People's Republic of China, Sultanate of Oman, Kingdom of Saudi Arabia and United Arab Emirates

Annexure-I**List of Exporters**

TORAY INTERNATIONAL Room 1607, 16th Floor, Office Tower, CITIC Plaza, 233 Tianhe North Road, Guangzhou, 510613, China Tel:+862087521672 Fax:+862038771217	SHANGHAI HUAJIAN IMP Rm. 2303, 23/f, Jingde Plaza, 319, Changde Road, Jing'an, Shanghai, China
CHINA NATIONAL AERO TECHNOLOGY IMP & EXP 39-1,Zhusigang 2nd road, Nonglinxia street, Guangzhou China Ph: + 86 20 87789274	JIANGSU SHUKANG PACKING MATERIAL CO.,LTD, SHUANGLI GANG ,jiangyin , jiangsu China-214444 Tel:86-510-6630121 Fax:86-510-6630116
SHENZHEN XIN YUN TONG SCIENCE Technology Co Ltd 1802 JingbeiJiayuanYiwu Zhejiang, China Tel 0579 85905126	SUZHOU KUNLENE FILM CO., LTD 368 XINGLONG ROAD SI 368 Xinglong Road SIP, Suzhou 215126, Jiangsu Province, China. Tel:8651262833030, Fax:8651262833770
ZHEJIANG ZHONGCHENG PACKING MATERIAL CO., LTD NO.26 LIU XI ROAD JIASHAN ECONOMIC DEVELOPMENT ZONE ZHEJIANG, CHINA P.C. 314100 Tel:8657384183960 Fax:8657384187818	NANCHANG TOPSHINE INDUSTRIAL CO. LTD. Lianxie Rd Nanchang County Jiangxi Province China
IZHAN ENTERPRISES Block B, Baoli Building, Baoan Road South, Shenzhen, Guangdong - 518 000,China	TAIZHOU DOYIN IMPORT AND EXPORT CO,LTD. F4,Building A, Wenling Mansion Taizhou Zhejiang , China 317500
TAGHLEEF INDUSTRIES SAOG P.O. Box 38 Postal Code 327, Sohar Industrial Estate, Sultanate of Oman Phone +968 26751823/24/25 Fax+968 26751822	FOSHAN JIAYU IMPORT AND EXPORT CO., LTD 66, Rulin West Road, Jiujiang, Nanhai District, Foshan, Guangdong, China, 528203, China
GULF PACKAGING INDUSTRIES LTD First Industrial Area PO Box 8556, Dammam, Kingdom of Saudi Arabia. Tel +966 38472244 Fax +966 38471931	AL - SHARQ FLEXIABLE PACKAGING 2nd Industrial City Riyadh, PO Box 285, Kingdom of Saudi Arabia. Tel +966 12655551 Fax +96612651804
TAGHLEEF INDUSTRIES L.L.C. P.O. Box 56391 Jebel Ali Industrial Area 1Dubai, U.A.E. Tel: +97148801100 Fax:+97148801122	INTEGRATED PLASTIC PACKING (LLC) P.O. Box 37607 Dubai , U.A.E. Tel: +97143479009 Fax: +97143476987
TAWAZON CHEMICAL COMPANY P.O. Box 52161 Dubai, U.A.E. Tel: +97143368230 Fax:+97143367357	ASAD MEHMOOD METALS TRADING LLC P.O. BOX DUBAI SH CITY – DUBAI BOX NO 92420 PHONE – 2722462
TWINS WALLS LLC Twin Walls LLC PO Box: 56834 Dubai, UAE Tel: +97148854436 Fax:+97148854437	TITAN STAR GENERAL TRADING FZC CHINA
INFUEX COMPANY LIMITEDCHINA AMAGIC HOLOGRAPHICS PVT LTDCHINA	SOUVENIR BLDG MATERIAL TRADING CHINA Wenzhou Gettel Plastic Industry Co., Ltd. (Haigang Road) Demonstrating Industrial Zone, Longjin Avenue, Longgang Town, Cangnan County, Wenzhou, Zhejiang, China (Mainland) Tel:86-577- 64288462, Fax: 86-577-26658662

Final Determination and levy of Definitive antidumping duties on import of Bixially Oriented Poly Propylene Film into Pakistan Originating in and/or Exported from the People's Republic of China, Sultanate of Oman, Kingdom of Saudi Arabia and United Arab Emirates

Annexure-II

List of Interested Parties at Public Hearing of BOPP Antidumping Investigation	
Name	Organization
Mr. MazharBangash	RIAA Law
Ms. Tess Lambourne	RIAA Law
Mr. Ali Mirza	Taghleef Industries
Mr. Waseem	Khawaja Electronics
Mr. Abdul JalilGhouri	GFC Fan
Mr. Shahid	GFC Fan
Mr. Amjad Ali	Tri-Pack Films Limited
Mr. Saifullah Khan	S. U. Khan Associates
Mr. Abdul KhaliqChishty	S. U. Khan Associates
Mr. JabarHussain	S. U. Khan Associates

Annexure-III

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

Table-II
Comments of Interested Parties

Column – A (Comments of Interested Parties)	Column – B (Commission's Response)
<p>Comments of:</p> <ul style="list-style-type: none">i. Taghleef Industries, UAEii. Taghleef Industries, Omaniii. Gulf Packaging Industries Limitediv. Tri-Pack Film Industries Limitedv. Wenzhou Gettel Plastic Industry Co. Ltdvi. Khawaja Electronics (Pvt.) Ltd.vii. Amber Capacitors andviii. Yunas Electronics Pak (Pvt.) Ltd. <p>Representative of the above mentioned parties made following comments/views:</p>	
<p><u>Gulf Packaging Industries Limited</u></p> <p>"on behalf of our client Gulf Packaging Industries Limited, Saudi Arabia, we wish to request the Commission to hold separate disclosure meetings with exporters or producers to explain the anti-dumping calculation methodology preliminarily applied to the exporter or producer and to also provide an opportunity to the exporter or producer or their legal representative of examination and receive copies of the anti-dumping calculations done by the Commission for their exporters to Pakistan."</p> <p>"Our client further requests the Commission to hold a hearing under and in terms of Rule 14 of the Anti-Dumping Duties Rules 2001 at which all interested parties should be present information and arguments to the Commission and all information received by the Commission as contemplated by Rule 14 of the Rules should be provided to the parties."</p> <p>"The Commission is requested to treat this letter as an application (request) as contemplated by Rules 11 and 14 of the Anti-Dumping Duties Rules 2001 for the purpose of holding separate disclosure meetings as contemplated by Rule 11 and for hearings with all</p>	<p>The Commission held separate disclosure meetings with the cooperating exporters/foreign producers and explained the anti-dumping calculation methodology preliminarily applied to the exporter or producer and to also provided an opportunity to the exporter or producer or their legal representative of examination and to receive copies of the anti-dumping calculations done by the Commission for their exporters to Pakistan.</p> <p>The Commission held hearing in terms of Rule 14 of the Anti-Dumping Duties Rules 2001 on November 19, 2012.</p> <p>The Commission holds separate disclosure meeting with the cooperating exporters/foreign producers only.</p>

