



**Government of Pakistan
National Tariff Commission**

REPORT

ON

**PRELIMINARY DETERMINATION AND LEVY OF PROVISIONAL 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. 22/2010/NTC/BOPP

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**Preliminary Determination and levy of Provisional 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**

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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 is conducting 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 preliminary determination in this investigation under Section 37 of the Ordinance. This report on preliminary determination has been issued in accordance with Article 12.2 of the Agreement on Antidumping.

3. In terms of Section 37 of the Ordinance, the Commission shall make a preliminary determination of dumping and injury, if any, not earlier than sixty days and not later than one hundred and eighty days, after initiation of an investigation. Such preliminary determination shall be based on the information available to the Commission at that time. This investigation was initiated on April 23, 2012. The preliminary determination is based on the information available to the Commission at the time of this preliminary determination.

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 Earlier this 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 in the Islamabad High Court, Islamabad ("IHC") on July 06, 2011 through writ petition No. 2098 of 2011. 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

6.1 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 is 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 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 arms length as disclosed in its Annual Report. Therefore, there are no grounds to exclude Tripack from the definition of the domestic industry. Above all the 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 producers 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 As per the information supplied in the application, 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

8.5 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 made by producers who accounted for 100 percent of the total production of BOPP Film during the period January 2009 to December 2009.

8.6 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 fulfils 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:

- 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 eighteen exporters/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 foreign exporters/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 foreign exporters/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 19 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”.

ii. Domestic Like Product:

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

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.

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 is Bixially Oriented Poly Propylene Film (“BOPP Film”) imported from the Exporting Countries. It is classified under Pakistan Customs Tariff¹ (“PCT”) Heading 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.

12.2.2 Domestic Like Product

The domestic like product is also BOPP Film produced by the domestic industry. It is classified under Pakistan Customs Tariff¹ (“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 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.

12.3 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;

¹ PCT heading in Pakistan is equivalent to Harmonized Commodity Description and Coding System up to six-digit level.

- 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.

12.4 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 M/s 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 foreign producers/exporters and were requested to supply the deficient information. Further details are given at paragraph 15 infra.

14.5 No other foreign producers/exporters, 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 constraint to rely on best information available to determine dumping of the investigated product for them, if they did 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 questionnaires to domestic producer other than the Applicant were sent requesting them 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 preliminary determination the Commission has used import data obtained from PRAL in addition to the information provided by the Applicant and the foreign producers/exporters.

14.9 Thus, the Commission has sought, from all available sources, the relevant data and information deemed necessary for the purposes of preliminary 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 preliminary 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 (hereinafter referred to as "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, Gadoon Amazai, 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 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 preliminary 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 preliminary determination. Preliminary 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 while 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 preliminary 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 (hereinafter referred to as "Taghleef SAOG") 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 no later than January 24, 2010. 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 preliminary 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 before preliminary determination in respect of the exporters of the product concerned. However, the Commission intends to verify

information/data provided by cooperating exporters/foreign producers (Taghleef SAOG, and Taghleef LLC) after preliminary determination.

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. Views/Comments of Interested Parties

19.1 The Commission received comments on the application and initiation of the investigation only from following interested parties:

- i. Metatex Private Limited, Karachi
- ii. Saima Packaging, Karachi
- iii. Khan Match (Pvt) Ltd., Peshawar
- iv. Dynamic Packging Ltd., Lahore.
- v. Ministry of Economy, UAE.

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

B. DETERMINATION OF DUMPING

20. 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”.

21. Normal Value

21.1 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”.

21.2 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:”.

21.3 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.”

22. 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”*.

23. Dumping Determination

23.1 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.

23.2 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 preliminary 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.

24. Determination of Normal Value

24.1 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 preliminary determination has been determined on the basis of that information (paragraphs 24.2 to 24.5 infra). Normal value for the Chinese and Saudi Arabian exporters/producers has been determined on the basis of best information available in accordance with Section 32 and Schedule to the Ordinance (paragraphs 24.6 and 24.7 infra).

24.2 Determination of Normal Value for Taghleef LLC, UAE

24.2.1 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.

24.2.2 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.

24.2.3 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 24.2.2 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 (paragraph 21.3 supra).

24.2.4 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 preliminary 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 preliminary determination as a principle and the amount of these adjustments would be verified during on the spot verification. 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-III.

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

24.3.1 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.

24.3.2 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 construction of normal value for other non-cooperating exporters from UAE 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.

24.3.3 Calculation of constructed normal value for other non-cooperating exporters from UAE is placed at Annexure-IV.

24.4 Determination of Normal Value for Taghleef SAOG, Oman

24.4.1 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.

24.4.2 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.

24.4.3 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 24.2.2 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 (paragraph 21.3 supra).

24.4.5 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-V.

24.5 Determination of Normal Value for Other Omani Exporters/Producers

24.5.1 The exports from other Omani exporters are only 1.13 percent of total exports. 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.

24.6 Determination of Normal Value for Chinese Exporters/Producers

24.6.1 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.

24.6.2 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.

24.6.3 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-VI.

24.7 Determination of Normal Value for Saudi Arabian Exporters/Producers

24.7.1 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.

24.7.2 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.

24.7.3 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-VII.

25. Determination of Export Price

25.1 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 preliminary 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.

25.2 Determination of Export Price for Taghleef LLC, UAE

25.2.1 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.

25.2.2 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.

