(NON-CONFIDENTIAL)

Government of Pakistan
National Tariff Commission

REPORT

ON

FINAL DETERMINATION AND LEVY OF DEFINITIVE ANTIDUMPING DUTY ON IMPORT OF FORMIC ACID 85% ORIGINATING IN AND/OR EXPORTED FROM THE REPUBLIC OF FINLAND AND THE FEDERAL REPUBLIC OF GERMANY

A.D.C No.09/2005/NTC/FA
July 06, 2006

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") has conducted an investigation and made a final determination under the above mentioned Ordinance and Rules.

A. PROCEDURE

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

1. Receipt of Application

The Commission received a written application from Tufail Chemical Industries Limited, Mezzanine Floor, Progressive Center, 30-A, Block-6, P.E.C.H.S, Karachi (the "Applicant") on behalf of the domestic industry producing Formic Acid 85% ("FA 85%") on July 30, 2005. The Applicant alleged that FA 85% produced in the Republic of Finland (hereinafter referred to as "Finland") and the Federal Republic of Germany (hereinafter referred to as "Germany") is exported to Pakistan at dumped prices. The Embassies of Finland and Germany in Islamabad were informed through note verbale dated August 03, 2005, sent through the Ministry of Foreign Affairs, Pakistan, of the receipt of application in accordance with the requirements of Section 21 of the Ordinance.

2. Evaluation and Examination of the Application

2.1 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 FA 85% and injury to the domestic industry caused therefrom. The requirements of Rule 3 of the Rules, which relate to the submission of information prescribed therein were also found to have been met.

2.2 The application fulfils the requirements of Section 24 of the Ordinance which enjoins upon the Commission to assess the standing of the domestic industry on the basis of the degree of support for or opposition to the application expressed by the domestic producers of the like product. 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.

2.3 The Domestic industry manufacturing FA 85% consists of two units. Following are the details of domestic industry's capacity and production during the Financial Year ("FY") 2004-05 with regard to standing of this antidumping application:

Name of the Unit	Installed Capacity MT	Domestic Production MT	Percentage Share in Domestic Production	Status
Tufail Chemical Industries Limited.	7,200	5,239	81.36	Applicant
Faras Combine Marketing (Pvt.) Ltd	1,200 (estimated)	1,200 (estimated)	18.64	Indifferent
Total	8,400	6,439		

2.4 It may be noted from the above table that the Applicant is the major domestic producer of FA 85% in Pakistan representing 81.36 percent of domestic production, whereas, the other unit represents 18.64 percent (estimated) of domestic production. The application has been filed by the Applicant. Faras Combine Marketing (Pvt.) Ltd, the other unit of the domestic industry is indifferent. Therefore, the application is considered to be made by the domestic industry as it is supported by 100 percent of the total production of the like product produced by that portion of the domestic industry expressing its opinion. The application, therefore, fulfils the requirement of Section 24(1) of the Ordinance.

2.5 The application also fulfilled the requirements of Section 24 (2) of the Ordinance, as the domestic producers expressly supporting this application account for 81.36 percent of total production of the domestic product produced by domestic industry.

3. Foreign Exporters of the FA 85%

The Applicant identified two exporters/producers i.e., (i) Kemira Chemicals Oyj, Helsinki, Finland ("Kemira") and (ii) BASF, Ludwigshafen, Germany, ("BASF") involved in alleged dumping of FA 85%. Upon initiation of investigation copy of the notice of initiation was sent to both the exporters/producers on September 08, 2005.

4. Applicant's Views

The Applicant, *inter alia*, raised the following issues in its application regarding dumping of FA 85% and material injury to the domestic industry caused therefrom:

i. FA 85% imported from Finland and Germany into Pakistan and the FA 85% produced in Pakistan by the domestic industry are like products;

ii. exporters from Finland and Germany are exporting FA 85% to Pakistan at dumped prices; and

iii. exports of FA 85% by the Finish and German exporters to Pakistan at dumped prices has caused and is causing material injury to the domestic industry producing FA 85%, mainly through:

a. price undercutting;
b. price suppression;
c. loss in market share;

d. negative effects on capacity utilization;
e. negative effects on employment ;
f. negative effects on productivity;
g. negative effects on cash flow;
h. decline in profits; and
i. increase in inventories.

5. Initiation of Investigation

5.1 The Commission upon examining the accuracy and adequacy of the evidence provided in the application established that there is sufficient evidence of alleged dumping and injury to justify initiation of an investigation. Consequently, the Commission decided to initiate an investigation on September 05, 2005. In terms of Section 27 of the Ordinance, the Commission issued a Notice of Initiation, which was published in the Official Gazette[1] of Pakistan and in two widely circulated national newspapers[2] (one in English language and one in Urdu language) on September 08, 2005. Investigation concerning imports into Pakistan of FA 85% (classified under PCT[3] No. 2915.1100) contained in the First schedule of Customs Act, 1969 (IV of 1969) originating in and/or exported from Finland and Germany was thus initiated on September 08, 2005 (pursuant to Commission's decision of September 05, 2005 to initiate).

5.2 The Commission notified the Embassies of Finland and Germany in Pakistan (by sending a copy of the Notice of Initiation through Ministry of Foreign Affairs, Pakistan on September 08, 2005). Copies of Notice of Initiation were also sent to Kemira and BASF, the known Pakistani importers, and the Applicant on September 08, 2005, in accordance with the requirements of Section 27 of the Ordinance.

5.3 In accordance with Section 28 of the Ordinance, on September 13, 2005, the Commission also sent copies of full text of the written application (non-confidential version) to the Embassies of Finland and Germany in Pakistan through the Ministry of Foreign Affairs, Pakistan.

6 Information/Data Gathering

6.1 The Commission sent questionnaires alongwith full text of written application (non confidential version) to Kemira and BASF for submission of data and information on September 13, 2005, and were asked to respond within 37 days of the dispatch of the questionnaires i.e by October 20, 2005.

6.2 Kemira requested for an extension in time period for submission of information till October 30, 2005. The Commission acceded to the request after taking into account the reasons given by Kemira in its request. Filled-in exporter questionnaire from Kemira was received at the Commission on October 29, 2005.

---

[1] The official Gazette of Pakistan (Extraordinary) dated September 08, 2005.
[2] The 'Daily Express and the 'Business Recorder' of September 08, 2005 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.

6.3 BASF also requested for an extension in the time period for submission of the required information till October 30, 2005. The Commission acceded to the request after taking into account the reasons given by BASF in its request. Filled-in exporter questionnaire from BASF was received at the Commission on November 01, 2005.

6.4 On September 27, 2005 questionnaires were sent to Pakistani importers known to the Commission and these importers were asked to respond to the Commission within 37 days of the dispatch of the questionnaires. None of the Pakistani importers responded.

6.5 The Commission maintains a database of import statistics, obtained on quarterly basis, from Pakistan Revenue Automation Limited ("PRAL"), the data processing arm of the Central 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 exporters (i.e., Kemira and BASF).

6.6 On-the-spot investigation was conducted at the premises of the Applicant from November 14 to 16, 2005 at Lahore, in order to verify the information provided by the Applicant and to obtain further information. On the spot investigations were also conducted at the premises of the producers/exporters from Finland (i.e Kemira) and Germany (i.e BASF) from January 30 to February 7, 2006, who responded to the Commission's request for data on exporter's questionnaire.

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

7. 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. This file contains non-confidential versions of the application, submissions, notices, correspondence, and other documents for disclosure to the interested parties.

8. 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.

9. Period of Investigation

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

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

Provided that the Commission may at its sole discretion, select a shorter or longer period if it so deems appropriate in view of the available information regarding domestic industry and an investigated product".

9.2 The POI selected for dumping and injury are, therefore, respectively, as follows:

Investigation of dumping	from July 1, 2004 to June 30, 2005;
Investigation of injury	from July 1, 2002 to June 30, 2005.

10. Investigated Product and Domestic Like Product

10.1 Section 2 of the Ordinance defines the "investigated product", and the "domestic like product" as follows:

Investigated Product:
"a product, which is subject to an antidumping investigation as described in the notice of initiation of the investigation".

Domestic Like Product:
"the domestically produced product, which is a like product to an investigated product".

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

i. Investigated Product

The investigated product is FA 85% originating in and/or exported from Finland and Germany into Pakistan. It is classified under PCT Heading No. 2915.1100. The investigated product is mainly used as an input by leather industry (for leather softening, tanning), in textile industry (as neutralizing agent in yarn & fabrics dyeing), in food industry (in antiseptic, disinfectants, preservatives), and in pharmaceutical industry (as synthesis of vitamin B, in alkaloids etc).

ii. Domestic Like Product

The domestic like product is FA 85% produced by the domestic industry in Pakistan. The domestic like product is also classified under PCT Heading No. 2915.1100. The domestic like product is mainly used as an input by leather industry (for leather softening, tanning), in textile industry (as neutralizing agent in yarn & fabrics dyeing), in food industry (in antiseptic, disinfectants, preservatives), and in pharmaceutical industry (as synthesis of vitamin B, in alkaloids etc). Major uses of the domestic like product are therefore, identical to those of the investigated product.