Final Determination and levy of Definitive antidumping duties on import of Bixially Oriented Poly Propylene Film into Pakistan Originating in and/or Exported from the People's Republic of China, Sultanate of Oman, Kingdom of Saudi Arabia and United Arab Emirates

<p>interested parties as contemplated by Rule 14 of the Rules.”</p> <p>“We have been further instructed by our client to state that the preliminary determination dated 14th August 2012 apart from being in violation of Rules 10 and 14, is also in violation of Section 43 of the Anti-Dumping Duties Ordinance 2000 as the order does not contain determination that provisional measures are necessary to prevent injury being caused during the course of an investigation for which the Commission considers it necessary to impose provisional measures in the form of anti-dumping duty or the provisional security in respect thereof under Section 44 prior to final determination. Thus the imposition of provisional anti-dumping duty and the order for furnishing of security is unlawful, arbitrary, malafide, unconscionable, untenable and without any lawful basis and jurisdiction. “</p> <p>“We have been further instructed by our client to state as under:-</p> <p>That the submissions and representation made by our clients were not taken into consideration by the Commission prior to passing of the preliminary determination order dated 14th August 2012.”</p> <p>“That no hearing was given to our client or its legal representative by the Commission prior to the preliminary determination order dated 14th August 2012. “</p> <p>“That inspite of a specific request made to the Commission to provide our client with a copy of the complaint filed by n interested importer/producer, no such copy was supplied to our client’s review, consideration and raising of objections.”</p> <p><u>Agencies Corporation</u></p> <p>“We are recently importing BOPP Film from China and we declare that our exporter Wenzhou Gettel Plastic Industry Co. Ltd not involved in any kind of dumping of BOPP Film plain grade.”</p> <p>“We request honorable commission to verify our prices CNF from our exporter through reliable sources as Pakistan Consulate General which be working in China.”</p> <p>“As honorable commission can collect all import data of BOPP plain film importing from china origin as Pakistan</p>	<p>The Commission determined injury to domestic industry in accordance with Part VI of the Ordinance and held that that dumped imports are causing material injury to the domestic industry.</p> <p>The Commission, on more than one occasion, asked Gulf Packaging to ratify the information it already has provided after re-initiation of investigation. However, Gulf Packaging did not reply the Commission in any manner after re-initiation of investigation.</p> <p>The Commission conducted hearing in terms of Rule 14 of the Rules which provides for a hearing after preliminary determination.</p> <p>The Commission provided copy of application filed by domestic industry to Gulf Packaging alongwith exporter questionnaires to all known interested parties. Embassies of exporting countries were also provided with the application filed by domestic industry alongwith exporter questionnaires and were requested to forward the same to all exporters/foreign producers in their countries.</p> <p>No producer/foreign exporter from China cooperated with the Commission in this antidumping investigation to establish that it is not involved in dumping. The Commission determined dumping margin for Chinese on the basis of best information available.</p>
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<p>custom has imposed Import Trade Price to release the goods from custom.”</p> <p>“This import trade price is finalized by consideration with the local manufacturer of the BOPP Film which claims in National Tariff Commission that the BOPP Film from certain origin dumped in Pakistan Market.”</p> <p>“As if import trade price is finalized in customs to release the goods how is possible that the importer can sale the goods cheaper then the local factories.”</p> <p><u>Wenzhou Gettel Plastic Industry Co. Ltd</u></p> <p>“We be the largest producer of BOPP Film in China as we have 8 lines to produce BOPP Film. We hereby want to file an appeal against imposition of Anti Dumping duties of BOPP Film manufacture from China origin.”</p> <p>“As our company is a new comer exporter of BOPP Film in Pakistan we ask the honorable commission to accept us as and interested party and make us a part of this investigation.”</p> <p>“We ensure the honorable commission that our company is not involved in any kind of Dumping of BOPP Film in Pakistan of this purpose we can provide all the related documents in also the commission if feel necessary can check the authenticity of the documents from the reliable sources.”</p> <p><u>Khawaja Electronics (Pvt.) Ltd</u></p> <p>“We are importing the BOPP Film since the last thirty years.”</p> <p>“The thickness of the film imported by us is not being manufactured in Pakistan by any manufacturer, therefore the question of dumping duty does not arise on the films being imported by us.”</p> <p>“NTC is requested to:-</p> <p>Kindly grant us a hearing time in accordance with Rule 14 in order to further clarify our position.</p> <p>Complete its investigation at the earliest and exclude BOPP films of capacitor grade (plain and metalized) and BOPP films (plain and metalized) ranging from 1 micron uptill 15 micron thickness.”</p>	<p>Wenzhou Gettel Plastic Industry Co. Ltd has exported the investigated product to Pakistan during POI and hence its request for treating as newcomer exporter is regretted.</p> <p>No producer/foreign exporter from China cooperated with the Commission in this antidumping investigation. The Commission determined dumping margin for Chinese on the basis of best information available.</p> <p>The Commission held hearing in terms of Rule 14 of the Anti-Dumping Duties Rules 2001 on November 19, 2012.</p> <p>The Commission has excluded BOPP Film Capacitor Grade and BOPP Film having thickness from 1 micron to 7 micron from the scope of investigated product.</p>
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<p><u>Yunas Electronics Pak (Pvt.) Ltd.</u></p> <p>“That we are a private limited company engaged in manufacturing of electrical capacitors of different sizes/capacities under the brand name of “POWER”.”</p> <p>“That the BOPP Film both plain and metalized of capacitor grade are classifiable under HS Codes. 3920.2010 and 3920.2030 respectively are the major raw materials for manufacturing of electrical capacitors. Our annual consumption is about 49.000 MTN.”</p> <p>“That unfortunately while these products were under investigation by the commission, we could not participate, anyhow the provisional levy of Anti Dumping Duty came into our notice on 10/09/2012.”</p> <p>“In the circumstances and the facts explained above we would like to pray:-</p> <p>That the commission should consider and differentiate the BOPP Films packing grade and the capacitor grade.</p> <p>If the provisions of Anti Dumping Ordinance, 2000 permits the commission, the BOPP Films plain and metalized of capacitor grade should be excluded from the ambit of levy of provisional Anti Dumping Duty.”</p> <p><u>Amber Capacitors Limited.</u></p> <p>“The product under investigation by the NTC is BOPP Film imported into Pakistan under PCT Heading 3920.2010 (plain film) and 3920.2030 (metalized film). The application of these products is mainly for packaging in confectionary, biscuits, soaps, processed food items, tobacco, ice bars, candles, gift wrappers and tea industries.”</p> <p>“We and other capacitors manufacturer in Pakistan are importing a special grade of BOPP Film under the above HS Codes which are used for manufacturing of capacitors. This grade of film is a very specialized and high-tech product which is imported in thickness from 4 Micron to 10 Micron. Moreover, the metalized BOPP capacitor film is metalized in small widths from 25 mm to 100 mm. BOPP Film in these sizes, thickness and specifications is not manufactured in Pakistan.”</p> <p>“While considering imposition of Anti-Dumping Duty on</p>	<p>The Commission has excluded BOPP Film Capacitor Grade and BOPP Film ranging from 1 micron to 7 micron thickness from the scope of investigated product.</p> <p>The Commission has excluded BOPP Film Capacitor Grade and BOPP Film (plain and metalized) ranging from 1 micron to 7 micron thickness from the scope of investigated product.</p>
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<p>BOPP Films, the NTC needs to exempt the BOPP films of capacitor grade since these are not manufactured in Pakistan by any Film manufacturer.”</p> <p><u>Mohsin Match Factory (Pvt.) Ltd.</u></p> <p>“This imposition of Anti-Dumping Duties on import of BOPP Film is not justified on the following grounds:-</p> <p>The provisional imposition of Anti-Dumping Duty has been imposed in clear violation of Anti-Dumping Duties Ordinance, 2000.</p> <p>The imposition of Anti-Dumping duties by the National Tariff Commission is unilateral and stakeholders have not been taken into confidence. The investigations conducted for the pricing of BOPP Film does not provide any basis for imposition of duties.</p> <p>The Ordinance provides that the commission may establish normal value of an investigated product on the basis of comparable prices paid or payable in the ordinary destined for consumption in the country of origin of investigated product if</p> <ul style="list-style-type: none">i) such product, are not produced in an exporting country orii) there is no comparable price for them in an exporting country. No such exercise was conducted by the commission before imposition of Anti-Dumping duties.iii) The applicant has serious reservation on the determination of price, comparison between normal value, export price and determination of injury.” <p><u>Taghleef Industries, Oman and Taghleef Industries UAE.</u></p> <p>POI is out of Time</p> <p>“The Commission initiated the New Investigation based on an Application made in April 2010, more than two and a half years ago. The information contained therein relates to a period that is over three years old.”</p> <p>“While the initial investigation was declared null and void by the Islamabad High Court on a procedural ground i.e., having been made by an improperly</p>	<p>The Commission made its preliminary determination in accordance with the Agreement on Antidumping, the Ordinance and the Rules.</p> <p>The Commission sent questionnaires to all known interested parties so that they can submit information for the purposes of this antidumping investigation.</p> <p>The Commission held hearing in accordance with Rule 14 of the Rules so that interested parties could present their views/comments regarding this antidumping investigation.</p> <p>The Commission compared normal value and export price in accordance with Part V of the Ordinance.</p> <p>Determination of injury was done in accordance with Part VI of the Ordinance.</p> <p>“The Commission received the application in the subject investigation on April 12, 2010 and initiated the investigation on September 27, 2010. However, the initiation of the investigation was challenged in Islamabad High Court on July 21, 2011 by the importers of the investigated product who were backed by the exporters. The honorable Court on</p>
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constituted Commission lacking the required quorum, the New Investigation also violates the Ordinance as the Commission did not seek fresh information from the Applicant to comply with the mandatory requirement of Section 36. Instead, the Commission re-initiated the investigation based on the old data submitted for the invalid investigation.”