25.2.3 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 provisionally 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 importer. 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 – II
Level of trade adjustment claimed

Distributor Name	Taghleef SAOG		Taghleef LLC	
	Status	Per Unit Adjustment Claimed	Status	Per Unit Adjustment Claimed
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 LLC for Multi Traders by taking it equal to 100.

25.2.4 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-VIII.

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

25.3.1 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.

25.3.2 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/producers. Calculations of export price for non-cooperating exporters/producers from UAE are placed at Annexure-IX.

25.4 Determination of Export Price for Taghleef SAOG, Oman

25.4.1 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.

25.4.2 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.

25.4.3 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-X.

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

25.5.1 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.

25.6 Determination of Export Price for Chinese Exporters/Producers

25.6.1 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.

25.6.2 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-XI.

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

25.7.1 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.

25.7.2 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 preliminary 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.

25.7.3 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-XII.

26. Dumping Margin

26.1 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 preliminary determination, the Commission has determined individual dumping margin for the three exporters who cooperated with the Commission and supplied necessary information and the provisional 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.

26.2 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.

26.3 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*”.

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

**Table-III
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	24.29%	22.92%
	All others	24.29%	22.92%
China	All exporters	66.01%	62.70%
Saudi Arabia	All exporters	28.04%	26.91%

27. Negligible Volume of Dumped Imports

27.1 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.

27.2 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-IV
Volume of Imports during POI**

Imports from:		Imports in:
		% of total imports
Dumped sources	China	4.25
	Oman	55.57
	Saudi Arabia	4.30
	UAE	24.68
Other sources		11.20
Total		100.00

Source: PRAL and Cooperating Exporters

27.3 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

28. Determination of Injury

28.1 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...”*

28.2 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” .

28.3 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.

29. Domestic Industry

29.1 For the purposes of this preliminary 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;

29.2 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. Therefore for the purposes of this investigation, the Applicant is considered as the "domestic industry" in terms of Section 2(d) of the Ordinance.

29.4 The analysis of injury factors carried out in this preliminary 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.

30. Cumulation of Dumped Imports

30.1 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”.*

30.2 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.

30.3 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 lower 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-V
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 of weighted average C & F price for China by taking it equal to 100.

30.4 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.

30.5 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.

31 Volume of Dumped Imports

Facts

31.1 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.

31.2 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-VI
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	--	--	2.78
2008	10.27	-0.25	3.07
2009	442.93	1.22	16.46
Jan – Jun 2009	---	---	28.59
Jan – Jun 2010	-47.91	0.29	14.85

* Year is from 1st January to 31st December Sources: PRAL and cooperating exporters

Analysis

31.3 Imports of the investigated product from Exporting Countries increased by 10.27 percent in the year 2008. It further increased significantly by 442.39 percent during the year 2009 over the imports of the year 2008.

31.4 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.

31.5 Imports of the investigated product were 2.78 percent, 3.07 percent, 16.46 percent and 14.85 percent of the production of domestic like product during the years 2007, 2008, 2009 and last six months of the POI respectively.

31.6 The imports in absolute terms in the year 2008 increased 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 as compared to same period last year. 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

31.7 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.

32. Price Effects

32.1 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.

32.2 Price undercutting

Facts

32.2.1 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 XIV and XV 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-VII
Calculations of Price Under-cutting**

Year*	Domestic Price**	Landed Cost**	Price under-cutting	
			Absolute	Percentage
2007	100.00	94.83	5.17	5.16
2008	127.44	145.34	---	---
2009	110.56	105.71	4.85	4.39
Jan – Jun 2009	111.56	100.85	---	---
Jan – Jun 2010	124.39	128.30	---	---

* Year is from 1st Jan to 31st Dec * Price/landed cost without sales tax

Sources: Applicant and cooperating exporters

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

Analysis

32.2.2 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

32.2.3 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.

32.3 Price Depression

Facts

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

**Table-VIII
Calculation of Price Depression**

Year*	Domestic price**	Price depression %
2007	100.00	---
2008	127.44	---
2009	110.56	13.24
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

32.2.3 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 as compared to the year 2008. Domestic price recovered during the last six months of POI but magnitude of the decrease during the first twelve months was overwhelming.

Conclusion

32.3.4 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. However, price depression was partly due to decrease in cost and partly due to dumping.

32.4 **Price Suppression**

Facts

32.4.1 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-IX
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

32.4.2 The above table shows that the weighted average cost of sales of the domestic like product increased by Rs. ***/MT and by *** 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. *** and by Rs. *** 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

32.4.3 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.

33. **Effects on Market Share**

Facts

33.1 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 - X
Market Share

Year	Applicant	Exporting Countries	Other Sources	Total Domestic Market
2007	89.67	2.53	7.80	100.00
2008	90.18	2.79	5.18	98.15
2009	88.31	15.14	2.28	105.72
Jan-Jun 2009	74.77	22.03	3.21	100.00
Jan-Jun 2010	74.71	11.47	0.83	87.01

* 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

33.2 The above table shows that domestic market of BOPP Film decreased by 1.85 percent in the year 2008 and increased by 7.70 percent during the POI for dumping.

33.3 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. The decrease in market share of the domestic industry during 2009 was due to increased imports from alleged dumped sources.

33.4 Market share of imports of the investigated product from exporting countries increased from 2.53 percent in the year 2007 to 2.84 percent in the year 2008. It sharply increased to 14.29 percent during the year 2009. Share of imports of the like product from countries other than Exporting Countries continuously decreased over three years.

