

ADC No.002/2003/SB

**Government of Pakistan
National Tariff Commission**

REPORT

ON

**FINAL DETERMINATION AND LEVY OF DEFINITIVE
ANTIDUMPING DUTY ON SORBITOL 70% SOLUTION
ORIGINATING IN AND EXPORTED FROM THE
REPUBLIC OF INDONESIA AND THE REPUBLIC OF
FRANCE**

(NON-CONFIDENTIAL)

November 17, 2003

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**FINAL DETERMINATION AND LEVY OF DEFINITIVE ANTIDUMPING DUTY ON
SORBITOL (70% SOLUTION) ORIGINATING IN AND EXPORTED FROM THE
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The National Tariff Commission (hereinafter referred to as the “Commission”) having regard to the Antidumping Duties Ordinance, 2000 (LXV of 2000) (hereinafter referred to as the “Ordinance”) and the Antidumping 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 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 on January 30, 2003 from Messrs. Habib Arkady Ltd., Hub Chowki, Baluchistan (hereinafter referred to as the “Applicant”), a domestic producer of Sorbitol 70% Solution, on behalf of domestic industry, alleging dumping of Sorbitol 70% Solution originating in and exported from the Republic of Indonesia (“Indonesia”) and the Republic of France (“France”) (hereinafter referred to as the “investigated product”). The Embassies of Indonesia and France in Islamabad were notified on February 10, 2003, through the Ministry of Foreign Affairs, Pakistan, of the receipt of the application in accordance with the requirements of Section 21 of the Ordinance.

2. Evaluation and Examination of the Application

The examination of the application showed that it met the requirements of Section 20 of the Ordinance as it contained evidence of dumping of the investigated product and injury to the domestic industry resulting therefrom as well as the requirements of Rule 3 of the Rules which relates to the submission of information prescribed therein. The application also fulfilled the requirements of Section 24 of the Ordinance, as the Applicant is the only domestic producer of Sorbitol 70% Solution, and it represents 100 percent of the total production of the domestic like product produced by the domestic industry.

3. Applicant's Views

The Applicant raised the following major issues in its application regarding dumping of the investigated product and the material injury resulting therefrom:

- i) the investigated product and the Sorbitol 70% Solution produced domestically are 'like products';
- ii) the Indonesian Producer/Exporter and the French Producer/Exporter are exporting the investigated product to Pakistan at dumped prices;
- iii) dumping of the investigated product is causing material injury to the domestic industry, mainly for the reasons given below:
 - price undercutting;
 - price depression;
 - price suppression;
 - decline in market share;
 - decline in sales;
 - losses; and
 - negative effect on cash flow; and
 - consequential difficulties in raising capital for its operations.

4. Exporters of the Investigated Product

1. P.T Sorini Corporation TBK, Desa Ngerong, Kecamatan Gempol, Kabupaten Pasuruan, East Java, Indonesia is the Indonesian producer and exporter of the investigated product (hereinafter referred to as the "Indonesian Producer/Exporter"); and
2. Roquette Freres, 62136 Lestrem, France is the French producer and exporter of the investigated product (hereinafter referred to as the "French Producer/Exporter").

5. Initiation of Investigation

5.1 The Commission examined the accuracy and adequacy of the evidence provided in the application, and satisfied itself that there is sufficient evidence of dumping and injury to justify initiation of an investigation. Consequently, the investigation was initiated on March 6, 2003. In terms of Section 27 of the Ordinance, the Commission, on the same day, issued a notice ("notice of initiation"), which was published in the Official Gazette of Pakistan² and in two widely circulated national newspapers² (one English language and one Urdu Language). Initiation of investigation concerning imports into Pakistan of the investigated product {classified under PCT³ Heading No. 3824.6000 contained in the First

² The official Gazette of Pakistan (Extraordinary) dated March 6 2003.

² 'Dawn' and the 'Nawae-Waqt' of March 6 2003 issue.

³ PCT is the abbreviation for Pakistan Customs Tariff.

Schedule to the Customs Act, 1969 (IV of 1969)} originating in and exported from Indonesia and France was thus notified.

5.2 The Commission also sent the notice of initiation to the Embassies of Indonesia and France in Islamabad, the Indonesian Producer/Exporter, the French Producer/Exporter, the known Pakistani importers, and the Applicant in accordance with the requirements of Section 27 of the Ordinance.

5.3 Thereafter, on March 11, 2003, the Commission sent a non-confidential version of the application to the Indonesian Producer/Exporter, the French Producer/Exporter and the Embassies of Indonesia and France in Islamabad. In addition to the non-confidential version of the application, the Commission sent questionnaires for submission of data and information (hereinafter referred to as the "Questionnaire(s)"), on March 12, 2003, to the Indonesian Producer/Exporter, the French Producer/Exporter, and Pakistani importers and requested them to respond to the Commission within 37 days of the dispatch of the Questionnaires. The Indonesian Embassy in Pakistan in a letter No.30/EK/III/03 dated March 27, 2003 requested the Commission for further information relating to the investigation to which the Commission responded appropriately, orally as well as through its letter dated April 4, 2003.