Investigation Commenced Late

“The Commission is required to initiate an investigation no later than 45 days after receiving an application by Rule 5 of the Anti-Dumping Duties Rules 2001. However, in the current case, the Commission received the Application on 12 April 2010, but did not issue the Notice of Initiation dated 27 September 2010.”

“Firstly, it violated Rule 5’s requirement to initiate the investigation within 45 days of the receipt of the Application

“Secondly, this delay of five months led the Commission to extend the POI for both injury and dumping by 6 months and further prejudiced the Respondents by requiring them to respond to trade information that was already partially out dated. Without prejudice to the above, the right course for the Commission was to ask the Applicant to revise the Application, before initiation, with new periods of investigation limited to 12 months&36 months and (leaving the first six months of the original POI) and thereafter review whether there was sufficient evidence to justify initiation of investigation. Once satisfied, the Commission should have thereafter involved the Respondents and not before.”

Extension of POI

Inconsistency with WTO Recommendations

“In the subject investigation the Commission has set the POI for dumping as 18 months, while the POI for injury is 42 months. This is not only inconsistent with the Commission’s normal practice of setting periods of 12 months and 36 months respectively, but it is also inconsistent with WTO recommendations on the matter.”

“The Committee has made strong recommendations with respect to the period of data collection in order to determine the existence of dumping and injury. It has

March 06, 2012 declared the Commission’s order of initiation dated September 27, 2012 *void ab initio* and directed that “N.T.C may proceed with the complaint pending before him: however the petitioner will have the right to raise aforesaid objection.” As per the Court’s order the Commission re-initiated the investigation on April 23, 2012.

In another similar situation, the Islamabad High Court has recently passed an order in writ petition 439/ 2012 that;

“It is also to be kept in view that on accepting the arguments of learned counsel for the petitioners, it would become a practice that whenever notice of initiation of investigation would be issued, the importers would file application in the Court and after the lapse of one year, would ask for inclusion of new period of time, in which no dumping was made and in such a way, would avoid the consequences of earlier dumping.”

From the above, it is clear that the re-investigation was well within the law as interpreted by the higher domestic courts.

The earlier investigation was declared *void an initio*. The re-initiation of the investigation was done in accordance with Rule 5 of the Rules.

As per Section 36(3) of the Ordinance, the Commission may at its sole discretion, select a shorter or longer period if it deems it appropriate in view of available information regarding domestic industry and an investigated product. The reasons for longer POI were explained in the reports of preliminary determination as well as final determination.

stated that *“the period of data collection for dumping investigations normally should be twelve months”*. For determination of injury, *“the period of data collection ...normally should be at least 3 years, unless a party from whom data is being gathered has existed for a lesser period.”*⁴

“By extending the POI by 6 months, the Commission has clearly ignored the guidelines that are considered best practice in the establishment of the POI for dumping and injury.”

*“Investigating authorities are not strictly precluded from taking account of the particular circumstances of a given investigation in setting the periods of data collection. However, the Committee’s guidelines require that in such cases, it should provide the reasons for the selection of a different POI period.”*⁵

“In the present case, the Commission has not given any valid reasons for digressing from its normal practice and WTO recommendations regarding the period of data collection.”

Initiation of Investigation Prior to Receiving Additional Data

“The Commission should have sought any additional data for the POI prior to initiation of the investigation. In this case, it initiated the investigation in September, but received the Additional Data for the additional 6 months in October 2010.”

“Thus, it is questionable whether the Commission can be said to have properly examined the adequacy and accuracy of the information provided in the Application to determine whether there was sufficient evidence to justify initiation of investigation, as required by Section 23.”

“Furthermore, even if the Commission was, due to any reason, required to extend the POI for additional six months, the Commission should have: (i) sought the latest six months data from the Applicant for examination pursuant to Section 23 of the Ordinance (examine the accuracy and adequacy of the information); and (ii) removed the earlier six months to

The Commission re-initiated the antidumping investigation after meeting the requirements of Section 23 of the Ordinance.