Conclusion

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

34. Effects on Sales

Facts

34.1 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 -XI
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

* figures are from Jan 01 to Jun 30

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

Analysis

34.2 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

34.3 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.

35. Effects on Production and Capacity Utilization

Facts

35.1 The installed production capacity of the domestic industry to produce domestic like product is 27,800 MT per annum on three-shift basis. Quantity produced and the capacity utilized by the domestic industry during POI was as follows:

**Table-XII
Production and Capacity Utilization**

Year *	Quantity Produced	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

35.2 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.

35.3 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 increased by 0.28 percent in first six months of 2010 as compared to same period of 2009.

Conclusion

35.5 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 the year 2008-09 (POI for dumping).

36. Effects on Inventories

Facts

36.1 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-XIII
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

36.2 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

36.3 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.

37. Effects on Profits/Loss

Facts

37.1 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 -XIV
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

** calculated on the basis of data for Jan 10 to Jun 10

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

Analysis

37.2 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

37.5 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.

38. Effects on Cash Flow

Facts

38.1 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 -XV
Cash Flow Position**

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

38.2 The above table shows that the net cash flow of the domestic industry recovered during year 2009.

Conclusion

38.3 On the basis of the above, the Commission has concluded that the domestic industry did not suffer material injury on account of cash flows.

39. Effects on Employment, Productivity and Salaries & Wages

Facts

39.1 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 -XVI
Employment, Productivity and Salaries & Wages

Year	No. of Employees	Salaries & Wages (Rs. in Million)	Production (KG)	Productivity per worker** (KG)	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

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

39.2 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 POI for dumping.

39.3 Salaries and wages per KG for 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 POI for dumping.

Conclusion

39.4 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 2007 to *** kg in the 2009. The salaries & wages per kg of output increased from Rs. *** in 2007 to Rs. *** in 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.

40. Effects on Return on Investment

Facts

40.1 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 -XVII
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

40.2 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

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

41. Effects on Growth

Table -XVIII
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

** calculated on the basis of data for Jan 10 to Jun 10

Source: Applicant

Facts/analysis

41.1 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

41.2 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.

42. Ability to Raise Capital

Facts/analysis

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

42.2 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.

43. Summing up of Material Injury

43.1 The facts and analysis in the table above and preceding paragraphs (paragraphs 28 to 43 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 growth.

43.2 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.

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

43.4 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.

44.5 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

44. Effect of Dumped Imports

44.1 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. 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.

44.2 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 24 percent in 2007 to 87 percent in 2009. This resulted in reduction of market share of domestic industry from 89.67 percent in 2007 to 83.53 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.

44.3 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.

45. Other Factors

45.1 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.

45.2 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 -XIX
Volume and C&F Prices of Imported BOPP Film**

	Weighted average C&F prices	% share in total imports
Dumped Imports	100.00	88.80%
Other sources	135.86	11.20%

Source: PRAL and Cooperating Exporters

45.3 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

46. The conclusions, after taking into account all considerations for this preliminary 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;
- iv. 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 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.

F. IMPOSITION OF PROVISIONAL ANTIDUMPING DUTY

47. In view of the analysis and conclusions with regard to dumping, material injury, and causation, imposition of provisional antidumping duty on dumped imports of the investigated product is needed to prevent injury being caused to the domestic industry during the course of this investigation in accordance with Section 43 of the Ordinance.

48. Individual dumping margins have been determined for the two exporters/foreign producers of the investigated product who supplied information necessary for this investigation and the provisional rate for antidumping duty for these exporters/foreign producers is determined on the basis of individual dumping margins.

49. 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.

50. In terms of Section 43 of the Ordinance, provisional 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 four months effective from August 10, 2012. The provisional antidumping duty rates are determined on C&F value in *ad val.* terms. Provisional antidumping duties at C&F value are equivalent to the preliminary dumping margins determined at ex-factory price level. The dumped investigated product is classified under PCT heading Nos. 3920.2010 and 3920.2030.

**Table-XX
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%

51. BOPP Film imported from sources, other than the Exporting Countries shall not be subject to these provisional antidumping duties.

52. In accordance with Section 51 of the Ordinance, the provisional antidumping duty shall take the form of *ad valorm* duty and be held in a non-lapsable personal ledger account established and

maintained by the Commission for the purpose. Release of the investigated product for free circulation in Pakistan shall be subject to imposition of such antidumping duty.

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

54. The provisional 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.

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

(Niamatullah Khan)
Member
August 10, 2012

(Zamir Ahmed)
Member
August 10, 2012

(Prince Abbas Khan)
Chairman
August 10, 2012

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 , jiang su China-214444 Tel:86-510-6630121 Fax:86-510-6630116
SHENZHEN XIN YUN TONG SCIENCE Technology Co Ltd 1802 Jingbei Jiayuan Yiwu 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
INFUEX COMPANY LIMITED CHINA	SOUVENIR BLDG MATERIAL TRADING
AMAGIC HOLOGRAPHICS PVT LTD CHINA	

Annexure - II

Comments by Interested Parties

Comments received and germane to this investigation under the Ordinance are reproduced in Column A and the Commission's views/determination thereto are set out in Column B in the following table:

Column-A (Views/Comments of Interested Parties)

Column-B (Commission's Response)

Views/Comments of

Metatex Private Limited. And Dynamic Packaging Limited offered following comments/ views on application and initiation of this investigation through their attorney Rizvi, Isa, Afridi and Angell, and Mr. Sikandar Bashir Mohmand Islamabad:

"D. PRELIMINARY OBJECTIONS"

"It is submitted with respect that although this aspect is alluded to in Section 4 of the Initiation Memo, the Commission has *erroneously* decided that the Applicant "falls within the purview of the domestic industry and is not attracted by the exception of Section 2(d) of the Ordinance inspite the fact that its parent company is an importer of the product from the alleged dumped source." In view of the fact that the Commission itself has given a finding that: (a) PL is related (and in fact the "parent" of the Applicant); and (b) that the related "parent" of the Applicant has indeed imported allegedly dumped product during the POI, it is respectfully submitted that the Commission did not possess the jurisdiction to nevertheless not exclude the Applicant from the domestic industry.."