10.3 In order to establish whether the investigated product and the domestic like product are like products, as contended by the Applicant, the Commission reviewed all the relevant information received/obtained from various sources including the Applicant, and the exporters/producers from Finland (i.e. Kemira) and from Germany (i.e. BASF) in the following terms:

i) The Applicant uses Sodium Formate and Sulphuric Acid as basic raw materials for the manufacture of the domestic like product (i.e. FA 85%), while the exporters/producers from Finland (i.e. Kemira) and from Germany (i.e. BASF) uses carbon monoxide and methanol for the manufacture of investigated product (i.e. FA 85%). Although different raw materials are used, the product manufactured is the same i.e. F.A 85%.

ii) The Applicant manufactures domestic like product by using NaFo Acidolysis manufacturing process, whereas the exporter/producer from Finland manufactures investigated product through Carbonylation manufacturing process and exporter/producer from Germany manufactures investigated product by using Extraction manufacturing process. The product manufactured from these manufacturing processes is the same i.e. F.A 85%.

iii) Both the products have same uses. These are mainly used as an input by leather industry (for leather softening, tanning), in textile industry (as neutralizing agent in yarn & fabrics dyeing), by food industry (in antiseptic, disinfectants, preservatives), and in pharmaceutical industry (as synthesis of vitamin B, in alkaloids etc).

iv) Both the products are classified under the same PCT sub-heading 2915.1100.

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

11. Negligible Volume of Imports

In terms of Section 41(3) of the Ordinance, the volume of imports shall normally be regarded as negligible if the volume of imports of an investigated product is found to account for less than 3 percent of total imports of the like product. In this regard, data and information provided by the Applicant (which is based on PRAL data) and provided by the exporters/producers from Finland and Germany has been analyzed. The data reveals that imports from Finland were 1928.45 MT, and from Germany were 3964.80MT during the POI, which were 28% and 57% of total imports of the investigated product into Pakistan respectively. Thus this percentage is well above the percentage for "negligible" volume (less than three percent) of imports of the like product.

12. Submissions by the Exporters

(i) Questionnaire response by Kemira

12.1 Filled-in exporter questionnaire from Kamira was received at the Commission on October 29, 2005. It manufactures and markets Formic Acid 85% (the investigated product) and Formic Acid 99%.

12.2 Upon examination it was found that the questionnaire did not contain information on cost of production, domestic and export sales on transaction-by-transaction basis, transportation, insurance, handling, loading and ancillary costs, (information that is to be provided on all fields in C-3 and D-3 and Appendix-1 and Appendix-2 of the questionnaire). Letter containing data deficiencies was sent to Kemira on November 22, 2005 and were asked to provide the deficient data by November 29, 2005. Kemira in its email dated November 22, 2005 requested 6-days extension in time period to provide the requisite information/data. Kemira was allowed 6-days extension (i.e., upto December 05, 2005).

12.3 On December 8,2005 the Commission received a response from Kemira to the data deficiency letter of November 22, 2005. Kemira submitted a revised questionnaire that contains information regarding its export sales to Pakistan and India during POI, its total domestic sales during three calendar years i.e. 2003, 2004 and 2005 and information in Appendix 1. Kemira did not provide complete information of its cost of production in Appendix 2.

(ii) Questionnaire response by BASF

12.4 Filled-in exporter questionnaire from BASF was received in the Commission on November 01, 2005. According to the information provided in response to the exporter questionnaire by BASF, it is a world leading chemical company, manufacturing chemicals, plastics, performance products, agricultural products etc. It manufactures and sells FA 85% (the investigated product), and Formic Acid 99% and other chemical products. BASF provided information of its domestic sales and export sales to Pakistan during POI in sections C and D of the questionnaire.

12.5 On December 17, 2005, BASF through a data deficiency letter was asked to explain the basis of allocation of each cost component to FA 85% and FA 99% and other products of chemical division separately. BASF was also asked to provide information on quantity and value of the investigated product sold in the domestic market and exports to each country including Pakistan and India for the period from July 1, 2002 to June 30, 2005 in the revised Appendix-1.

12.6 In response to the data deficiency letter of December 17, 2005, BASF in its letter dated

December 20, 2005 submitted clarifications regarding packing cost, R&D cost in administrative expenses and informed that basis of allocation of cost can be given during on –the-spot-investigation. However, it provided information of its export sales to other countries in Appendix 1 of the exporter's questionnaire.

13. Preliminary Determination and Levy of Provisional Antidumping Duties

13.1 The Commission made its preliminary determination in this case on March 06, 2006 and in terms of Section 37 of the Ordinance, the Commission issued a notice of preliminary determination, which was published in the official Gazette of Pakistan[1] and in two widely circulated national newspapers[2] (one in English language and one in Urdu Language) on March 09, 2006 notifying the imposition of provisional antidumping duties on the investigated product @ 16.49 percent and @ 6.16 percent ad val of C&F price importable from Kemira and BASF respectively for a period of four months effective from March 09, 2006. The Commission besides sending the notice of preliminary determination to the Embassies of Finland and Germany in Islamabad also sent the notice of preliminary determination to exporters/foreign producers of investigated product (Kemira and BASF), the Applicant, and the known Pakistani importers in accordance with the requirements of Section 37(4) of the Ordinance.

13.2 The findings of the Commission in the preliminary determination were as follows:

i. the application was filed on behalf of domestic industry as the Applicant Unit represents major proportion of the production of domestic like product;

ii. the investigated product and the domestic like product are like products;

iii. during the POI, the investigated product was exported to Pakistan by the exporters/foreign producers, from Finland and Germany, at prices below its normal value;

iv. the volume of dumped imports of the investigated product and the dumping margins established, are above the negligible and *de minimis* levels respectively;

v. the domestic industry suffered material injury during the POI on account of, volume of dumped imports, price undercutting, price suppression, loss in market share, decline in profit, negative effects on production and capacity utilization, negative effects on productivity and increase in inventories (in terms of Section 15 and 17 of the Ordinance); and

vi. there is a causal relationship between dumped imports and the material injury suffered by the domestic industry.

1 The official Gazette of Pakistan (Extraordinary) of March 09, 2006 issue.
2 'Daily Business Recorder' and ' Daily Express' of March 09, 2006 issues.

14. Disclosure after Preliminary Determination

14.1 In terms of Rule 11 of the Rules, the Commission, upon request made by a foreign producer/exporter within fifteen days of the publication of notice of preliminary determination, shall hold disclosure meeting with the foreign producer or exporter to explain dumping calculation methodology applied for that exporter/ producer. The

Commission shall also provide an opportunity to exporter/producer or their legal representatives to examine and receive copies of the dumping calculations done by the Commission for their exports.

14.2 Kemira requested the Commission for disclosure meeting vide its facsimile dated March 23, 2006. Disclosure meeting with its authorized representative was held on April 12, 2006 at the offices of the Commission. The Commission's investigating staff explained the methodology used in dumping calculations to Kemira. The representative of Kemira obtained copies of the dumping calculations.

14.3 BASF through its letter dated March 24, 2006 also requested the Commission for disclosure meeting. In response to BASF's request, the Commission vide its letter dated April 12, 2006 proposed April 20, 2006 for the disclosure meeting at the offices of the Commission and requested BASF to intimate to the Commission the name and designation of the authorized representative before the proposed date of disclosure meeting. However, BASF did not respond to the Commission and thus chose not to avail this opportunity. Further, in response to a letter of the European Commission Directorate General for Trade to Pakistan dated June 8, 2006, the Commission provided another opportunity to BASF for a disclosure meeting if requested before the final determination. However, the Commission did not receive any such request.

15. Hearing

In terms of Rule 14 of the Rules, the Commission shall, upon request by an interested party made not later than thirty days after publication of notice of preliminary determination, hold a hearing at which all interested parties may present information and arguments. The Commission did not receive a request for hearing from any of the interested parties registered in this investigation.

16. Written Submissions by Interested Parties on Preliminary Determination

16.1 The Commission received written submissions/comments from the European Commission, Directorate General for Trade through the Delegation of the European Commission to Pakistan on the preliminary determination made by the Commission in this investigation.

16.2 The comments received and germane to the investigation are reproduced in Column A below and the Commission's response thereto are set out in Column B as follows:

Views/Comments from the European Commission Directorate General for Trade:

Column A	Column B
(i) "…. it remains unclear to the Commission whether the Applicant is really suffering material injury as defined by the WTO Antidumping Agreement. In the view of the Commission, the report under consideration reveals rather positive developments of the applicant during the investigation period (IP), e.g. the applicant made great investments, increased its production, increased sales and also increased its selling price.	The Commission examined and evaluated all injury factors listed in Sections 15 and 17 of the Ordinance and Article 3.4 of the Agreement on Antidumping. As regards positive developments of the Applicant during the POI, the same may be seen in relative term. Growth in sales and production is relatively less than the growth in size of the domestic market demand and growth in dumped imports.
(ii) "Moreover, the Pakistani Authorities conclude that in their report that the applicant suffered injury in terms of price suppression because cost of production increased more between 2004 and 2005 than did the selling price. The Commission would like to point out that during the whole IP, i.e. between 2003 and 2005, there is no price suppression. During this time period, cost of production increased by 17% whereas prices during the same period increased by 20%."	The Commission has mentioned in its Report of Preliminary Determination that the domestic industry did not suffer price suppression during FY 2004. However, in FY 2005, the cost of production increased by 13.3 percent over FY 2004 and the selling price of the domestic like product increased by only 11.8 percent over FY 2004 causing injury to the domestic industry in terms of price suppression.
(iii) "Furthermore, the report alleges that the selling price of the European exporters concerned undercut the selling price of the applicant to a small extent. However, the Pakistani Authorities do not explain how they have calculated the landed cost of the European exporters. In particular, it is not clear whether the general import duty of 25% has been added to this cost."	As clearly mentioned in the Report of Preliminary Determination, prices of the investigated product significantly undercut the prices of the domestic like product during the POI. It may be noted that the landed cost has been calculated by adding customs duty in the C&F price of investigated product.
(iv) "It should be added that the Pakistani Authorities have concluded that the decrease of capacity utilization of the applicant is due to dumped imports whereas it is rather clear from the figures displayed in the report that capacity utilization decreased because the applicant installed extra capacity."	As clearly stated in the Report of Preliminary Determination, capacity utilization of the domestic industry decreased from 77 percent in FY 2003 to 67 percent in FY 2004 due to increase in capacity. However, it may be noted that during FY 2003 and FY 2005 the size of the domestic market increased by 52 percent while the production of the domestic industry increased by only 26 percent.