⁴WTO Committee on Anti-Dumping Practices, *‘Recommendation Concerning the Periods of Data Collection for Anti-Dumping Investigations’*, 16 May 2000, G/ADP/6, Article 1(a) and 1(c).

⁵*Ibid*, Article 3.

<p>be consistent with Section 36 and the WTO recommendations.”</p> <p>Distorted Import Data</p> <p>“The Application was filed against the Investigated Product under three PCT Headings: “Plain”, “Metalized” and “Other”. Correctly, the Commission excluded the product category of ‘Others’ from the scope of the investigation.”</p> <p>“However, the Commission did not ask the Applicant to revise the information provided in the Application, and as a result the data provided relates to all three product heads.”</p> <p>“The Application data unreasonably distorts the volume of imports from alleged dumped sources by including products that are beyond the scope of the investigation. Similarly, prices, percentages and sales data may also be contaminated by a now-excluded product category.”</p> <p>“The Application Data and the Additional Data are both for all three (03) product codes, and both sources have been relied upon by the Commission in making the Preliminary Determination. Unless it can be shown that there were no imports under PCT code 3920.2090 during the POI, it is presumed that the data used by the Commission is tainted.”</p> <p>“Furthermore, without the relevant Application data, the Respondents have been prevented from being able to fully respond to the allegations made against them, as it is not possible to know the real figures for the two product heads.”</p> <p>Domestic Industry - Parent company is an Importer</p> <p>“The Applicant does not fall within the definition provided in Section 2(d) of the <i>Ordinance</i>, nor does it have <i>standing</i> to qualify as the ‘Domestic Industry’, as required for initiation of the investigation under Section 24.</p> <p>i. <u>Importing of Investigated Product by Parent Company</u></p> <p>Packages Limited, the parent company of the Applicant, has been identified as an importer of the Investigated</p>	<p>The Commission re-initiated the antidumping investigation while taking into account the import data of BOPP Film - Plain and BOPP Film – Metallized only. The Commission limited the scope of investigated product to above mentioned BOPP Films in and used it in its initiation memo, preliminary determination and final determination.</p> <p>Respondents including Taghleeef Industries have registered their responses on the Commission’s Preliminary Determination which was made after exclusion of import data falling under PCT/HS Code 3920.2090.</p> <p>The position regarding exclusion of import data was well explained by the Commission in its Preliminary Determination as well.</p> <p>This issue has already been explained on various occasions including this final determination (Para 7).</p>
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<p>Product during the POI from allegedly dumped sources in the Applicant’s Application.⁶</p> <p>ii. <u>Relationship of Control</u></p> <p>Definition in Section 2(d) excludes domestic producers “when any such domestic producers are <i>related</i> to the exporters or importers” of the allegedly dumped product. The Commission has already accepted that the Applicant is related to an importer, Packages Limited.</p> <p>There is an automatic relationship of <i>control</i> between the parties where there is such a ‘legal’ and/or ‘operational’ structure which empowers one entity to direct, manage, oversee and/or restrict the affairs, business or assets of another entity. In this case, Packages Limited has both legal and operational control over the Applicant.</p> <p><u>Legal:</u> Packages Limited is the majority shareholder in the Applicant, with a 33.3% shareholding.⁷ The Commission has acknowledged that it is the ‘parent company’ of the Applicant.</p> <p><u>Operational:</u> There is a high correlation between the key personnel of both companies at the highest level of management:</p> <p><u>Differential or Preferential Behaviour</u></p> <p>There are strong reasons for believing and/or suspecting that the effect of the relationship of control between the Applicant and Packages Limited causes the former to behave differently from non-related producers, and thus for excluding it from the domestic industry.</p> <p>a. <i>Preference of Sales:</i> The Applicant prefers sales for the use of its parent company. Packages Limited is one of the main industrial users of the Domestic Like Product produced by the Applicant and requires a steady and reliable source.</p> <p>b. <i>No Alternative Producer:</i> During the POI there was no other significant domestic producer of the Domestic Like Product. When other industrial users tried to place orders from the Applicant, it offered them</p>	<p>During on-the-spot investigation, the Commission obtained the list of top five customers of the Applicant. As per the list, the Applicant has sold substantial quantities to importers of BOPP Film including Metatex Pvt. Ltd and Dynamic Packaging Limited.</p> <p>Other producer namely Mac-Pac Films Limited was operating in the market.</p> <p>Prices charged by the Applicant from Metatex Pvt.</p>
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⁶Application, Part Six, ‘Identification of Importer(s)’.

⁷ According to the Packages Limited website.

<p>unreliable or deliberately delayed supplies. Thus, the only viable alternative for the industrial users was to import the IP.</p> <p>c. <i>Sale Price:</i> It is also believed that Applicant sells the Domestic Like Product to Packages Limited at discounted prices than to other industrial users.”</p> <p>Volume of Dumped Imports</p> <p>“The Applicant has claimed that it suffered material injury due to increase in the volume of dumped imports, however, its supporting data contradicts this assertion, showing little but irrelevant increase in imports from the Exporting Countries.”</p> <p>“At the very outset, we request the Commission to review the figures provided for in Table VI of the Preliminary Determination.”</p> <p>“We believe that the figure showing an increase of dumped imports by 442.93% in 2009 has been incorrectly calculated. The Respondents who collectively represent over 90% of the allegedly dumped imports are sure that this figure is an error based on their actual export volume records.”</p> <p>“This is especially the case given that in the Application, the share of dumped imports in the domestic market between 2009 and 2009 changes only by 0.90%, from 3.90 to 4.8.”</p> <p>“We are not sure as to how these figures have been calculated by the Commission, but if such working is provided, we will be happy to provide evidence establishing the correct figures.”</p> <p><u>Price Effects</u></p> <p>i. <u>Price Undercutting</u></p> <p>“The Applicant has claimed that the dumped imports undercut the prices of Domestic Like Product during the injury POI of January 2007 to June 2010. This simple interpretation ignores the realities of the global economy. In the middle of the POI, the world had entered into a severe recession which had the effect of lowering the prices of goods due to reduced demand.”</p>	<p>Ltd, Dynamic Packaging Limited and Packages are at par and there is no substantial difference. In fact during the POI for dumping, the Applicant sold the domestic like product to Dynamic Packaging Limited at average prices less than average prices charged from Packages.</p> <p>The Commission, in its preliminary determination, determined the volume of dumped imports using the data provided by the cooperating exporters and PRAL. For first two years of POI for injury, PRAL data was used for all exporters and for last one and a half year, PRAL data was used for non-cooperating exporters and data provided by the cooperating exporters was used for cooperating exporters.</p> <p>While making final determination, the Commission has used data provided by cooperating exporters for and PRAL data has been used for non-cooperating exporters POI for injury.</p> <p>It is evident that domestic industry faced price undercutting during the period in which imports of dumped product registered sharp increase.</p>
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<p>“The data used in the Preliminary Determination shows that the ‘Landed Cost’ of the Investigated Product was only below the price of the domestic industry twice: in 2007 and 2009. In the latter year, it is clear that the domestic price also fell, suggesting industry-wide or external factors affecting both the domestic and foreign industries.”</p> <p>“It is clear that the prices of BOPP Film fell substantially across the globe while the Applicant, by virtue of its monopoly position due to (i) existing 20% tariff protections; and (ii) fixation of ITP at a higher level by customs, chose only to decrease its prices of the Domestic Like Product nominally.”</p> <p>ii. <u>Price Depression</u></p> <p>“Price depression occurs when a domestic industry is forced to reduce its selling price in order to compete with the imports priced at LTFV.”</p> <p>“Other than alleging 13.24% price depression in 2009, Table VIII provided of the Preliminary Determination is entirely empty. As explained above, the reduction in prices was experienced by industries worldwide due to the deteriorating market conditions.”</p> <p>“It is also relevant to note that even during the dip in 2009, the price is still above the starting price in 2007.”</p> <p>“It is unreasonable to conclude that the price reduction is due to the presence of dumped imports from the Exporting Countries when the entire world suffered the same price effects.”</p> <p>“As Table IX below shows, at the time of the complained of price ‘depression’, one can see that the Applicant’s cost of making the Like Product also fell by 13.39%.⁸”</p> <p>iii. <u>Price Suppression</u></p> <p>“The Commission has rightly concluded that the Applicant did not suffer material injury on account of price suppression, however we wish to highlight a very interesting trend in the cost and prices of the Applicant. The ex-factory price of the Applicant has always been substantially higher than its cost of goods sold. Hence, the Applicant has been generating a significant profit</p>	<p>The Commission has determined that price depression faced by the domestic industry was due to dumped imports and other global economic developments.</p> <p>No comments.</p>
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⁸ [(Cost of Goods Sold 2008- Cost of Goods Sold 2009) / Cost of Goods Sold 2008]*100