"Essentially, under Section 2(d) of the Ordinance, any domestic producer which is related to exporters or importers or itself is an importer of the allegedly dumped investigated product must be excluded from the being considered as a part of the domestic industry for the purposes of the Ordinance (including, but not limited to the provisions of Part VII of the Ordinance). It is submitted with respect once it is established that the Applicant is related to PL in terms of Section 2(d) (which in turn is known to have imported the allegedly dumped investigated product), the Commission has no option but to exclude the Applicant from the domestic industry. In other words, once the requirement of being related is established, the Commission has no further discretion to nevertheless retain such an entity as part of the domestic industry."

"Section 2(d) itself employs the phrase "shall mean the rest of the domestic industry" (in contradistinction to "may"), which indicates that the requirement is mandatory. As mentioned below even WTO jurisprudence recognises the mandatory nature of a requirement when the expression "shall" is employed".

The issue of domestic industry is to be interpreted in the context of Anti-Dumping Duties Ordinance, 2000. The implementation of the Ordinance is the responsibility of the Commission. Hence it is well in the jurisdiction of the Commission.

The Commission in the initiation memo on the basis of evidence before it at the time clearly stated that the Applicant is a part of domestic industry and hence it is eligible to file the application. Further arguments, now put forth by the respondents will be considered on merit. The definition of domestic industry is a mirror copy of the Agreement on Implementation of Article VI of GATT 1994 except the word 'may be interpreted as referring to' stated in Sub-Article (i) is replaced with 'shall mean' in Section 2(d) of Ordinance. In this change the phrase 'shall mean' is equivalent to may be interpreted as referring to. The meanings of word 'mean' in concise Oxford Dictionary are intend to (specified sense) or indicate (object) or refer to (thing). The interested party has highlighted the word 'shall' but has ignored the word 'mean'. In the opinion of the Commission, two phrases 'shall mean' and 'may be interpreted as referring to' are equivalent. Therefore, the definition of 'related producers' would be interpreted in the same way as interpreted by other traditional users of anti dumping. The traditional users of antidumping have interpreted the phrase as not mandatory¹, but contingent upon fulfilling conditions. These conditions set the standard for exclusion of related parties. The condition in

¹ Page No. 234-235 of A handbook on antidumping investigations by Judith Czako, Johann Human, and Jorge Miranda

Column-A (Views/Comments of Interested Parties)

Column-B (Commission's Response)

"It is, at least implicit, in Section 4.2 of the Initiation Memo that the Commission too acknowledges and admits that PL and the Applicant are indeed related to each other. However, the Commission appears to have been, influenced by the view that (despite being related to an importer of allegedly dumped investigated product during the POI) the Applicant is not likely to behave differently from non-related producers. It is submitted with respect that this view formed by the Commission is not sustainable for, inter alia, the following reasons:

(i) in the first instance, although the Commission's entire decision to exclude the Applicant from the scope of the exception to Section 2(d) of the Ordinance is premised solely on this view, the Commission has not provided any reasons or the rationale for this decision. The failure to provide any reasons is a contravention of the requirements of applicable law including, but not limited to, the provisions of Section 24A of the General Clauses Act, 1987. It is also underscored, that the failure to provide reasons for this decision, which goes to the very root of the Investigation (as otherwise the Investigation itself is liable to immediate termination and the Applicant's application liable to dismissal), would also be justiciable before the Islamabad High Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 and MPL and DPL respectfully reserve all of its rights in this respect. It is submitted that in the absence of reasons (which themselves would be justiciable), legally, the decision set out in Section 4.2 of the initiation Memo is not sustainable as cumulatively explained in this Application;

(ii) the Commission appears to have reached a conclusion that the Applicant is not likely to behave differently from non-related producers without recognising and applying the provisions contained in the proviso to the Explanation to Section 2(d) which has much broader scope since it refers to both grounds for believing or suspecting that the effect of the relationship is such as to cause the producer concerned to behave differently. Accordingly, the mere suspicion that such domestic producer may behave differently is sufficient to bring the producer within the scope the exception to Section 2(d). In other words, the jurisdictional threshold specified by the statute itself (i.e. the Ordinance) is very low which aspect has not been given due weight by the Commission or its officers in the Initiation Memo.;

case of import by related party is "²A community producer is held to be an importer regardless of whether it imported 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. Keeping in view the above quoted texts, the decision in initiation memo is a step in right direction.

The reason for not excluding the Applicant from the domestic industry is that it falls under the exception mentioned at proviso of the Section 2(d) of the Ordinance. "...There are no grounds for believing or suspecting that the effect of relationship is such to cause the producer concerned to behave differently from non-related producers"

Although the argument is not directly related to the investigation, it is added that the exception becomes operative when it is suspected that related producer would jeopardize the interest of domestic industry. There are no such suspicions as Applicant accounts for 92% of domestic production and is a major producer of the domestic like product and is the only Applicant in this case.