5.4 The Commission maintains a database of import statistics obtained from Pakistan Revenue Automation Limited (PRAL), the data processing arm of the Central Board of Revenue, Government of Pakistan, on quarterly basis. The Commission has used import data obtained from PRAL in addition to the information provided by the Applicant for the purposes of this final determination.

5.5 Thus the Commission sought, from all available sources, the relevant data and information deemed necessary for the purposes of 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 this final determination. In this connection, on-the-spot investigations were conducted at the premises of the Applicant and the Indonesian Producer/Exporter in order to verify the information provided and to obtain further details.

5.6 The Commission, in accordance with Rule 7 of the Rules, has established and maintained a public file at its offices, which is available to the interested parties for review and copying from Monday to Thursday between 1100 hrs to 1300 hrs throughout the investigation. This file contains non-confidential versions of the application, responses to questionnaires, submissions, notices, correspondence and any other document that the Commission may deem appropriate for disclosure to the interested parties. 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 an investigation, be kept confidential.

6. Period of Investigation

6.1 In terms of Section 36 of the Ordinance:

- (a) for the purposes of investigation of dumping, period of investigation (hereinafter referred to as the "POI") shall normally cover twelve months preceding the month of initiation and in no case less than six months; and
- (b) for the purposes of an investigation of injury, the POI shall normally cover thirty-six months.

However, the Commission may select a shorter or longer period if it deems it appropriate in view of available information regarding domestic industry and an investigated product.

6.2 The periods of investigation selected for dumping and injury, are therefore, respectively, as follows:

Investigation of dumping	from January 01, 2002 to December 31, 2002;
Investigation of injury	from July 01, 1999 to December 31, 2002.

7. Investigated Product, Domestic Like Product

7.1 Section 2 of the Ordinance defines "investigated product" to mean a product which is subject to an antidumping investigation as described in the notice of initiation of the investigation. The "like product" is defined to mean a product, which is alike in all respects to an investigated product, or, in the absence of such a product, another product, which although not alike in all respects, has characteristics closely resembling those of the investigated product. The "domestic like product" means the domestically produced product, which is a like product to an investigated product.

7.2 For the purposes of this investigation and the definitions set out above, these products are identified as follows:

i. Investigated Product

The investigated product is Sorbitol 70% Solution classified under Pakistan Customs Tariff ("PCT") Heading No. 3824.6000. It is used in food items, pharmaceuticals, cosmetics and textile industries. Sorbitol 70% Solution can be further processed to convert it into Sorbitol Powder.

Sorbitol Solutions are classified under PCT Heading No. 3824.6000 whereas Sorbitol Powder is classified under PCT Heading No. 2905.4400. However, Sorbitol 70% Solution is actually being imported under PCT Heading No. 3824.6000 as well as PCT Heading No. 2905.4400. Sorbitol Powder is not subject to this investigation since the domestic industry does not produce Sorbitol Powder.

ii. Domestic Like Product

Domestic like product is Sorbitol 70% Solution, classified under PCT Heading No. 3824.6000, produced by the domestic industry in Pakistan. It is used in food items, pharmaceuticals, cosmetics and textile industries.

7.3 In order to ascertain 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 from various sources including the Indonesian Producer/Exporter, the French Producer/Exporter, the Applicant, and PRAL in the following terms:

- i. It is understood that Sorbitol is a sugar alcohol classified as a “polyhydric alcohol”, Sorbitol 70% Solution is obtained by high-pressure hydrogenation of the dextrose fraction of starch sugars.
- ii. The Indonesian Producer/Exporter uses Tapioca/Cassava and the French Producer/Exporter uses Corn as basic raw material to produce starch and hence the investigated product. The Applicant however uses rice as basic raw material to produce starch and hence the domestic like product. The resulting product (Sorbitol 70% Solution) from all these basic raw materials has same physical characteristics, tariff classification and uses and, therefore, the difference of use of basic raw materials has no impact on the resultant product.
- iii. Both, the domestic like product and the investigated product have same uses i.e., used in food items, pharmaceuticals, cosmetics and textile industries.
- iv. The investigated product is Sorbitol 70% Solution and is classified under PCT Heading No. 3824.6000 contained in the First Schedule to the Customs Act, 1969 (Act IV of 1969). The domestic like product is also Sorbitol 70% Solution and is classified under the same PCT heading.

In light of the above, it is concluded that the investigated product and the domestic like product are like products.

8. Submissions by the French Producer/Exporter

8.1 In response to its letter of March 12, 2003 (see paragraph 5.3 above) the Commission received partially filled Questionnaire along with submissions from the French Producer/Exporter on April 28, 2003. Although the Questionnaire and the submissions were received after the expiry of time period provided for the purpose, the Commission considered the same in good faith. The information submitted by the French Producer/Exporter was examined and it was found that the information was deficient in following respects:

- a) Transaction-wise sales of Sorbitol 70% Solution in its domestic market during POI;
- b) Transaction-wise export sales to Pakistan during POI; and
- c) Cost of production during POI; were not provided.