<p>throughout the duration of the POI.”</p> <p>“The lack of price suppression supports our contention that there is no injury from price effects to the domestic injury that is attributable to the presence of imports from the Exporting Countries in the Pakistan market.”</p> <p><u>Market Share</u></p> <p>“We are not sure how the Commission has calculated the market share in Table X of the Preliminary Determination, as there seems to be an error in the 2009 data.”</p> <p>“For the first half of 2009, the Applicant’s market share is stated as 74.77%, whereas the entire 2009 figures show a market share of 88.31%. Once re-indexed to 100, the 2009 percentage would be 83.53%. In order for the first half of 2009 to have an average of 74.77%, the Applicant’s market share for July-December 2009 must have been 92.29%.”</p> <p>“There are also errors between the numbers included in the analysis and the chart figures.”</p> <p>“In paragraph 33.3, the Preliminary Determination states that “Domestic industry’s market share increased from 89.67 percent in the year 2007 to 91.88 percent in the year 2008. It decreased to 83.54 percent during the 2009.”</p> <p>“There are similar discrepancies in paragraph 33.4 in relation to the Exporting Countries data.”</p> <p><u>Sales</u></p> <p>“With the exception of the year 2009, the domestic sales of the Applicant did not reduce during the POI. Assuming that this information is correct, there are many reasons why the sales volume may have decreased temporarily at this time.”</p> <p>“The first is that the gross and net sales of the Applicant decreased in 2009 as the demand weakened in the market due to the global recession, common to all producers, as previously demonstrated by the World Bank international commodity prices previously.”</p> <p>“It is evident that the total sales of the Applicant grew steadily throughout the POI. However, it is interesting to note that the Applicant consciously increased its</p>	<p>Methodology for calculating market share has been explained in preliminary determination and final determination.</p> <p>Domestic sales of the Applicant decreased during the same period in which the volume of dumped imports increased significantly.</p>
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<p>Exported Sales at the expense of its Domestic Sales from January 2009 to June 2010.”</p> <p><u>Capacity Utilization</u></p> <p>“The Commission has very rightly determined that the Applicant has not suffered injury on account of capacity utilisation.”</p> <p><u>Profits</u></p> <p>“The Commission has determined that the Applicant did suffer injury on account of dumped imports”</p> <p>“However, these amounts contradict the statistics given in the Applicant’s Annual Reports, which indicate that even in 2009 the profits were higher than in 2007.”</p> <p>“We cannot explain the disparity between the data given to the Commission and that in the Applicant’s Annual Reports.”</p> <p><u>Cash Flow</u></p> <p>“Although the Commission has determined that there is no injury in relation to cash flow, we note that the reason for the sudden fall in the Applicant’s net cash flow in 2008 was due to its expenditure on the construction of a new CPP Film manufacturing system.”</p> <p><u>Salaries & Wages</u></p> <p>““The Preliminary Determination concludes that there is no injury to the Applicant in terms of employment, but that productivity per worker reduced, and salaries increased during the POI.”</p> <p>“We do not disagree with these findings but believe an alternate analysis of the causes is warranted. The Applicant has not provided any evidence as to why or how the presence of imports from the Exporting Countries has caused or influenced its decline in employee productivity.”</p> <p>“It is suggested that the number of employees increased and productivity decreased in 2008 and 2009 as the Applicant hired workers to construct the new CPP film plant, which did not immediately contribute to production. The plant workers newly employed for</p>	<p>No Comments</p> <p>Profit of the Applicant decreased during POI for dumping as compared to previous corresponding period.</p> <p>Cash Flow of domestic industry decreased during last six months of POI.</p> <p>The Commission examined the no. of employees, production, productivity and salaries & wages relating to BOPP Film only. Data related to CPP Film have not been included in the Commission’s analysis.</p>
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manufacturing of CPP film were not fully utilised until December 2009 when work commenced at full capacity.

Moreover, the table suggests that employees hired in 2008 and 2009 are paid significantly higher salaries than other staff hired earlier, as the wage expense increased by 70% for an additional workforce increase of only 16%. This could be the case if such staff are more specialized or if they do not directly contribute to production such as IT or human resources.”

Return on Investment

“Although starting with the same information for the Applicant’s return on investment data for 2007 and 2008, we are unsure as to why the percentages given for 2009 and 2010 in the Preliminary Determination are so much more negative than that reported from the On the Spot Verification Visit.”

“We would want the Commission to confirm as to whether the Respondents should rely on the Preliminary Determination or On the Spot Verification and secondly, the Commission is requested to provide reasons as to why these figures have been revised to the benefit of the Applicant.”

“Even if the above data were accurate, it is worth noting that a return of investment of 18%, which translates as 35.12 when annualized (based on Commission method of analysis) is extremely high given Pakistan’s current economic climate.”

Growth

“The Commission reasonably explains the observed decrease in the above numbers as follows:

“The reason seems to be installation of new plant of CPP in 2007 and 2008. One cannot expect a steady growth rate in assets as it is always linked to expansion plans.”