(v) "In addition, the Pakistani Authorities fail to provide any satisfactory explanation regarding why the cost of production of the applicant increased to such a significant extent during the IP. Considering the importance of this point for the outcome of the case, the Commission expects that Pakistan conducts an in-depth analysis of the development of the cost of production. It would have to be established whether the increased cost is there because of the increased investments. In this context, it is noted that the applicant made significant loss in 2005 compared to 2004. In the view of the Commission, it cannot be excluded that the reason for this loss is the increased cost of production rather than the alleged dumped imports."	In the same period, import from dumped sources increased by 81 percent. On this basis it can be concluded that the domestic industry suffered material injury on account of capacity utilization due to dumped imports. Information provided by the Applicant revealed that during the period from 2002-03 to 2004-05, the cost of production of the domestic like product increased significantly due to increase in the prices of raw material, packing material and wages of direct labor. The increase in fixed expenses, which include depreciation and fixed overhead, was not significant. The domestic industry was not able to increase its sales price to meet the rising cost of production and consequently reduce its losses due to prices of dumped imports. In the absence of dumped imports, the domestic industry would arguably have been better placed to recover its cost to a greater extent
(vi) "Moreover, the Pakistani Authorities have not addressed the comments and views provided by the importers/industrial users and the exporters concerned by this case. According to the Commission, the Pakistani Authorities have therefore failed to fully respect the right of defence of all interested parties as foreseen by the WTO Antidumping Agreement. In particular, one of the exporters (Kemira) demonstrated a difference between the manufacturing cost of the applicant and the exporter concerned due to the difference of technologies: the technology used by the former being more costly than the one used by the latter. The Pakistani Authorities should in all fairness carefully examine and properly address all relevant comments made by interested parties."	Comments and views provided by all interested parties including the importers/industrial users and the exporters concerned, as mentioned in paragraphs 14 to 16 of the Report of Preliminary Determination (non confidential) were all considered while making the preliminary determination and this final determination.

vii) Finally, the Pakistani Authorities did not send to Kemira and BASF any details with regard to the calculation of their respective dumping or undercutting margins, not even upon their request. Instead, the exporters concerned were requested to come themselves to Pakistan to collect a copy of the relevant confidential sections of the report. As a matter of fact, it seems that non of the two exporters concerned received even the non-confidential version of the report, only the public notice. According to the Commission, this seriously impedes the right of defence of the exporters, as defined by the WTO Antidumping Agreement.

The disclosure meeting with the authorized representative of Kemira was held on April 12, 2006 at the Commission. During the disclosure meeting, the Commission also provided Kemira the confidential part of the dumping margin calculation preliminary applied for Kemira. It may be noted that BASF also requested for disclosure meeting with the Commission. The Commission through its letter dated April 12, 2006 proposed the disclosure meeting with BASF on April 20, 2006, and requested BASF to intimate to the Commission the name and designation of its authorized representative before the date of disclosure meeting. However, this opportunity of disclosure meeting was not availed by BASF. Later, in response to a letter of the European Union Directorate General for Trade to Pakistan dated June 8, 2006, the Commission provided another opportunity to BASF for disclosure meeting if requested before the final determination. No request in this regard was made to the Commission by BASF. Further, the Commission did express its limitations to BASF that it cannot send the dumping margin calculation methodology preliminary applied for BASF as the same falls outside the purview of the Commission in terms of Rule 11 of the Rules. As regards provision of non-confidential version of the report on preliminary determination, the Commission had sent the notice of preliminary determination to all interested parties where it is clearly stated that the Commission has posted non-confidential version of the report on preliminary determination on its website: www.ntc.gov.pk

17. Views/Comments Submitted by Applicant on Views/Comments Submitted by the European Commission Directorate General for Trade to Pakistan on Preliminary Determination:

In response to the comments made by the European Commission, Directorate General for Trade, the Commission received comments from the Applicant through its Attorney on June 05, 2006, which are reproduced below at Column A along with the Commission's findings at Column B:

Column A	Column B
Views/Clarification on EC's Comment 1: (i) "EC has referred to four injury factors showing positive developments. However, as per Article 3.1 and 3.2 of Antidumping Agreement (ADA) there are four injury factors (volume for dumped imports, price undercutting, price depression and price suppression) which are required to be examined. In addition as per Article 3.4, around fifteen injury factors (*actual and potential decline in sales, profits, output, market share, productivity, return on investment, or utilization of capacity, the magnitude of the margin of dumping, actual and potential negative effects of cash flows, inventories, employment, wages, growth, ability to raise capital or investments)* have been mentioned. At the end of Article 3.2 as well as 3.4 it is written that no one or several of these factors can necessarily give decisive guidance." "The above clarification shows that only four factors showing positive development cannot give decisive guidance that applicant industry is not being injured. Remaining factors also need to be examined and evaluated properly. Even the factors showing positive development have not been seen in comparative position……….. comparison clearly shows that increase in production as well as increase in sales by the domestic industry is still below the expansion in domestic market. However, increase in dumped imports is 40.35% during this period which is well above the increase in domestic sales of 11.66%, as both become part of the domestic market."	Please see the Commission's findings in response to European Commission's comments on injury factors at paragraph 16.2 (i) above.

Views/Clarification on EC's Comment 2:

"Price suppression as worked out for 2004-2005 over 2003-2004 is reflecting the true position where increase in price could not fully recover the increase in cost of production. However, no suppression has been claimed for 2003-2004 over 2002-2003."	Please see the Commission's findings in response to EC's comments on this issue at paragraph 16.2 (ii) above.

Views/Clarification on EC's Comment 3:

"While calculating landed cost of the dumped imports impact of 25% customs duty has duly been accounted for."	Please see the Commission's findings in response to EC's comments on landed cost at paragraph 16.2 (iii) above.

Views/Clarification on EC's Comment 4:

"The domestic market has shown increase of 2,087 MT in 2004-05 over 2002-03. However, increase in capacity by the domestic industry during this period was to the extent of 1,800 MT. Inspite of the fact that the domestic industry's enhanced installed capacity was below the domestic market, even then the capacity utilization was only 77% during 2004-2005. The reduced capacity utilization is no doubt affected by the quantum of dumped imports which are holding 46.55% share of domestic market in 2004-2005 as compared to 42.96% share held by it during 2002-2003."	Please see the Commission's findings in response to EC's comments on landed cost at paragraph 16.2 (iv) above.

Views/Clarification on EC's Comment 5:

"The increase in cost of production from 2002-2003 to 2004-2005 mainly comprise of Rs. 6,660/MT on account of increase in cost of raw material which is not in the control of applicant domestic industry.	Please see the Commission's findings in response to EC's comments on landed cost at paragraph 16.2 (v) above.

Whereas increase in cost of production on account of depreciation and other fixed expenses is only Rs. 206/MT during the same period which was mainly due to enhancement in production capacity. It clearly reveals that the increase in installed capacity did not affect materially in increase in cost of production. All these figures are evident from confidential version of Appendix 9 submitted to the NTC."

18. Disclosure of Essential Facts:

18.1 In terms of Rule 14(8) of the Rules and Article 6.9 of Agreement on Antidumping, the Commission disclosed the essential facts, and in this context dispatched the Statement of Essential Facts (hereinafter referred to as the "SEF") on June 06, 2006 to all interested parties including exporters/foreign producers (Kemira and BASF), the Applicant, the known Pakistani importers, and to the embassies of Finland and Germany in Pakistan.

18.2 Under Rule 14(9) of the Rules, the interested parties were required to submit their comments (if any) on the facts disclosed in SEF, in writing, not later than fifteen days of such disclosure. The Commission received written submissions/ comments on the facts disclosed in the SEF from the European Commission Directorate General for Trade.

18.3 The comments received and germane to the investigation under the Ordinance are reproduced in Column A below and the Commission's response thereto are setout in Column B as follows:

Column A	**Column B**
(i) "At the outset, the Commission would like to underline its astonishment that the Pakistan Authorities confirm the existence of material injury to the applicant merely by making a general reference to the figures displayed in the report. There are no analytical remarks as to which of the injury factors, and how the development of those factors, led to the conclusion that material injury is suffered by the domestic industry. An analysis in this case is particularly important considering that most of the injury factors developed positively, which rather points to the contrary, i.e. that the applicant does not suffer any material injury."	Please see the Commission's injury analysis at paragraph 27 to 29.