The exclusion is subject to the important proviso that there are grounds to believe that related producer would behave differently than unrelated producer. As stated above, there are no grounds for such belief.

² Page No. 202-203 of Anti-Dumping and other trade protection laws of the EC by Van Bael & Baelis.

Column-A (Views/Comments of Interested Parties)

Column-B (Commission's Response)

(iii) As submitted above, the underlying requirement in Section 2(d) is to exclude any domestic producer which is related to an entity which has imported alleged dumped investigated product. Accordingly, the quantity or quantum of import is neither relevant nor to be taken into consideration which the Commission appears to have done according to the discussion in Section 4.2 of the Initiation Memo. It may be submitted that MPL and DPL, in any event, do not agree with the assertion therein that the said imports from PL were well above dumped prices as there is no evidence thereof and also such finding can hardly be given when even the stage of Preliminary Determination has not been reached.;

The interpretation of law is in accordance with the explanation and not contrary to it.

(iv) Under established principals of interpretation of statutes, the scope of an Explanation to a statutory provision is limited to a providing an explanation but its language cannot be employed to limit or alter the scope of the statutory provision to which it relates, which is what appears to have been done in the Memo of Initiation.;

(v) Even otherwise, MPL and DPL respectfully disagree with the conclusion that the Applicant is unlikely to behave differently. On the contrary, it is strenuously asserted that the relation between PL and the Applicant is such that it is highly likely to behave differently than a non-related domestic producer and that were an measures applied under Ordinance against imports of the investigated product the Applicant would behave to the detriment of importers such as MPL. Only by way of illustration, it is submitted that given the clear operational and legal relationship between PL and the Applicant and the substantial shareholding and common senior executive management, in the event any measure is imposed on the Investigated Product – which would obviously lead to increase in the cost of the investigated product – the Applicant qua producer of majority of the production of the domestic like product would certainly be expected to (and MBL and DPL reasonably believe and suspects that it would) give preferential treatment to PL over all other domestic consumers in terms of availability, quantity and terms of sale and delivery of the domestic like product produced by it. This aspect has not been considered in the Initiation Memo on the basis of the recommendations of which the Commission has decided to nevertheless treat the Applicant as part of the domestic industry;

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 Metatex Pvt. Ltd and Dynamic Packaging Limited. Prices charged by the Applicant from Metatex, 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.

(vi) one other statement by the Investigating Unit of the Commission in the Initiation Memo is that the Applicant is unlikely to behave differently as Tri-Pack Films Limited itself is a major producer of BOPP Film and is the applicant for imposition of anti-dumping measure. It is respectfully submitted that, these views have no nexus with the requirements of Section 2(d) and would constitute a reason extraneous to the scheme of the Ordinance and hence be unsustainable. Contrary to the view taken by the Investigating Unit of the Commission, the very fact that the Applicant is directly and intimately related to and controlled by an entity (i.e. PL) which has imported alleged

The arguments given by the importer have no nexus with the investigation. The interpretation of law must be within certain norms and standard practice followed by international traditional users and spirit of law.

Column-A (Views/Comments of Interested Parties)

Column-B (Commission's Response)

dumped investigated product during the POI, provides ample opportunity of abuse and circumvention as well as providing an undue advantage to PL and its associated company, the Applicant. In other words, by allowing this Applicant to be treated as domestic industry in the circumstances, is placing all domestic consumers of the investigated product or domestic like product (other than PL) at a clear and severe commercial disadvantage.

"Strictly without prejudice to the foregoing, the Investigation is also liable to be terminated on account of the fact that the Application of Tri-Pack Films Limited is premised on data and figures collectively relating to products falling under the PCT Headings No. 3920.2010 (BOPP Plain); 3920.2030 (BOPP Metalized) and 3920.2090 (Other). However, the Notice of Initiation includes only the products falling under PCT Heading No. 3920.2010 (BOPP Plain); 3920.2030 (BOPP Metalized) as the Investigated Product. It is submitted with respect that, without prejudice to the foregoing grounds, since the scope of the Investigated Product has been narrowed by the Commission as compared to that in the Application of Tri-Pack Limited (which contains data on all three PCT Headings on the assumption that all three will be the declared Investigated Product), in order to enable the interested parties to properly assess the Application and to be able to comment thereon the Applicant ought to have been required to submit a fresh or revised Application which it has not been asked to do by the Commission. This omission of the Commission has deprived the interested parties including MPL and DPL from being able to correctly appreciate the allegations in the Application and to comment on the same. It is respectfully submitted that the data in the Application is skewed and misleading as it is premised on an assumption which no longer holds in view of the re-definition of the scope of Investigated Product by the Commission. In such circumstance, it has also become necessary for the Commission to seek a fresh updated application from the Applicant the admission whereof would be subject to the requirements of Section 23 of the Ordinance. Failure to require the Applicant to do so would deprive MPL and DPL of their respective right to a fair defence and hence also contravene Article 10A of the Constitution.."