However, it then strangely concludes that:

“On the basis of the above, the Commission has concluded that the domestic industry suffered material injury on account of growth and investment during POI.”

There is no evidence linking the rate of change of growth of fixed assets to the imports by the Exporting Countries.

The Commission determined in the final determination that domestic industry did not suffer injury on account of growth during the POI for dumping.

<p>The Commission's conclusion therefore seems unwarranted and disconnected from its analysis."</p> <p><u>Tri-Pack Films Pvt. Ltd.</u></p> <p>"Taghleef LLC, UAE claimed a number of adjustments in domestic sales like credit cost, discount, rebate, freight, technical assistance, sales promotion (exhibitions), sales promotion (others) and packing cost. All these adjustments were accepted. Claim of difference on account of packing cost is abnormal as if in similar packs, export packing is usually more costly."</p> <p>"For non-cooperating exporters of UAE, normal value has been constructed on the basis of cost of production plus admin, selling and general costs and financial expenses of Taghleef LLC. But it has not been mentioned that profit has been added to it. If it is so, then Commission is requested to rectify the same and again work out dumping margin accordingly for non-cooperating exporters of UAE."</p> <p><u>Para 24.4.5:</u></p> <p>"Sales of Taghleef SAOG, Oman in domestic sales were less than five percent of sales of the investigated product to Pakistan. The Commission constructed its normal value based on its cost of production. The Commission may ensure that constructed normal value includes normal profit as most of the exporter's sales in domestic market were below cost that is why its sales in ordinary course were less than 5% of the sales of the investigated product to Pakistan."</p> <p><u>Para 24.7.3:</u></p> <p>"Normal value of Saudi Arabian exporters has been taken as an average cost of manufacturing plus selling, admin and general expenses of Taghleef LLC & Taghleef SAOG. There is no mention of taking into consideration of average profits. The Commission may kindly ensure inclusion of average profit. If it is not so, then the same may be added to the constructed normal value and dumping margin needs to be revised accordingly."</p>	<p>On the spot investigation could not be carried out for unavoidable circumstances. All the data provided by the cooperating exporters, with the exception of some adjustments no agreed on the basis of methodology used, has been accepted.</p> <p>Normal value has been taken at average of Taghleef SAOG, Oman and Taghleef LLC, UAE.</p>
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Annexure - IV

Comments of Interested Parties on Statement of Essential Facts

Column A (Views/comments of interested parties)	Column B (Commission's response)
Comments of Khawaja Electronics Pvt Ltd.	
"since the investigation is being carried out for both BOPP Films falling under PCT No. heading 3920.2010 and BOPP Films metalized falling under PCT heading No. 3920.2030 therefore it is kindly requested that both of these films which are not being manufactured in Pakistan should be excluded i.e. BOPP films with thickness 1 to 7 microns falling under PCT Heading No. 3920.2010 and 3920.2030 alongwith capacitor grade films falling under PCT heading no. 3920.2010 and 3920.2030 i.e. BOPP films thickness 1 to 7 microns plain and metalized, and BOPP films capacitor grade plain and metalized."	The Commission has excluded BOPP Film Capacitor Grade and BOPP Film (plain and metalized) ranging from 1micron to 7micron thickness from the scope of investigated product.
Comments of Taghleef Industries Representative of the Taghleef Industries made following comments/views:	
"Based on the revised figures of imports (although we are still unclear as to how these figures have been calculated), it is clear that the imports of the investigated product from the Exporting Countries fell during the POI for dumping, being from January 2009 to 30 June 2010. Further, the volume of allegedly dumped imports for the six months of 2010 was almost half that of the first six months of 2009."	Volume of dumped imports increased substantially during the year 2009 as determined in final determination.
"The revised market share data in Table – IX of the SEF illustrate that during the POI the domestic market for BOPP Film contracted overall. However, it should be noted that whereas the domestic industry retained almost its entire market share, the Exporting Countries and other exporting sources bore the burnt of the contraction as their market shares diminished during the POI for dumping."	As per indexed figures provided in Table – IX of SEF, share of exporting countries increased from 10.43 to 16.89. Share of Exporting Countries increased despite the fact that both, size of domestic market and share of domestic industry decreased.
"The revised figures of Table-XVI of the SEF illustrate that the Applicant's return on investment suffered a relative dip during the second half of 2009. It is submitted that this decrease was caused by the Applicant's substantial investment in the engineering, procurement and construction of the CPP Film manufacturing line and associated costs."	
"The price data in Table-VI of the SEF is unchanged from Table-VII of the PD. Having relied upon these figures previously, the Commission noted in the PD that the landed cost of the Investigated Product and prices of the Domestic Like Product both increased in 2008. However, it was held	It is evident that domestic industry faced price undercutting during the period in which imports of dumped product registered sharp increase.

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<p>that prices of the Investigated Product undercut prices of Domestic Like Product during POI for dumping, even though the Commission itself acknowledged that the domestic price was less than the landed cost during the last six months of POI.”</p> <p>“We once again request that the Commission should consider the impact of global financial crisis during the first twelve months of the POI for dumping.”</p>	
<p>“The price information in Table-VIII of the PD has been incorporated into the SEF as Table-VII. The Commission’s conclusion that the depression in prices for 2009 was brought about by the imports of the Investigated Product is absolutely incorrect. We invite the Commission to take into account the fact that the producers of BOPP Film worldwide suffered the same price effects due to deteriorating market conditions during this time.”</p>	<p>The Commission is of the view that price depression faced by the domestic industry was due to dumped imports and other global economic developments as decrease in price is higher than decrease in cost.</p>
<p>“In concluding that the domestic industry suffered material injury on account of a transitory fluctuation in the sales of the Domestic Like Product during 2009, the Commission relied on the data from Table-XI of the PD, incorporated into SEF as Table-IX.”</p> <p>“We reiterate that the sales of the Domestic Like Product increased during the POI for dumping. This occurred even though the overall demand in the market declined due to the global recession.”</p>	<p>Domestic sales of the Applicant decreased during the same period in which the volume of dumped imports increased significantly.</p>
<p>“In finding that the Applicant suffered material injury in respect of profit and loss, the Commission relied on Table-XIII of the SEF, incorporated from Table-XIV of the PD. It is submitted that these figures contradict those given in the Applicant’s Annual Reports, wherein the profits for 2009 were stated to be higher than the corresponding figures from 2007.”</p>	<p>Profit of the Applicant decreased during POI for dumping as compared to previous corresponding period.</p>
<p>“The number of employees increased due to the commissioning of the CPP Film line, and the freshly hired workforce required time to achieve optimal levels of efficiency and not due to imports from the Exporting Countries. Moreover, the CPP Film line only started to operate at full capacity in December 2009. Lastly, the data by the Commission reveals that the CPP Film employees were paid significantly higher salaries than those working on BOPP Film, as the wage expense increased by 70% for a corresponding 16% increase in workforce.”</p>	<p>The Commission examined the no. of employees, production, productivity and salaries & wages relating to BOPP Film only. Data related to CPP Film have not been included in the Commission’s analysis.</p>
<p>“It is contended that having invested so heavily for the commissioning of the CPP Film plant, the Applicant would not immediately invest in new fixed assets. Accordingly, it is unreasonable for the Commission to have found material injury to the Applicant on account of growth and investment during the POI.”</p>	<p>The Commission has determined that there is not injury on account of growth.</p>
<p>“We reiterate that the Commission’s methodology for the determination of dumping in the PD is not in accordance</p>	<p>The cost of production stated at D-3 has been calculated by allocating the fixed costs to export</p>