(ii) "Another striking element is that the report does not include any causal link analysis. The Commission therefore considers that the Pakistan Authorities have failed to establish that the alleged injury is *caused* by dumping, which is clearly a requirement of the WTO Anti-dumping Agreement (Article 3)."	Please see the Commission's analysis at paragraph 30 and 31.
Injury	
(iii) "As mentioned above, examining the information provided in the report, it seems that the applicant is *not* suffering any injury: it made great investments, increased its production, increased sales, and also increased its selling price. Considering these factors, the Commission is surprised that the Pakistan Authorities reached the conclusion that there is *material* injury and would appreciate an explanation."	Please see the Commission's analysis at paragraph 27-29.
(iv) "In its report on preliminary findings, the Pakistan Authorities concluded that the applicant suffers injury in terms of price suppression because cost of production increased more between 2004 and 2005 than did the selling price. The Commission would like to point out that during the whole investigation period (IP), i.e. between2003 and 2005, there is no price suppression. During this time period, cost of production increased by 17% whereas prices during the same period increased by 20%."	The Commission has mentioned in the Report of Preliminary Determination that the domestic industry did not suffer price suppression during FY 2004. However, in FY 2005, the cost of production increased by 13.3 percent over the FY 2004 and the selling price of the domestic like product increased by only 11.8 percent over FY 2004 causing the domestic industry to suffer injury in terms of price suppression because in this year the increase in COP is greater than the increase in price of the domestic like product.
(v) "In more detail, the Commission would like to know how the landed cost of the European exporters has been calculated. In particular, it is not clear whether the general import duty of 25% has been added to this cost, which it should be."	Landed cost has been calculated by adding customs duty in the C&F price of investigated product.
Causality	
(vi) "As mentioned above, the report does not establish any causal link between the alleged injury and dumping, and therefore clearly breaches Article 3 of the WTO Anti-dumping Agreement."	Please see the Commission's analysis at paragraph 30 and 31.

(vii) "For example, it would be interesting to receive an explanation as to why the cost of production of the applicant increased to such a significant extent during the IP. In particular, it would have to be established whether the increased investments have caused the increase of costs. In this context, it is noted that the applicant made significant loss in 2005 compared to 2004. In the view of the Commission, it cannot be excluded that the reason for this loss is the increased cost of production rather than the alleged dumped imports. Considering the importance of this point for the outcome of the case, the Commission urges Pakistan to conduct an in-depth analysis of the development of the cost of production of the applicant."

Information provided by the Applicant revealed that during the period from 2002-03 to 2004-05, the cost of production of the domestic like product increased significantly due to increase in the prices of raw material, packing material and wages of direct labor. The increase in fixed expenses, which include depreciation and fixed overhead, was not significant. The domestic industry was not able to increase its sales price to meet the rising cost of production and consequently reduce its losses due to prices of dumped imports. In the absence of dumped imports, the domestic industry would arguably have been better placed to recover its cost to a greater extent.

(viii) "It should be added that the Pakistan Authorities concluded in its report of preliminary findings that the decrease of capacity utilization between 2004 and 2005 of the applicant is due to dumped imports whereas it is rather clear from the figures presented in the report that capacity utilization decreased because the applicant installed extra capacity."

Please see the Commission's analysis at paragraph 26.23 and 26.24.

Rights of Interested Parties

(ix) "The Commission is concerned that the Pakistan Authorities have not addressed the comments and views provided by the importers/industrial users and the exporters at the time of the initiation of this case. These comments were not addressed in the report of preliminary findings, nor in the statement of essential facts. The Commission therefore considers that the Pakistan Authorities have failed to fully respect the right of defence of all interested parties as foreseen by the WTO Anti-dumping Agreement.

Comments and views provided by the importers/industrial users and the exporters concerned, as mentioned in paragraphs 14-16 of the report of preliminary determination (non confidential) were considered while making the preliminary determination.

In particular, one of the exporters (Kemira) demonstrated a difference between the manufacturing costs of the applicant and the exporters concerned due to the difference of technologies: the technology used by the former being more costly than the one used by the latter. The Pakistan Authorities should carefully examine and properly address all relevant comments made by interested parties."	
(x) "Finally, the Commission regrets that the Pakistan Authorities did not send the relevant sections of the confidential disclosure to the exporters concerned. This clearly hampers the exporters' opportunity to properly defend their interests and submit valid comments, as provided for in Article 6 of the WTO Anti-dumping Agreement……"	The disclosure meeting with the authorized representative of Kemira was held on April 12, 2006 at the Commission. During the disclosure meeting, the Commission also provided Kemira the confidential part of the dumping margin calculation preliminary applied for Kemira. It may be noted that BASF also requested for disclosure meeting with the Commission. The Commission through its letter dated April 12, 2006 proposed the disclosure meeting with BASF on April 20, 2006. BASF was also requested to intimate to the Commission the name and designation of its authorized representative before the date of disclosure meeting. However, this opportunity of disclosure meeting was not availed by BASF. Later, in reply to the latter dated June 8, 2006 of the European Union Delegation of the European Commission to Pakistan, the Commission provided another opportunity to BASF for disclosure meeting to be held before the final determination is made, on a request to be made by BASF. However, the Commission has not received any such request from BASF till making its final determination.

18.4 The Commission on June 24, 2006 received comments on SEF from Kemira, which are reproduced in Column A below and the Commission's response thereto is given in Column B as follows:

Column A	**Column B**
Injury "The paragraphs 32-40 of the SEF touch price effects and other effects of the alleged dumping to the domestic industry. (1) In paragraph 32.1, it is established that there has been price undercutting ranging from 6.56% to 11.53% during the POI. We submit that the price undercutting is due to the high cost of the domestic industry's raw material sodium formate rather than the imports from Germany and Finland. As the Commission has duly noted in it the paragraph 11.3 of SEF, the Applicant uses different production technology than Kemira. Therefore, the Applicant's raw material costs are different from those of Kemira. Kemira has no accurate statistical data for the price of the sodium formate, but it is our understanding based on the general market knowledge that there has been a significant increase in the market price for sodium formate.	The Commission has mentioned in its report that the domestic industry did not suffer price suppression during FY 2004. However, in FY 2005, the cost of production increased by 13.3 percent over the FY 2004 and the selling price of the domestic like product increased by only 11.8 percent over FY 2004 causing the domestic industry to suffer injury in terms of price suppression because in this year the increase in COP is greater than the increase in price of the domestic like product.
We submit that this has resulted in uncompetitive pricing of the domestic product. Consequently, there is no causal link between the alleged dumping and the price undercutting. According to paragraph 41, the Commission has not analysed the influence of the raw material price increase to the domestic industry. We submit that the Commission considers this matter before the final determination."	Information provided by the Applicant shows that the cost of production of the domestic like product increased in FY 2004. However, the cost of production significantly increased in FY 2005, due to increase in the prices of raw material, packing material and wages of direct labor. The increase in fixed expenses, which include depreciation and fixed overhead, was not significant. The domestic industry was not able to increase its sales price on account of price undercutting arising through dumped imports. The domestic industry was therefore unable to fully recover the rising cost of production and consequently reduce its losses. In the absence of dumped imports, the domestic industry would arguably have been better placed to recover its cost to a greater extent.

(2) In paragraph 32.2, it is established that the domestic industry experienced no price depression during the POI but, in contrast, the domestic industry has been able to increase its prices by 6.89% in 2005. We submit that this is a strong indication that the domestic industry has not suffered material injury due to the alleged dumping.	The domestic industry increased its prices in 2005 in order to recover the increase in its cost of production, which was not fully recovered and thus resulted in price suppression.
(3) In paragraph 32.3, it is established that the domestic industry has experienced price suppression of 1.55% during the POI. In our view this figure is negligible and does not indicate that the domestic industry would have experienced material injury.	Please see the Commission's analysis at paragraph 26.
(4) In paragraph 33, it is established that the domestic industry has experienced loss of market share during POI. However, the Commission has not considered whether the loss of market share is due to other factors, such as customer preferences (e.g. quality differences between domestic and imported product) rather than merely a direct consequence from the import as such.	Prior to dumping of investigated product, the domestic industry has been selling FA 85% in the domestic market. The domestic industry sold [***] MT to *** MT of FA 85% in a growing domestic market during the POI which is around 35% to 47% of total domestic market. The loss of market share is not on account of quality of domestic like product, rather prices of dumped imports have affected the sales and market share of domestic industry.
(5) In paragraph 34 it is established that the Applicant's production capacity increased by 16.67% in 2004 and again by 14.28% in 2005. According to the paragraph 40, the Applicant's production capacity increased in excess of the demand of FA 85%. In our view, the fact that the applicant has invested in expanding its production capacity is a very strong indicator that the domestic industry has not suffered injury during the POI. Additionally, the capacity utilization rates set forth in paragraph 34 are not reliable indicators of injury due to the increase in the production capacity.	The total domestic demand of FA 85% was 11,066MT in FY 2005 and the Applicant increased its production capacity from 100 percent to 133 percent, which is still much lower than the total domestic demand. Due to dumped imports the Applicant has not been able to increase its production to achieve the desired level of capacity utilization.

[***] Actual figures have been omitted to maintain confidentiality

(6) In paragraph 35 it is established that the applicant suffered a <u>loss</u> of 429.09% in 2005. The concepts of "profit" and "loss" are not defined in the SEF. Therefore, we understand them to refer to the bottom line of the company's income statement (profit and loss statement). Consequently, this figure includes accounting items such as depreciations (cf. the expansion of the production capacity) and write-downs, appropriations, and extraordinary items, as a contrast to for example gross margin or EBITDA figures. Because the annual profit /loss figure depends on a variety of accounting items in addition to actual operational performance of the Applicant, we consider this figure is an insufficient measurement of the actual operational performance. As a consequence, the amount of huge loss does not per se indicate that the Applicant has suffered material injury due to the alleged dumping.	The figures of profit/loss are verified from the audited accounts of the Applicant (profit and loss statement) and the figure of loss is actually net loss from operations.
As a conclusion, in light of the above, we respectfully submit that the Applicant and the domestic industry has not suffered material injury due to the alleged dumping.	Please see Commission's analysis at paragraph 27 to 29.