"Through the instant application, MPL and DPL have raised material questions of law which go to the very root of the matter including, but not limited to, the very jurisdiction of the Commission to initiate and Investigation in the circumstances described above. It is settled law that when questions of jurisdiction have been raised, these questions must be examined and decided in the first instance before proceeding further in the matter. Indeed, should the jurisdictional objections raised hereinabove be sustained and accepted, the entire Investigation would be liable to be terminated thus obviating the need for a lengthy investigation under the Ordinance. Accordingly, it is submitted with respect, that it is in the interest of justice and a fair and transparent adjudicatory procedure for the issues raised above to be decided by the Commission in the first instance prior to proceeding further in the Investigation.."

As stated in initiation memo itself that PCT code 3920.2090 is not BOPP Film but other polypropylene films. Therefore the exclusion of PCT code from investigation is not an 'omission' rather it was a considered decision.

The exclusion of PCT Code does not change the trend and hence the decision of initiation was correct. In this preliminary determination the imports of only two PCT codes have been considered. It may also be kept in mind that at the time of initiation the standard of scrutiny is not so strict but decision are of *prima facie* nature.

The proceedings of the Commission are made in 'overall' guiding parameters of the Ordinance. In 'overall' guiding parameters, the Commission is obliged to make following three decisions or determinations for public.

- i) Initiation of investigation,
- ii) Preliminary determination, and
- iii) Final determination.

Any points raised in between these are addressed in the next public decision. Therefore, all the concerns are being addressed in this preliminary determination.

Column-A (Views/Comments of Interested Parties)

In both the Notice of Initiation and the related Initiation Memo, it is erroneously stated that the Islamabad High Court ordered the Commission to proceed afresh on the complaint pending before it. In this connection, it is respectfully submitted that the import and intent of the Order dated 6-3-2012 of the Honourable Islamabad High Court has not been appreciated correctly as there was no mandatory direction by the High Court to the Commission to proceed with the application of Tri-Pack. Instead, the precise language employed in the Order dated 6-3-2012 is that the Commission may (in contradistinction to shall or must) proceed with the application and that too is subject to the Commission first deciding the application on behalf of MPL dated 11-1-2011 under, inter alia, Section 2(d) of the Ordinance which has long been pending before the Commission but which the latter is evidently reluctant to decide and dispose of through a speaking order.

On a cumulative reading of the Order dated 6-3-2012 of the Islamabad High Court, it is apparent that before initiating any investigation under the Ordinance on the basis of the so-called application of Tri-Pack, the Commission was required to first issue notice to and hear MPL on the objections to the very maintainability and competence of the said purported application in view of the serious objections taken to the claimed standing of Tri-Pack qua domestic industry in view of the requirements and test prescribed by Section 2(d) of the Ordinance. The Commission has acted contrary to and in violation of the letter and spirit of the Order dated 6-3-2012 by a) failing to give any prior notice and hearing to MPL before taking steps purportedly initiating the investigation; and b) failing to even consider, examine or adjudicate upon the detailed grounds for termination of the investigation and competence of the application set out in MPL's application of 11-1-2011.

“Accordingly, it follows that the Commission must be satisfied (i.e. honestly conceived and not merely be proceeding on the basis of an opinion but something much higher) that an application is indeed by or on behalf of the domestic industry before it can initiate an investigation under the Ordinance. A perusal of the Initiation Memo, however, reveals that instead of being satisfied (i.e. honestly conceived and not merely be proceeding on the basis of an opinion but something much higher) that Tri-Pack indeed qualifies as domestic industry (as defined in Section 2(d) of the Ordinance), the Commission has erroneously and incorrectly initiated the investigation merely on the basis of a tentative preliminary and superficial assessment.....”

Column-B (Commission's Response)

The order of the Hon'ble Islamabad High Court has been intentionally misinterpreted and misconceived by the petitioner. Contrary to the assertions of the petitioner, it was incumbent upon the Commission to proceed afresh after the case was remanded back by the Hon'ble Islamabad High Court in accordance with provisions of the Anti-Dumping Duties Ordinance, 2000. Order of the Hon'ble Islamabad High Court dated 06.03.2012 read with the provisions of the Ordinance leaves no choice with the Commission except to initiate the investigation on the complaint of the Applicant. It is however, pertinent to mention that the petitioners were invited to make their submission on, *inter alia*, maintainability of the application, in accordance with the directions of the Islamabad High Court and in line with the set procedure of the Commission. The Commission considered the points raised by the petitioner in earlier applications and it was held that Tripack Ltd. is not likely to behave differently as compared to the unrelated producers.

The Commission has satisfied itself that the application has been made on behalf of the domestic industry and that there is sufficient evidence of dumping and injury in terms of Section 23(4) of the Ordinance. The matters of 'relationship', 'interest', and 'behavior' have been dealt with in Preliminary submissions. The Commission is also satisfied that the Application is filed by the domestic industry in terms of Section 23 of the Ordinance. The information and documents provided in the application show that the domestic industry of BOPP Film comprises of following two units:

1. Tri-Pack Films Limited
2. Mac-Pack Films Limited

Tri-Pack Films Limited, is the major producer of the domestic like product. It produces 92 percent of the total domestic production of BOPP film during 2009. On the basis of facts and information provided it was concluded that the application falls within the preview of domestic industry and

Column-A (Views/Comments of Interested Parties)

Column-B (Commission's Response)

"In terms of Section 36(2) of the Ordinance, for the purposes of an investigation of dumping the investigation is required to cover a period of twelve months preceding the month of initiation of the investigation and in no case the investigation period shall be shorter than six months from the month of initiation of investigation. Contrary to this unequivocal requirement of the Ordinance, in the Notice of Initiation dated 23-4-2012 the POI vis-à-vis dumping is stated to be 1-1-2009 to 30-06-2012. In other words, instead of requiring data relating to alleged dumping for the period of twelve months preceding 23-4-2012 the Commission has (erroneously and in contravention of Section 36(1) and 36(2)) decided to proceed with an investigation of dumping in which it will make its assessment on the basis of data which is over two years old and none of which relates to the period which the Ordinance mandatorily prescribes."

is not attracted by the exception of Section 2(d) of the Ordinance.