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<p>with the information provided by Taghleef and thus in contravention of the Ordinance. The Commission has chosen to ignore what Taghleef has repeatedly stated in its response to the Exporter’s Questionnaire, deficiency letters, detailed letters and submissions etc., that the information representing cost to make and sell for domestic sales is what was provided in D-3 rather than Appendix 2 to unnecessarily protect the domestic industry in the garb of anti-dumping duties.”</p>	<p>markets other than Pakistan. Similarly fixed cost has not been allocated to cost of production for domestic sales. This method of cost allocation does not present true and fair picture of cost of production. Hence the Commission calculated cost of production of Taghleef Oman on the basis of information provided by it in Appendix 2.</p>
<p>“The Commission has disregarded Taghleef Dubai’s and Taghleef Oman’s respective claims of adjustment based on the differences between ‘level of trade’ in their respective domestic markets and the Pakistani market. It is requested that the Commission consider Taghleef’s previous submissions in this respect.”</p>	<p>Reason for rejecting the level of trade adjustment has already been well explained in Preliminary Determination and re-iterated in Final Determination. The level of trade adjustment cannot be allowed on the basis of cost of importer but saving in cost of exporters.</p>
<p>“Further, for Taghleef Oman, the Commission has applied the ‘sufficiency test’, found in Section 6 of the Ordinance, prior to the ‘ordinary course of trade test’ in terms of Section 7. In consequence, the Commission disregarded the relevant figures for the domestic sales of Taghleef Oman completely and instead constructed the normal value, which in our view is inappropriate.”</p>	<p>As per Section 6 of the Ordinance, “When there are no sales of a 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 –</p> <p>(a) a comparable price of the like product when exported to an appropriate third country provided that this price is representative; or</p> <p>(b) the cost of production in the exporting country plus a reasonable amount for administrative, selling and general costs and for profits.”</p> <p>It is clear from plain reading of the above quoted Section that normal value can be constructed as per prescribed methods if there are no sales of like product in the ordinary course of trade in domestic market. It speaks on sufficiency test after determining the ordinary course of trade.</p>
<p>Comments of Tri-Pack Films Limited, Pakistan Representative of the Tri-Pack Films Limited made following comments/views:</p>	
<p><u>Para 18</u></p> <p>“In sub para v of this para, it is stated that “the dumping margins expressed as a percentage of weighted average adjusted export price at ex-factory level is ranging between 22.92 percent to 62.70 percent for exporters/ foreign producers from the Exporting Countries”.</p> <p>“However, in the Preliminary Determination report same</p>	<p>The Commission has calculated the dumping margins expressed as percentage of C & F Export Price as well as weighted average weighted average ex-factory export price in Final Determination. The comparative figures are given in table III of the report of final determination.</p>

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<p>dumping margins ranging from 22.92 percent to 62.70 percent are expressed as percentage of C&F Export Price. We would therefore request the Commission to consider in the final determination that whether these dumping margins are computed on the basis of C&F Export Price or Weighted Average Adjusted Export Price.”</p>	
<p>Para 26.3.2</p> <p>“For non-cooperating exporters of UAE, normal value has been constructed on the basis of cost of production plus admin, selling and general costs and financial expenses of Taghleef LLC. But it has not been mentioned that profit has been added to it. If it is so, then Commission is requested to rectify the same in final determination to work out dumping margin accordingly for non-cooperating exporters of UAE.”</p>	
<p>Para 26.4.4</p> <p>“Sales of Taghleef SAOG, Oman in domestic sales market less than five percent of sales of the investigated product to Pakistan. The Commission constructed its normal value based on its cost of production. The Commission may ensure that constructed normal value includes normal profit as most of the exporter’s sales in domestic market were below cost that is why its sales in ordinary course were less than 5% of the sales of the investigated product to Pakistan.”</p>	
<p>Para 26.7.3</p> <p>“Normal value of Saudi Arabian exporters has been taken as an average cost of manufacturing plus selling, admin and general expenses of Taghleef LLC & Taghleef SAOG. There is no mention of taking into consideration of average profits. The Commission may kindly ensure inclusion of average profit. If it is not so, then the same may be added to the constructed normal value and dumping margin needs to be revised accordingly.”</p>	<p>The profits of Taghleef LLC are already included at the normal value is based on domestic price.</p>
<p>Para 34</p> <p>“Apparently slight increase in capacity utilization during 2009 and Jan – June 2010 over 2008 is because of increased export sales during this period. Here the Commission has given overall capacity utilization which should have been given with reference to production for domestic sales. In applicant questionnaire, separate production for domestic sales and export sales has been given in the respective table which clearly shows reduction in capacity utilization on account of lesser production for domestic sales during the POI. On the same lines, the Commission is requested to analyze and conclude capacity utilization with reference to production of the applicant for domestic sales only. In</p>	<p>Capacity is always worked out on the basis of production and not on the basis of sales to a particular market segment.</p>

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<p>another injury factor relating to sales, in its preliminary determination, the Commission has itself considered only domestic sales for injury analysis purpose. Therefore, export sales need to be excluded from the total production as has been provided in the applicant's questionnaire. On that basis as claimed in the applicant's questionnaire the domestic industry was injured on account of reduced capacity utilization because of increased dumped imports."</p>	
<p>Para 36</p> <p>"Opening and closing inventories for the period Jan-Jun 2009 and Jan – Jun 2010 need to be corrected. Opening inventory for the period Jan – Jun 2009 is 1.84 (indexed figure) instead of 3.60 whereas closing inventory for the said period is 4.79 (indexed figure). Furthermore, opening inventory for Jan – Jun 2010 is 1.89 (indexed figure) instead of 3.69 (indexed figure) whereas closing inventory for the said period is 1.51 (indexed figure) instead of 3.32 (indexed figure)."</p>	
<p>Comments of Government of Sultanate of Oman Government of Sultanate of Oman made following comments/views:</p>	
<p>"... the information contained in the application, normally, would reflect most recent or current information that shows injury suffered within the last 6 months or last 12 months prior to filling the application to NTC."</p> <p>"Due to circumstances of this case, NTC should have examined the effect of time on all the data in the application and should have made this clear when decided that application is proper for the re-initiation after almost two years from receiving the application."</p>	<p>The Commission received the application in the subject investigation on April 12, 2010 and initiated the investigation on September 27, 2010. However, the initiation of the investigation was challenged in Islamabad High Court on July 21, 2011 by the importers of the investigated product who were backed by the exporters. The honorable Court on March 06, 2012 declared the Commission's order of initiation dated September 27, 2012 <i>void ab initio</i> and directed that "N.T.C may proceed with the complaint pending before him: however the petitioner will have the right to raise aforesaid objection." As per the Court's order the Commission re-initiated the investigation on April 23, 2012.</p> <p>In another similar situation, the Islamabad High Court has recently passed an order in writ petition 439/ 2012 that;</p> <p><i>"It is also to be kept in view that on accepting the arguments of learned counsel for the petitioners, it would become a practice that whenever notice of initiation of investigation would be issued, the importers would file application in the Court and after the lapse of one year, would ask for inclusion of new period of time, in which no dumping was made and in</i></p>