18.5 Pacific Multi Products (Pvt.) Ltd (the sole agents of Kemira in Pakistan) has also sent comments on the Statement of Essential Facts, which were received at the Commission on June 24, 2006. Pacific Multi Products comments are reproduced in Column A below and the Commission's response thereto is given in Column B as follows:

<u>Column A</u>	**<u>Column B</u>**
1) "The Formic Acid produced by Tufail Chemicals in Pakistan is totally based on technology which is already obsolete in the world thus it is proven that this technology cannot give the product of international standards as required by the end consumers here in Pakistan."	Prior to dumping of investigated product, the domestic industry has been selling FA 85% in the domestic market. The domestic industry sold ***MT to *** MT of FA 85% in a growing domestic market during the POI which is around 35% to 47% of total domestic market. The loss of market share is not on account of quality of domestic like product, rather prices of dumped imports have affected the sales and market share of domestic industry.

*** Actual figures have been omitted to maintain confidentiality.

2) "In this whole case, the views of the end consumers are not taken into consideration as we think that all end consumers should be visited in person and your committee should see the difference in quality by themselves and hear the practical views of the consumers and their plant production managers. Though we understand that the opportunity was given to all parties to send their views in writing which was not fully utilized, but we believe that in a Country like Pakistan where things are based more on the practical approach than the theoretical one, one should base investigation on practical approach of visiting customers and to know their views and to see the actual situation of the factory floors etc. We would like to mention here that the major segments who are consuming Formic Acid from Europe is the Tannery industry in Pakistan who are the renowned leather companies/exporters to Europe, USA and other countries of the world as they need quality and that is why they prefer European Products, for which Tufail cannot fulfill and satisfy."	The Commission has received letters from few end users of FA 85% and their views were taken into account while making preliminary determination. The Commission has not received any comments from end users of FA 85% after preliminary determination.
3) "Commenting on the other major sector consuming Formic Acid in Pakistan is the Textile sector who is also afraid and not happy with this situation as they believe that Tufail is being given Monopoly to rule the market prices and has been given open grounds to dictate prices and terms to the buyers. Here we would like to mention that there is no physical existence of the Faras Combine Marketing (Pvt) Ltd as a proper Formic Acid manufacturer, as a result the only manufacturer benefited by this decisions of Anti dumping duty is Tufail Chemicals."	The Commission has not received any comments from consumers of FA 85% in the textile industry. The Applicant identified that there is another producer of FA 85% i.e. Faras Combine Marketing (Pvt) Ltd. The Commission upon initiation of investigation sent questionnaire to it and requested to provide necessary information for the purposes of this investigation. No response was received from Faras Combine Marketing (Pvt) Ltd. However, as regards monopoly of Tufail Chemicals, the applicant is holding 35% of domestic market share whereas 53% share is being held by dumped imports and 12% by non-dumped imports as per data pertaining to FY 2005.

4) "The Anti Dumping committee is very well aware of the cost effective technology of the European producers like Kemira and BASF which Tufail cannot match on cost effectiveness + unit cost. The only base for this antidumping duty was the difference between the normal value of the product in their Domestic market of the producers and the Export value on which we totally disagree as the main basis, as every producers have a strategy of Export prices region wise and if you see the process in this region, the prices of our Exporters are well in line to other markets in our region."	Article 2 of Agreement on Antidumping provides that *"a product is to be considered as being dumped, i.e. introduced into the commerce of another country at less than its normal value, if the export price of the product exported from one country to another is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country".* The Commission has made the determination of dumping in accordance with the provisions of Article 2 of Agreement on Antidumping.
5) "It has been seen during last 3 months that even though a provisional Antidumping Duty of 6% has been levied on the BASF goods from Germany. It has not effected BASF Exports to Pakistan, as they have started selling at the same price in turn from their Formic Acid plant in China, which clearly shows the intention & will of buyers here plus the trend of international prices as well as the level of Formic Acid prices in the world."	The Commission has conducted this investigation under the Antidumping Duties Ordinance 2000 against dumping of the investigated product from Finland and Germany on the basis of a properly documented application filed by the Applicant. The Commission has not received an application against alleged dumping of FA 85% from China and therefore, no investigation can be initiated to determine the normal value and export price for imports from China.

B. DETERMINATION OF DUMPING

19. <u>Determination of Dumping</u>

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".

20. <u>Normal Value</u>

20.1 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".

However, Section 6 of the Ordinance states:

> "(1) when there are no sales of like product in the ordinary course of trade in domestic market of an exporting country, or when such sales do not permit a proper

comparison because of any particular market situation or low volume of the sales in the domestic market of the exporting country, the Commission shall establish normal value of an investigated product on the basis of either:

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

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

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

20.2 Section 7 of the Ordinance provides circumstances in which certain sales may be disregarded in determining normal value, 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."

20.3 As stated in paragraph 6.1 supra the Commission sent questionnaires to Kemira and BASF to gather information/data, including data relating to their sales in the domestic market, export sales and cost of production. Both the exporters (i.e. Kemira and BASF) provided information in response to the exporters questionnaire (paragraphs 12.1 to 12.6 supra). Normal value for these two exporters is determined on the basis of the information supplied by them.

20.4 **Determination of Normal Value for Kemira, Finland**

20.4.1 According to the information provided by Kemira in exporter's questionnaire and verified during on-the-spot-investigation, its total domestic sales of the investigated product were *** MT during the years 2003 to 2005. The domestic sales during POI would be less than this quantity. These domestic sales of Kemira are not in sufficient quantity for the determination of normal value in terms of Section 6(2) of the Ordinance, as these sales are much less than five per cent of its sales of the investigated product to Pakistan.

20.4.2 As stated in paragraph 20.1(1) supra, Section 6 of the Ordinance provides inter-alia that when sales in the domestic market of an exporting country do not permit a proper comparison because of low volume of the sales in the domestic market of exporting country, the Commission shall establish normal value of an investigated product on the basis of either[4]

(a) 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.

20.4.3 Normal value for Kemira is therefore, determined on the basis of its cost of production of FA 85% during the POI provided during on-the-spot-investigation. The ex-factory cost to make and sell plus profit for FA 85% of Kemira works out to **US$ ***/MT**.

20.5 **Determination of Normal Value for BASF, Germany**

20.5.1 BASF provided information of its domestic sales of FA 85% (on transaction to transaction basis) made during the POI in Attachment D-3 of the questionnaire. The accounting year of BASF is from January to December (calendar year) and record of export sales is also maintained for calendar year. The POI for dumping is from July 2004 to June

*** Actual figures have been omitted to maintain confidentiality

[4] Ordinarily the Commission's approach is that normal value for an exporter/producer be determined on the basis of sales made by such exporter/producer in the domestic market during the POI. If normal value cannot be determined on the basis of sales made in the domestic market for reasons set out in Section 7(1) of the Ordinance, then normal value is determined on the basis of cost of production plus a reasonable amount for administrative, selling and general costs and for profits (provided by the exporter/producer) or construction of normal value. Determination of normal value on the basis of cost of production plus a reasonable amount for administrative, selling and general costs and for profits, provided by the exporter/producer concerned or constructed normal value brings determination more nearly in line with exporting country's relevant costs and prices for the foreign like product vis a vis determination of normal value on the basis of comparable price of the like product when exported to an appropriate third country.

2005. The total domestic sales of BASF during POI were ***MT having gross value of Euro ***. The gross domestic sales price works out to US$ ***/MT).

20.5.2 The domestic sales made by BASF in Germany during the POI were in sufficient quantity, as these sales were more than 5 percent of its sales to Pakistan in terms of Section 6(2) of the Ordinance and were made in the ordinary course of trade in terms of Section 7 of the Ordinance[5].

20.5.3 BASF made some sales i.e., ***MT to its related parties, however, during on-the-spot-investigation it informed that in accordance with the BASF Inter Company Transfer Pricing (ICTP) Guidelines, business transactions between legal entities of the same group of companies are conducted as if those entities are unrelated parties. Therefore, ICTP between related entities are also based on market prices ("arm's length principle").

20.5.4 BASF sold FA 85% in the domestic market on carriage paid to (CPT) basis during the POI, which means freight is included in the BASF sales price. All expenses from ex-factory level, including transportation costs were borne by BASF. Inland freight of domestic sales of FA 85% as recorded in the computerized records maintained in SAP shows total domestic freight charges of Euro ***(Euro ***/MT or US$ ***/MT).

20.5.5 Some sales of FA 85% in the domestic market were on 45 to 90 days credit during POI. The credit cost has been worked out on the basis of 3% interest rate (at which BASF gets finances from its bank), which is lower than the prevailing market interest rate. The total credit cost of sales made on 45 to 90 days credit is Euro *** (US$***) and works out to US$ ***/MT.

20.5.6 BASF gives discount to its customers on the basis of early payment. A discount of 2 to 3 percent (negotiable) is given if a customer pays within 14 days of a sale. Total discount paid during the POI was Euro *** (US$***) and works out to US$ ***/MT.

20.5.7 BASF has an agreement with major customers in the domestic market that if they purchase a certain quantity of FA 85%, they will get rebate of 3 percent. The rebate works out to US$ ***/MT.

20.5.8 BASF has mentioned in its questionnaire response and its letter of December 20, 2005 that:

i) "there is a difference in packing material cost of domestic sales and export sales to Pakistan. The domestic sales are in bulk in container trucks, whereas, the product exported to Pakistan is filled into drums (35kg each). There is

---

[5] In order to determine whether sales made by BASF in the domestic market during the POI were in the ordinary course of trade, the domestic sales prices given in Attachment D-3 were compared with average cost to make and sell provided by BASF for the period from July to December 2004 and January to June 2005. This comparison showed that the sales made in the domestic market during the POI that were below the cost to make and sell were less than 20 % of BASF domestic sales.