Islamabad High Court has remanded the case back to the Commission vide its order dated 06.03.2012 wherein the application of the domestic industry was protected by the Hon'ble Islamabad High Court. For reference paragraph 2 of the said order is reproduced below for ready reference:

"1. ...

2. In the circumstance, NTC may proceed with the complaint pending before him, however, the petitioner will have the right to raise aforesaid objection."

Under the circumstance, it submitted with respect that the application contains certain information for dumping and injury to the domestic industry and the Commission is duty bound to reappraise and re-appreciate the same evidence attached with the application. The same has been held by the Hon'ble Islamabad High Court in its order dated 03.05.2012 in W.P. No. 2140/11. In the light of the orders of the August High Court, the Commission can only proceed with the complaint pending before it.

Ministry of Economy, UAE

"1. The period of investigation is artificially extended to 18 months as will lead to incoherent analysis.

The ministry submits that the National Tariff Commission has taken a period of investigation of 18 months from 1 January 2009 to 30 June 2010 which is not the normal period of investigation for dumping purposes to be one year and in no case less than six months.

The ministry submits that the National Tariff Commission did not provide the reasons for the extension of the period of investigation for dumping purposes to 18 months.

The excess of confidentiality in the non confidential version of the application did not permit a reasonable understanding of the substance of the information submitted in confidence.

The ministry submits that the applicant has improperly treated all related information to the current case as confidential, and in so doing, the rights of the United Arab Emirates to defend its interests has been impaired, as it is no possible to make pertinent presentation on the base the information which has been provided in the non confidential version of the application.

The antidumping investigation has been illegally initiated.

The ministry would like to draw the national tariff commission attention to a number of irregularities that have affected the initiation of the antidumping investigation at hand and that render the initiation of the investigation illegal, at the initiation of the current investigation happened five months later to the date of receiving the related application, which is not consistent with the rules which allow only for a period of 45 days and in

As per Section 36 of the Ordinance, the Commission may at its sole discretion, select a shorter or longer period as period of investigation for determination of dumping and injury.

The Applicant has provided non-confidential version of the information submitted to the Commission as confidential. The non-confidential version has the information in the indexed form, which provides reasonable understanding of the information submitted to the Commission in confidence.

The Commission could not initiate an antidumping investigation, as quorum of the Commission was incomplete in the light of Supreme Court of Pakistan's decision in civil petition no. 1608 of 2009. In the light of Supreme Court of Pakistan's decision, the Commission cannot initiate antidumping investigation, impose provisional measures and final measures if its quorum is incomplete. Therefore, the Commission was not in a position to initiate antidumping

Column-A (Views/Comments of Interested Parties)

Column-B (Commission's Response)

extraordinary circumstances 60 days between the time of receipt of the application and the time of initiation of investigation.

investigation within the time frame prescribed in the Ordinance. However, Commission initiated this antidumping investigation as soon as its quorum was complete.

The evidence provided in the application is insufficient to justify the initiation of the investigation and more importantly to justify a finding of material injury.

The evidence provided in the application is inconsistent with the applicant's claim of injury and causation. In fact, the ministry would like to stress the major inconsistency between the figures presented in the application and the claim made by the applicant with respect to injury alleged being suffered.

The Commission, at the time of initiation, on *prima facie* basis, determined that the domestic industry faced material injury on account of increase in volume of alleged dumped imports, price depression, decline in sales, productivity and wages, profits/profitability, return on investment, and decline in cash flows. The Commission has now made its preliminary determination regarding these points on the basis of information available to it at this point of time.

The standing of the domestic industry did not justify the initiation of the investigation and provided a distorted picture of the domestic industry.

The Ministry submits that the applicant is not even supported in his application by the other known producer of the like product. Thus, it seems that the applicant is clearly isolated in his attempt to present a story according to which imports should be blamed for their alleged difficulties; event though imports cannot be viewed as responsible for any alleged injury, as shown in the present document. This casts serious doubts on the foundation of this action.

The Commission determined that the application has been filed by the Applicant, who is major producer of the domestic like product. During the course of investigation, other domestic producer namely Mac-Pac Films Limited supported the Application. The information supplied in the application shows that the Applicant produced 92 percent of the total domestic production of BOPP Film during 2009.

The scope of the product under investigation is not only broad enough as it cannot be considered as a single product, but also not clearly defined.

The ministry submits that the applicant has defined the subject product in very broad terms, in such a way as, a wide range of product types are covered under the definition. In fact, the range products included in the scope of investigation is so broad that all the individual products are not alike to each and every of the products collectively forming the subject product.

The Applicant in the application requested the Commission to investigate the alleged dumping of products falling under Pakistan Custom Tariff (PCT) No. 3920.2010 (BOPP Film, Plain), 3920.2030 (BOPP Film, Metalized) and 3920.2090 (BOPP Film, Other). However the Commission determined that the 3920.2090 include other Films of propylene. Therefore, the Commission decided to exclude 3920.2090 (BOPP Film, Others) from the scope of the investigation.