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	<p><i>such a way, would avoid the consequences of earlier dumping.”</i></p> <p>From the above, it is clear that the re-investigation was well within the law as interpreted by the higher domestic courts.</p>
<p>“It should be noticed that old initiation lasted around 8 months (i.e. 240 days) before its suspension by the court stay order which is beyond the time frame of application of preliminary determination (180 days). With no preliminary determination made, NTC judged that there is no need for preliminary determination and consequently, it is not necessary to put in place provisional measures. Therefore, no duty has been imposed during the whole 8 months (i.e. between old initiation and stay order) which leaves the imports figures not intact. Therefore, it seems difficult to comprehend the circumstances for applying provisional measures in the current investigation, while investigation was based upon the old application. Even though, the circumstances have changed, NTC should have illustrated that and reflected in a proper manner in any of its reports.”</p>	<p>Kindly note that the Commission could not make timely preliminary determination during old initiation because quorum was incomplete at the time when preliminary determination was due. However, after re-initiation of investigation, the Commission made preliminary determination within the time frame set out in the Ordinance.</p>
<p>“In evaluating the practice of NTC in this investigation, first, NTC decided that POI for determination of dumping and injury should cover more recent information therefore, POI for determination of dumping was selected to cover 18 instead of 12 months and POI for injury is selected to cover 42 months instead of 36 months: however, the gap between the end of POI and date of initiation is more than 18 months which nullify/undo its efforts to cover more recent information.”</p> <p>“Second, NTC did not express, in any of its reports, any concerns on their decision which would be based on information go back to 30-months old. Third, NTC did not address, in any of its reports, any practical problems necessitate this particular period of investigation. Fourth, NTC did not show, in any of its reports, that such concerns was carefully investigated despite the concerns that Taghleef SAOG, cooperating foreign exporter/producer expressed on POI (i.e. the data collection period) in several letters and submissions to NTC during the new investigation. Finally, Taghleef SAOG did not find any explanation from NTC to show why information that is more recent was not sought.”</p>	<p>The Commission received the application in the subject investigation on April 12, 2010 and initiated the investigation on September 27, 2010. However, the initiation of the investigation was challenged in Islamabad High Court on July 21, 2011 by the importers of the investigated product who were backed by the exporters. The honorable Court on March 06, 2012 declared the Commission’s order of initiation dated September 27, 2012 <i>void ab initio</i> and directed that “N.T.C may proceed with the complaint pending before him: however the petitioner will have the right to raise aforesaid objection.” As per the Court’s order the Commission re-initiated the investigation on April 23, 2012.</p> <p>In another similar situation, the Islamabad High Court has recently passed an order in writ petition 439/ 2012 that;</p> <p><i>“It is also to be kept in view that on accepting the arguments of learned counsel for the petitioners, it would become a practice that whenever notice of initiation of investigation would be issued, the importers would file application in the Court and after the lapse of one year, would ask for inclusion of new period of time, in which no dumping was made and in such a way, would avoid the consequences of earlier dumping.”</i></p>

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	From the above, it is clear that the re-investigation was well within the law as interpreted by the higher domestic courts.
<p>“NTC narrowed the scope of the product however, no clear mention on the efforts that NTC exerted during the investigation to reflect the impact of such decision in the Statement of Essential Facts especially on:</p> <ul style="list-style-type: none"> ▪ Definition of domestic industry ▪ Export price ▪ Normal value ▪ Import volumes ▪ Price effects ▪ Economic factors and indices of the applicant ▪ Other causes of injury ▪ Causality” 	The Commission narrowed the scope of investigated product by excluding the product imported under HS Code 3920.2090 (other films of poly propylene). The reason for exclusion was that domestic industry is not producing other films of poly propylene. The Commission excluded the import volume of 3920.2090 from import data. Price effects were worked out after exclusion of 3920.2090. Exclusion of 3920.090 did not had any effect on economic factors and indices of the applicant as it was not produced by the applicant. In the case of Taghleef Oman, Normal Value and Export Price were calculated on the basis data provided by it.
<p>“GSO understands that import statistics are public information (non-confidential information) and shall be available for all, thus, NTC deviated from its obligation by accepting the treatment of import statistic as confidential information as the information was indexed in the application and the written text of the application did not include any attachments for Official Import Statistics related to the product under consideration (the imported product).”</p>	Non-confidential version of the Application contained the indexed form of import data. The said data was available to interested parties for their views/comments.
<p>“To sum, poor treatment of confidentiality leaves Taghleef SAOG unable to defend its interest in corresponding to these allegations of price effects. In addition, Taghleef SAOG argues that lack of providing sources of information on constructed normal value, export prices for 2007, 2008, and 2009 deprives its right for defense in the course of investigation.”</p>	Non-confidential version of the Application states that “Export price is determined on the basis of information / data obtained from PRAL”. The Commission, in its non-confidential version of initiation memo and preliminary determination, informed the interested parties about the sources and method adopted for construction of normal value and export price. This step was taken with the view to provide information to interested parties so that they could comment on it.
<p>“GSO requests NTC to respond positively to Taghleef SAOG request of reflecting the cost born per product and for product under investigation only then re-calculates the margin of dumping for Taghleef SAOG in a correct manner.”</p>	The Commission has calculated the cost of Taghleef SAOG on the basis of information provided by it.
<p>“GSO requests NTC to insure that all comments and arguments raised by Taghleef SAOG throughout its submissions during this current investigation are fully covered and answered by NTC.”</p>	The Commission has considered all the comments raised by Taghleef in its submissions and responded to its concerns at the time of making preliminary determination and final determination.

Annex-V

(Omitted as it contained confidential information)

Annex-VI

(Omitted as it contained confidential information)

Annex-VII

(Omitted as it contained confidential information)

Annex-VIII

(Omitted as it contained confidential information)

Annex-IX

(Omitted as it contained confidential information)

Annex-X

(Omitted as it contained confidential information)

Annex-XI

(Omitted as it contained confidential information)

Annex-XII

(Omitted as it contained confidential information)

Annex-XIII

(Omitted as it contained confidential information)

Annex-XIV

(Omitted as it contained confidential information)

Annex-XV

(Omitted as it contained confidential information)

Annex-XVI

(Omitted as it contained confidential information)