*** Actual figures have been omitted to maintain confidentiality.

filling and packing cost of export sales to Pakistan and no cost of filling and packing of domestic sales;

ii) "One major component of administrative cost is R&D expenses. R&D is carried out at BASF chemical complex in Germany and new applications of formic acid are undertaken. The new applications are for users of formic acid in Germany and are not related to sales to Pakistan, therefore, administrative cost of sales to Pakistan is different than administrative cost of sales made in Germany.

iii) "Similarly the financial cost of sales made in Germany is different than financial cost of export sales to Pakistan."

For fair comparison of domestic sales price and export price to Pakistan of BASF during the POI, it requested that packing cost, selling & distribution expenses, financial expenses and administrative expenses may be excluded from both the domestic sales price and export price to Pakistan to arrive at ex-factory price.

20.5.9 Packing cost of Euro [***]/MT (US$***/MT) has been deducted from the domestic sales price of BASF and Euro ***/MT (US$***/MT) from its export price to Pakistan. Similarly administrative expenses of Euro ***/MT (US$***/MT) has been deducted from the domestic sales price of BASF and Euro ***/MT (US$***/MT) from its export price to Pakistan. Similarly financial cost of US$***/MT has been deducted from domestic sales price and US$***/MT from export price to Pakistan. Adjustments on account of selling and distribution expenses (i.e. inland freight, ocean freight, handling cost, filling cost, commission, discount, and credit cost) claimed in the domestic sales and export sales during the POI have also been made.

20.5.10 After making adjustments from gross domestic sales price of US$***/MT for inland freight of US$***/MT, packing cost of US$***/MT, discount of US$***/MT, credit cost of US$ ***/MT, rebate US$***/MT, administrative cost of US$***/MT and financial charges of US$***/MT the weighted average domestic price works out to **US$ ***/MT** at the ex-factory level.

21. Export Price

21.1 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".

21.2 Determination of Export Price for Kemira, Finland

21.2.1 To determine export price charged by Kemira from Pakistani importers during the POI, the Commission has used the information provided in Kemira's response to the exporter's questionnaire and further information obtained during on-the-spot investigation.

[***] Actual figures have been omitted to maintain confidentiality

21.2.2 According to the information provided by Kemria in its questionnaire response, it exported ***MT of investigated product packed in 30 liters can (36kg) to Pakistan having gross value of US$*** during the POI. The accounting year of Kemira is from January to December (calendar year) and record of export sales is also maintained on a calendar year basis. The POI for dumping is from July 2004 to June 2005. During on-the-spot-investigation Kemira provided a revised copy of all its export sales to Pakistan during POI, from the computerized records maintained by Kemira in SAP. According to which its export sales of investigated product to Pakistan were ***MT having gross value of US$***. Kemira also provided summary report of its exports sales to Bangladesh, Pakistan, India, South Africa, Turkey and Uruguay. The summary report shows export sales to Pakistan of ***MT. In its comments on the report of on-the-spot-investigation, Kemira has clarified that the correct figure of its export sales to Pakistan is ***MT having sales value of Euro *** (US$***). The reason for difference in the volume of export sales mentioned in Attachment C-3 and Appendix 1 of Questionnaire was because of Kemira's reporting system for transactions, which did not take into account all the cancelled invoices. The gross export price on CFR basis works out to **US$***/MT.**

21.2.3 Kemira has made all export sales to Pakistan through its agent Pacific Multi Product (pvt) Ltd. and paid 5 percent commission of the transaction value to its agent. Kemira does not have a written agreement with Pacific Multi Product showing a commission of 5 percent of transaction value. However, Kemira provided copy of its record of sales to Pakistan during the period from January to March 2005, showing payment of 5 percent commission to Pacific Multi Product. The commission to Pacific Multi-Product works out to Euro ***/MT (US$ ***/MT).

21.2.4 According to the information provided by Kemira, Euro *** was paid as ocean freight for exports of the investigated product to Pakistan, for every 20 feet container (which contained around ***MT of the investigated product). Thus, ocean freight works out to Euro ***/MT (US$***/MT) for exports of the investigated product to Pakistan during the POI.

21.2.5 The Commission used the inland freight charges of US$***/MT in its preliminary determination, as provided by Kemira during on-the-spot-investigation. However, commenting on calculation of dumping margin for Kemira, disclosed during disclosure meeting held on April 12,2006), Kemira in its letter of June 24, 2006 stated that the correct inland freight figure is Euro ***/MT (US$***/MT). Kemira provided documentary evidence in support of its claim of inland freight. The Commission accepted the adjustment and used inland freight charges of US$***/MT in its calculation of ex-factory export price. The handling cost was Euro ***/MT (US$***/MT) and documentation fee was Euro ***/MT (US$***/MT) during the POI.

21.2.6 After making adjustments from weighted average gross export price of US$***/MT for commission US$ ***/MT, ocean freight US$***/MT, inland freight US$***/MT, handling cost US$***/MT and documentation fee US$***/MT, the adjusted weighted average export price (ex-factory) works out to **US$ ***/MT** (as against earlier figure of US$***/MT worked out in the preliminary determination).

*** Actual figures have been omitted to maintain confidentiality.

21.3 **Determination of Export Price for BASF, Germany**

21.3.1 To determine export price charged by BASF from Pakistani importers during the POI, the Commission has used the information provided in BASF's response to the exporter's questionnaire and further information obtained during on-the-spot investigation.

21.3.2 BASF exported [***]MT of the investigated product to Pakistan during the POI, packed in 35kg per plastic can. The accounting year of BASF is from January to December (calendar year) and record of export sales is also maintained for calendar year. The POI for dumping is from July 2004 to June 2005. The export sales to Pakistan were verified from the computerized records maintained by BASF in SAP and this record showed exports of ***MT having gross value of Euro *** during July to December 2004 and ***MT having gross value of Euro *** during January to June 2005. The total quantity exported to Pakistan during POI comes to ***MT and its gross value works out to Euro *** (US$***). The weighted average cost & freight ("CFR") export price of the investigated product works out to Euro ***/MT or US$***/MT.[7]

21.3.3 Sales to Pakistani customers are made through BASF Pakistan, which receives commission on export of the investigated product to Pakistan. BASF also has an agent in Singapore (through which all sales to Asia are made) and it also gets commission on sales value. The commission paid by BASF as given in attached C-3 of the questionnaire works out to US$***/MT.

21.3.4 All the export sales to Pakistan are shipped from Germany, the ocean freight during July to December 2004 was Euro *** and during January to June 2005 was Euro ***, which was verified from computerized records maintained by BASF in SAP. The total ocean freight cost during POI works out to Euro *** (US$***). Thus ocean freight for exports of the investigated product to Pakistan works out to Euro ***/MT (US$***/MT) during the POI.

21.3.5 BASF did not provide information regarding handling cost and filling cost in the Attachment C–3 of the questionnaire. However, during on-the-spot-investigation the record of BASF showed an expense of Euro *** (US$***) as handling cost and Euro *** (US$***) as filling cost (filling the investigated product into plastic cans) during the POI. The handling and filling cost of export sales to Pakistan works out to Euro ***/MT (US$ ***/MT) and Euro ***/MT (US$ ***/MT) respectively. The evidence of these costs has been obtained from the computerized records maintained by BASF in SAP.

21.3.6 BASF has made some export sales to Pakistan at credit for 45 to 90 days, the total credit cost of these sales is US$ *** and works out to US$***/MT. The credit cost has been worked out on the basis of ***% interest rate (at which BASF gets finances from its bank), which is lower than the prevailing market interest rate.

[***] Actual figures have been omitted to maintain confidentiality.

[7] Exchange rate of Euro 1= US$ 1.2934 for the POI.

21.3.7 After making adjustment from gross export price of US$*** /MT for commission US$ ***/MT, ocean freight US$ ***/MT, credit costUS$***/MT, handling cost US$***/MT, filling cost US$***/MT, administrative expenses US$***/MT, packing cost US$***/MT and financial cost US$***/MT the weighted average export price works out to **US$ ***/MT** at the ex-factory level.

22. Dumping Margin

22.1 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.

22.2 Section 2(f) of the Ordinance defines "dumping margin" in relation to a product as "the amount by which its normal value exceeds its export price". In terms of Section 14 of the Ordinance the Commission shall determine an individual dumping margin for each known exporter or producer of an investigated product.

22.3 Taking into account all requirements set out above, the dumping margins of 13.63% and 6.25% *ad valorem* of C&F export price for Kemira and BASF respectively have been calculated.

INJURY TO DOMESTIC INDUSTRY

23 Determination of Injury

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

> "A determination of injury shall be based on an objective examination of all relevant factors by the Commission which may include but shall not be limited to:
>
> a. volume of dumped imports;
> b. effect of dumped imports on prices in domestic market for like products; and
> c. consequent impact of dumped imports on domestic producers of such products…"

Material injury to the domestic industry is summarized in the following paragraphs.

24 Domestic Industry

24.1 In terms of Section 2(d) of the Ordinance, domestic industry is defined as follows:

*** Actual figures have been omitted to maintain confidentiality.

"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."

24.2 The domestic industry manufacturing domestic like product presently consists of two operative units with installed capacity of 8,400/MT per annum. The Applicant set up its plant to manufacture domestic like product in 1993 with an installed capacity of 5400MT per annum. At present, the Applicant's installed capacity is 7,200 MT per annum. The Applicant is engaged in manufacture and sale of domestic like product and its by products sodium sulphate etc. The Applicant represents 81.36 percent of total domestic production.