With this respect, the ministry notes that there is no coincidence between the definition of the subject product which is under consideration as defined in the non confidential version of the application under the tariff classification 3920.2010, 3920.2030 and 3920.2090 and the product under investigation as defined in the notice of initiation of the current investigation under the headings 3920.2010 and 3920.2030 of Pakistan tariff classification.

Therefore, the National Tariff Commission has given a new and narrow definition of the product under investigation. In so doing, all the information and data provided in the application regarding the volume of imports, the injury indicator, the price effect and dumping are becoming erroneous and misleading.

The alleged injury is attributed to factors other than imports and no causality should be found to exist.

The Commission has taken into account the injury caused by factors other than dumped imports.

Column-A (Views/Comments of Interested Parties)

Column-B (Commission's Response)

The imports from subject countries cannot have caused the alleged injury to the Applicant, but the alleged injury is attributed merely to factors other than the alleged dumped imports, inter alia, the contraction in demand of the like product during the years 2007 to 2009 from (index) 100 in 2007 to 94.22 in 2008 to 90.96 in 2009.

On the other hand, the alleged injury suffered by the applicant is attributed to the world over recession which affected all industrial sectors, inter alia, the petrochemical sector. Accordingly, it is necessary to examine the applicant's allegations of injury and causality in one single chapter but divided in tow periods. First, the performance of the applicant before the global economic crisis. Second, the situation of the applicant after the global economics crisis in order to see that this economic crisis and a number of other factors unrelated tot imports from the UAE have been the main reason causing the alleged difficulties encountered by the applicant.

The normal value and the export price used in the dumping margin calculation have been constructed in an abusive manner.

The ministry submits that the level of the constructed normal value and export price are far fetched from reality. The dumping margin is highly exaggerated. The applicant has manipulated figures in an attempt to present a distorted picture about the dumping margin that can under no circumstances be considered as prima facie evidence of dumping. The applicant does not provided in fact, does not even attempt to provide any reliable justification or clarification about how such prices have been constructed.

Comments after re-initiation of investigation.

Taghleef LLC and Taghleef SAOG

The Commission has initiated the investigation based on an application dating back to March 2010, which is more than two (2) years old. The information contained therein relates to a period that is more than two and a half years of old and instead of seeking new data and information as required under Section 36 of the Ordinance, the Commission has initiated the investigation based on the old data submitted for an investigation which has been declared null and void by the courts in Pakistan.

The Commission has determined dumping margin for cooperating exporters/foreign producers on the basis of information provided by them. However, the Commission has used best information available to determine dumping margin for non-cooperating exporters/foreign producers.

Islamabad High Court has remanded the case back to the Commission vide its order dated 06.03.2012 wherein the application of the domestic industry was protected by the Hon'ble Islamabad High Court. For reference paragraph 2 of the said order is reproduced below for ready reference:

"1. ...

2. In the circumstance, NTC may proceed with the complaint pending before him, however, the petitioner will have the right to raise aforesaid objection."

The application contains certain information for dumping and injury to the domestic industry and the Commission is duty bound to reappraise and re-appreciate the same evidence attached with the application. The same has been held by the Hon'ble Islamabad High Court in its order dated 03.05.2012 in W.P. No. 2140/11. In the light of the orders of the August High Court, the Commission can only proceed with the complaint pending before it.

Column-A (Views/Comments of Interested Parties)

Column-B (Commission's Response)

We once again reiterate that the investigated product is sold on three levels of trade, namely: distributors, converters (printers) and end-users. Since, we largely sell to distributors in Pakistan, who then sell the investigated product to converters; the margin of distributor's costs is taken into account while determining the price. The costs of the distributor include, inter alia, cost on account of stock holding, handling cost, SG & A cost and profit margin. On the other hand, sales in the domestic market are mostly made directly to converters, and hence distributor's costs are not taken into account.

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 importer. 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 above.

As regards the scope of the product under investigation, the application contained import data for PCT Headings No. 3920.2010 (BOPP "Plain"), 3920.2030 (BOPP "Metallized"), and 3920.2090 (BOPP "other"), while the investigation is only against two PCT Heads. Since the Commission did not ask the domestic industry to revise the application upon removal of PCT Head 3920.2090, the exporters have been forced to comment of distorted data vis-à-vis volume of imports, prices and injury etc.

As stated in initiation memo itself that PCT code 3920.2090 is not BOPP Film but other polypropylene films. Therefore the exclusion of PCT code from investigation is not an 'omission' rather it was a considered decision. The exclusion of PCT Code does not change the trend and hence the decision of initiation was correct. In this preliminary determination the imports of only two PCT codes have been considered. It may also be kept in mind that at the time of initiation the standard of scrutiny is not so strict but decision are of *prima facie* nature.

The application was received approximately five months before the investigation was initiated. Upon reading the Rule 5 of the Anti-Dumping Duties Rules, 2001, we understand that the Commission is bound to initiate the investigation within period of 45 days of the date of receipt of an application. It is therefore clear that the Commission should have been initiated the investigation within 45 days rather than five months.

Islamabad High Court has remanded the case back to the Commission vide its order dated 06.03.2012 wherein the application of the domestic industry was protected by the Hon'ble Islamabad High Court. For reference paragraph 2 of the said order is reproduced below for ready reference:

"1. ...

2. In the circumstance, NTC may proceed with the complaint pending before him, however, the petitioner will have the right to raise aforesaid objection."