24.3 Faras Chemical Company (the other domestic producer of domestic like product) who is indifferent represents 18.64 percent of total domestic production.

25. <u>Cumulation of Dumped Imports</u>

25.1 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".

25.2 As mentioned in paragraph 11 supra, the volume of imports of the investigated product from Finland and Germany individually during the POI was well above the negligible quantity (i.e. less than 3 percent of total imports of investigated product). Furthermore, the weighted average dumping margin for Kemira from Finland and BASF from Germany is also more than the de-minimus (i.e. less than 2 percent of export price). Following table shows the weighted average dumping margin determined for the Kemira and BASF:

Dumping Margin

Exporter/Country	Dumping Margin
Kemira, Finland	13.63%
BASF, Germany	6.25%

25.3 It is evident from the weighted average export price charged by the exporters during the POI that there was a price competition between the imports of the investigated product exported from Finland and Germany. Weighted average export price of the investigated product during the POI from Finland and Germany is given in a table below:

Export Price

Country	Weighted Average
	CFR Price (US$/MT)
Finland	***
Germany	***

Sources: (i) information provided by the exporters/producers from Finland and Germany.

25.4 The investigation revealed that there was a competition between the investigated product imported from both the sources. Conditions of competition between imports of the investigated product and the domestic like product are given in detail in paragraphs 26 and 27 infra.

25.5 For the reasons given above, the Commission has cumulatively assessed the effects of dumped imports from Finland and Germany on the domestic industry in the following paragraphs.

26. Volume of Alleged Dumped Imports

Facts

26.1 In order to ascertain the volume of dumped imports of the investigated product, the Commission obtained import data from PRAL, Kemira, BASF and the Applicant.

26.2 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 by the domestic industry. The following table shows imports of the investigated product during the POI:

*** Actual figures have been omitted to maintain confidentiality.

(MT)

Year	Imports from dumped sources*	Imports from other Countries*	Total Imports*
FY 2003	100.00	18.22	118.22
FY 2004	94.44	23.22	117.66
FY 2005	181.10	41.09	222.19

*Actual figures of imports from dumped sources have been indexed by taking figures of FY 2003 equal to 100.

Analysis

26.3 The imports from dumped sources decreased from by 5.56 percent in FY 2004. It increased by 91.76 percent in FY 2005. Nonetheless during the POI 81% to 85% of total imports were from dumped sources.

26.4 Imports from other countries also increased by 24 percent in FY 2004 and further increased by 100.84 percent in FY 2005. Thus during the POI 15% to 19% imports were from non-dumped sources.

Conclusion

26.5 On the basis of the above analysis, the Commission has concluded that the dumped imports increased in absolute terms substantially in FY 2005.

Price Effects

26.6 The effect of dumped imports on the sales price of domestic like product in the domestic market has been examined to establish whether there has been significant price undercutting (the extent to which the price of the imported product is lower than the price of the Applicant industry), price depression (the extent to which the Applicant industry experiences a decrease in its selling prices over time), and price suppression (the extent to which increases in the cost of production cannot be recovered in selling price).

Price undercutting

Facts

26.7 Following data relating to the weighted average ex-factory price of the domestic like product and weighted average landed cost of investigated product was submitted by the Applicant. Comparison of weighted average ex-factory price of the domestic like product with the weighted average landed cost of the investigated product during the POI is given in the following table:

(Rs./MT)

Period	Weighted Average ex-factory price of domestic like product*	Weighted Average landed cost of investigated product*	Price under-cutting in	
			Absolute terms*	Percent-age
FY 2003	100.00	88.47	11.53	(11.53%)
FY 2004	106.89	99.88	7.01	(6.56%)
FY 2005	119.49	110.42	9.07	(7.59%)

*Actual figures of weighted average ex-factory price of the domestic like product have been indexed by taking figures of FY 2003 equal to 100.

Analysis

26.8 The landed cost of the investigated product was lower than the average ex-factory price of the domestic like product by 11.53 percent in FY 2003, by 6.56 percent in FY 2004 and by 7.59 percent in FY 2005. Thus price undercutting ranged from 6.56% to 11.53% during the POI.

Conclusion

26.9 On the basis of the above, the Commission has concluded that the prices of the investigated product significantly undercut the prices of domestic like product during the POI.

Price Depression

Facts

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

(Rs./MT)

Period	Weighted Average ex-factory price of domestic like product*	Price depression
FY 2003	100.00	--
FY 2004	106.89	6.89%
FY 2005	119.49	12.60%

* Actual figures of weighted average ex-factory price of the domestic like product have been indexed by taking figures of FY 2003 equal to 100.

Analysis

26.11 The weighted average ex-factory price of domestic like product increased by 6.89 percent in FY 2004 and further by 12.60 percent in FY 2005.

Conclusion

26.12 The Commission has concluded on the basis of the above analysis that the domestic industry did not experience any price depression throughout the POI. The domestic industry, therefore, did not suffer injury on account of price depression.

Price Suppression

Facts

26.13 The following table shows the weighted average cost of production ("COP") and the weighted average ex-factory sales price of the domestic like product during the POI:

(Rs./MT)

Period	Weighted Average COP of domestic like product*	Weighted Average ex-factory price of domestic like product*	Price Suppression		
			Increase in COP	Increase in price	Price supp-ression
FY 2003	100.00	96.72	--	--	--
FY 2004	103.22	103.38	3.22	6.66	--
FY 2005	116.98	115.59	13.76	12.21	1.55

*Actual figures weighted average COP of domestic like product have been indexed by taking figures of FY 2003 equal to 100.

Analysis

26.14 The above table shows that the weighted average COP of domestic like product increased by 3.22 percent in FY 2004 vis-à-vis previous year's COP. It further increased by an increase of 13.31 percent in FY 2005 over FY 2004.

26.15 The weighted average ex-factory price of the domestic like product also increased by 6.89 percent during FY 2004 and in FY 2005 it further increased by 11.79 percent over the last year.

Conclusion

26.16 In FY 2004 the COP increased over the previous year by 3.22%, and selling price of the domestic like product also increased over the same period by 6.89%, thus the domestic industry did not suffer price suppression during FY 2004. In FY 2005, the COP increased by 13.31% over the FY 2004 and selling price of the domestic like product only increased by 11.79% over FY 2004 causing the domestic to suffer injury in terms of price suppression because in this year the increase in COP is greater than the increase in price of the domestic like product. On the basis of the above analysis, the Commission has, therefore, concluded that the domestic industry suffered injury on account of price suppression during later part of the POI due to dumped imports.

Market Share

Facts

26.17 During the POI, domestic demand for FA 85% in Pakistan was met through sales by the domestic industry and by imports. The domestic consumption of FA 85% is ascertained by combining the domestic industry's sales and total imports, and this is referred to here as the total domestic market. The total domestic market for FA 85% during the POI is given in following table:

(MT)

Year	Quantity sold by domestic industry	Imports from Dumped Sources	Imports from other countries	Total Imports	Total domestic market*
FY 2003	47.19	44.67	8.14	52.81	100
FY 2004	43.57	42.18	10.10	52.28	95.85
FY 2005	52.70	80.89	18.31	99.20	151.90

*Actual figures of total domestic market have been indexed by taking figures of FY 2003 equal to 100.

Analysis

26.18 The above table shows that the total domestic market of FA 85% decreased by 4.15 percent during FY 2004 over FY 2003 and grew by 58.47 percent during FY 2005 over FY 2004.

26.19 The above table shows that the market share of domestic industry decreased from 47.19 in FY 2003 to 43.57 in FY 2004 and increased to 52.70 during FY 2005. Market share of dumped imports decreased from 44.67 in FY 2003 to 42.18 in FY 2004 and increased to 80.89 in FY 2005. The market share of imports from all other sources increased from 8.14 in FY 2003 to 10.10 in FY 2004 and to 18.31 in FY 2005.

Conclusion

26.20 On the basis of the above analysis, the Commission has concluded that the domestic industry suffered a significant loss of 12% of market share during the POI. Imports from dumped sources gained market share by 8% during the POI, whereas increase in market share by non-dumped sources was also to the extent of 4%. It is therefore, concluded that the domestic industry suffered loss in market share mainly due to imports from dumped sources.

Production and Capacity Utilization

Facts

26.21 The installed production capacity of the Applicant to produce domestic like product is 7,200 MT per annum. The quantity produced and the capacity utilized during the POI are given in the table below:

(MT)

	FY 2003	FY 2004	FY 2005
Installed Capacity*	100.00	116.67	133.33
Capacity Utilization	77.20%	65.79%	72.76%

*Actual figures indexed by taking figures of FY 2003 equal to 100.

Analysis

26.22 It may be noted from the table above that the production of domestic like product increased throughout the POI but the capacity utilization level decreased from 77.20% in FY 2003 to 66.79% in FY 2004 due to increase in capacity. The Applicant has stated that the market of FA 85% increased around 30% between FY 2003 and FY 2005 and it managed to increase its production around 26% during the same period. However, the Applicant could not increase its production with the same pace. The Applicant further stated that had there been no dumping, it could have increased its production and capacity utilization according to the expanded size of the domestic market.

Conclusion

26.23 On the basis of the above analysis, the Commission has concluded that the domestic industry has suffered injury on account of capacity utilization mainly due to dumped imports.

. **Effects on Inventories**

Facts

26.24 The Applicant provided data relating to accumulation of inventories during the POI. The data for opening and closing inventories for the domestic like product is given in the table below:

(MT)

Year	Opening Inventory *	Production*	Sales/ Consumption *	Closing inventory *	Changes in Inventory
FY 2003	3.72	100	99.64	4.08	--
FY 2004	4.08	99.42	95.03	8.47	107.60%
FY 2005	8.47	125.66	121.37	12.76	50.65%

*Actual figures of production have been indexed by taking figures of FY 2003 equal to 100

Analysis

26.25 The data given in table above shows that the inventory level of the domestic like product increased from 4.08 in FY 2003 to 12.76MT in FY 2005.

Conclusion

26.26 The Commission has concluded that the domestic industry suffered material injury on account of increase in inventories during the POI mainly owing to increase in dumped imports.

Profit and Loss

Facts

26.27 The Applicant provided Profit and Loss Account Statement for the domestic like product. The table below shows the profit and loss figures of the Applicant for the POI:

(Million Rs.)

	Profit/(Loss)*
FY 2003	(100)
FY 2004	9.27
FY 2005	(429.09)

*Actual figures have been indexed by taking figures of FY 2003 equal to 100

Analysis

26.28 The Applicant suffered loss in FY 2003, it, however, earned a marginal profit of 9.27 in FY 2004 and again suffered a huge loss of 429.09 in FY 2005.

Conclusions:

26.29 On the basis of available facts, the Commission has concluded that the Applicant suffered material injury on account of decline in profit in FY 2003 and FY 2005 due to price undercutting, price suppression and increased volume of dumped imports.

Cash Flow

Facts

26.30 The Applicant has submitted following information regarding its cash flow positions during POI.

(Rs. In Million)

Year	Cash Flow from operations*
FY 2003	100.00
FY 2004	53.71
FY 2005	N.A

*Actual figures have been indexed by taking figures of FY 2003 equal to 100

26.31 The above table shows that cash generated from operations decreased by 46.29 in FY 2004.

Conclusions

26.32 On the basis of the above, the Commission has concluded that the Applicant has suffered material injury on account of cash flow during the POI.

Employment, Productivity and Wages

26.33 Following is the information regarding employment, productivity and wages as given below in the table:

	Number of Employees*	Wages in Rs. 000*	Production MT*	Productivity MT*
FY 2003	100.00	100.00	100	100.00
FY 2004	127.92	151.74	99.42	77.72
FY 2005	125.97	145.44	125.66	99.78

*Actual figures have been indexed by taking figures of FY 2003 equal to 100

26.34 The above table shows that the number of employees increased by 27.92 percent in FY 2004 but it decreased by 1.52 percent in FY 2005. During the same period wages also increased from 100.00 to 151.74 and then reduced to 145.44. Productivity of the employees slightly declined during POI.

Conclusion

26.35 The domestic industry slightly suffered on account of productivity during FY 2005 as compared to FY 2003 due to increased dumped imports during this period.

Investments

Facts/analysis

26.36 The Applicant has stated that during the FY 2004, there was improvement as new investment was made in this industry to cater to the needs of expanding domestic market.

Conclusions

26.37 On the basis of the above, the Commission has concluded that the Applicant did not suffer material injury on account of its ability to invest.

Growth

Facts/Analysis

26.38 According to the Applicant the total demand for FA 85% grew by 30% in FY 2005 over FY 2005. The Applicant increased its installed production capacity by 33% in FY 2005 as compared to FY 2003.

Conclusion

26.39 On the basis of above facts, it is concluded that the Applicant did not suffer material injury on account of growth, however, this growth is not being utilized fully as major portion of domestic market is taken by dumped imports.

Summing up of Material Injury

27. The discussion in paragraph 26 supra shows that there has been significant increase in the volume of dumped imports during the POI. Though the dumped imports decreased by 5.89 percent in FY 2004, the volume rebounded sharply to increase by 91.76 percent in FY 2005.

28. Discussion of injury factors in paragraph 26 shows that the landed cost of investigated product undercut the prices of domestic like product during the POI. The domestic industry lost its market share as a result. Even though, the domestic market of FA 85 % grew by 51 percent during the POI, the share of the domestic industry in the domestic market decreased from 47 percent in FY 2003 to 35 percent in FY 2005. The market share of dumped imports increased from 45 percent to 53 percent during the POI. Thus due to dumped imports the domestic industry was not able to maintain its share even in a growing market.

29. The domestic industry suffered price suppression in FY 2005. As a result it was unable to recover its costs and, for that reason suffered significant losses in FY 2005; it suffered a loss of Rs. ***million in the FY 2005. The domestic industry also experienced significant decrease in cash flow from Rs. *** million in FY 2003 to Rs. *** million in FY 2004.

30. On the basis of the above i.e., loss of market share and increased losses on account of price undercutting and price suppression, the Commission has concluded that the domestic industry suffered material injury from dumped imports of investigated product from Finland and Germany.

31. Other Factors

31.1 In accordance with Section 18(2) of the Ordinance, the Commission also examined factors, other than dumped imports, 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 injury caused by dumped imports.

31.2 Following table shows the volume and weighted average C&F prices of imports from other sources and from dumped sources:

(MT)

Year	Imports from dumped sources		Imports from other sources	
	Quantity (MT)	C&F price (US$/MT)	Quantity (MT)	C&F price (US$/MT)
FY 2003	100	100	18.22	102.19
FY 2004	94.44	117.74	22.62	95.14
FY 2005	181.10	124.53	40.99	111.74

*Actual figures have been indexed by taking figures of FY 2003 equal to 100.

31.3 The above table reveals that the volume of imports from non-dumped sources increased by 24.11 percent in FY 2004 and by 81.25 percent in FY 2005, and resultantly the market share of non-dumped imports increased from 8 percent in FY 2003 to 12 percent in FY 2005 (an increase of 4 percent). Thus the domestic industry also suffered some injury due to imports of FA 85% from sources other than dumped sources during the POI. However, injury caused by imports from other sources cannot be considered as significant as its volume was far less than the volume of dumped imports, even though the weighted average

*** Actual figures have been omitted to maintain confidentiality.

C&F price during FY 2004 and FY 2005 was less than the weighted average C&F price of the investigated product.

D. CAUSATION

32. Effect of Dumped Imports:

On the basis of the foregoing analysis and findings, the Commission has concluded that there was a causal link between dumped imports of the investigated product from Finland and Germany and the material injury suffered by the domestic industry. The investigation revealed that the following happened during the POI:

i) volume of dumped imports increased significantly (paragraph 26.3 supra);

ii) domestic industry experienced significant price undercutting and price suppression due to dumped imports (paragraph 26.9 to 26.10 and 26.15 to 26.16 supra);

iii) domestic industry lost significant market share while market share of dumped imports increased significantly (paragraph 26.20 supra);

iv) domestic industry's production and capacity utilization decreased significantly (paragraph 26.23 supra);

v) inventories of the domestic industry increased due to dumped imports (paragraph 26.26 supra); and

vi) due to dumped imports, the domestic industry experienced decline in profits (paragraph 26.29 supra).

E. CONCLUSIONS

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

i. the application was filed on behalf of domestic industry as the Applicant Unit represents major proportion of the production of domestic like product;

ii. the investigated product and the domestic like product are like products;

iii. during the POI, the investigated product was exported to Pakistan by the exporters/foreign producers, from Finland and Germany, at prices below its normal value;

iv. the volume of dumped imports of the investigated product and the dumping margins established on the basis of the foregoing analysis, are above the negligible and *de minimis* levels respectively;

v. the domestic industry suffered material injury during the POI on account of, volume of dumped imports, price undercutting, price suppression, loss in market share, decline in profit, negative effects on production and capacity utilization and increase in inventories (in terms of Section 15 and 17 of the Ordinance); and

vi. there is a causal relationship between dumped imports and the material injury suffered by the domestic industry.

F. IMPOSITION OF DEFINITIVE ANTIDUMPING DUTY

34. In view of the analysis and conclusions with regard to dumping, material injury, and causation, imposition of definitive antidumping duty on the investigated product is needed to offset injury to the domestic industry by dumped imports.

35. In terms of Section 50 of the Ordinance and Article 9 of the Agreement on Antidumping, definitive antidumping duty rates as given in the following table are hereby imposed on import of the investigated product (Formic Acid 85%) originating in and/or exported from Finland and Germany to Pakistan for a period of five years effective from March 09, 2006.

36. FA 85% imported from sources, other than the two as specified above shall not be subject to definitive antidumping duties. The antidumping duty rates are determined on C&F value in *ad val* terms. The investigated product is classified under PCT heading no. 2915.1100:

Definitive Antidumping Duty Rates

Exporter/producer	Duty rate
Kemira, Finland	13.63 %
BASF, Germany	6.25 %

37. In accordance with Section 51 of the Ordinance, the definitive 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.

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

39. The definitive antidumping duty 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.

40. The Commission had imposed provisional antidumping duty on the investigated product vide official gazette (extra ordinary) dated March 09, 2006 for a period of four months effective from March 09, 2006. In terms of Section 55(2) of the Ordinance and Article 10.3 of Agreement on Antidumping, if the definitive antidumping duty is lower than the amount of provisionally determined antidumping duty, the difference shall be refunded by the Commission within forty-five days of the final determination. Since provisional antidumping duty imposed by the Commission on March 09, 2006 on exports from Kemira was higher than the definitive antidumping duty imposed on July 07, 2006 the difference will be refunded in terms of section 55(2) of the Ordinance. Importers are informed to submit their requests for refund within a period of 30 days from the date of publication of the Notice of Final Determination in the Newspapers i.e., by August 05, 2006.

(Muhammad Ikram Arif)	(Faizullah Khilji)
Member	Chairman
July 06, 2006	July 06, 2006