8.2 Data deficiency was communicated to the French Producer/Exporter through a letter dated May 10, 2003 and the Commission requested it to provide the deficient data

by May 25, 2003. The French Producer/Exporter did not remove the data deficiencies within the stipulated time period.

8.3 The Commission then, through a letter dated May 29, 2003, informed the French Producer/Exporter that it may make preliminary determination on the basis of “Best Information Available” (in terms of Section 32 of the Ordinance and Article 6.8 of Agreement on Antidumping), as data deficiencies conveyed to the French Producer/Exporter had not been removed within the extended time period (in total a period of 74 days, i.e., from March 12, 2003 to May 25, 2003, as compared with the statutory period of 37 days in terms of Article 6.1 of Agreement on Antidumping and Rule 8 of the Rules). The French Producer/Exporter did not respond to this letter either.

8.4 Set out below are the relevant comments received from the French Producer/Exporter, provided in the partially filled Questionnaire received on April 28, 2003:

a) “The raw material utilized by Habib Arkady and Roquette for the production of the investigated product are different. Habib Arkady utilizes rice and Roquette utilizes corn. Therefore, the Sorbitol of the two companies does not have the same criteria for the user.”

b) “The only fundamental difference leading to a price difference between the investigated product sold in France and in Pakistan lies in the “Export Refunds” granted to the starch sector of the European Industry in the frame of the Common Agriculture Policy (CAP). These Export Refunds are admitted by the WTO and included in the reduction commitments made by the European Union pursuant to the WTO Agreement on Agriculture. The average amount of the Export Refund for the investigated product for 2002, is about Euros 37.58/MT.”

c) “Roquette Freres, as all the European starch producers, buy its raw material (i.e. corn) at a price higher than that prevails in the world market, Habib Arkady Ltd. buys its raw material at the world price, i.e., at a lower cost in comparison with the European starch producers, meaning in comparison with Roquette Freres.”

9. Submissions by the Indonesian Producer/Exporter

9.1 The Indonesian Producer/Exporter, vide letter dated April 10, 2003, requested for extension of 30 days in the time limit for submission of its reply to the Questionnaire. The request was reviewed by the Commission and, upon good cause shown, extension of two weeks in the time period for submission of filled-out Questionnaire was granted through letter No. 02/2003/SB-1032 dated April 14, 2003.

9.2 The Commission received partially filled Questionnaire along with submissions from the Indonesian Producer/Exporter on May 12, 2003. Although the Questionnaire and the submissions were received well after the expiry of extended time period (i.e., May 2, 2003) provided for the purpose, the Commission considered the same in good faith. The information submitted was examined and it was found that the information was deficient

in the following respects:

- a) Sales of Sorbitol 70% Solution in its domestic market during POI; and
- b) Export sales to Pakistan during POI; were not provided.

9.3 Data deficiency was communicated by the Commission to the Indonesian Producer/Exporter through a letter dated May 13, 2003 and the Commission requested it to provide the deficient data by May 25, 2003.

9.4 The Indonesian Producer/Exporter through an e-mail dated May 26, 2003 requested for an extension in time period for the removal of deficiencies. The Commission reviewed the request and communicated an extension of two weeks in the time period through its letter No. 02/2003/SB-1032 dated May 28, 2003. Thus the Indonesian Producer/Exporter was allowed a time period, in total, of 88 days (from March 12, 2003 to June 8, 2003) to provide the requisite information (as compared with the statutory requirement of 37 days in terms of Article 6.1 of Agreement on Antidumping and Rule 8 of the Rules).

9.5 The Indonesian Producer/Exporter sent a revised Questionnaire on June 10, 2003 through an e-mail. Upon review of the same, it was found that the data deficiencies, pertaining to details of sales in the domestic market and of export sales to Pakistan during POI, had not been removed. Nonetheless, the Indonesian Producer/Exporter offered the Commission an opportunity to inspect its relevant record (relating to its domestic sales) maintained in its offices (An On-the-Spot investigation was conducted at the premises of the Indonesian Producer/Exporter, details of which are set out in paragraph 13 below).

9.6 Set out below are the comments received from the Indonesian Producer/Exporter provided in partially filled questionnaire received on June 10, 2003 in response to Commission's letter of March 12, 2003 (see paragraph 5.3 above):

a) **Unsuitable Comparison**

i) **Products**

"In this case the comparison was proved not suitable. The products exported to Pakistan are Sorbitol liquid 70% Solution, while the comparison goods are Sorbitol powder (not liquid). It also could draw a mistake since the HS code for both products are exactly same 2905.4400 or 3824.6000."

ii) **Territory**

"Again it was easily noted that the comparison is not match. The products exported to Pakistan should be compared with the products sold in the domestic markets (Indonesia). The comparison is based with products exported to United States in which P.T. Sorini NEVER exported the Sorbitol liquid (70% Solution)."

b) **Competitive advantage**

i) **Starch**

"As we all know that PT. Sorini raw material (major material) is from Tapioca /Cassava. This tapioca harvested and planted in Indone sia abundantly all over the region.

Our starch cost sources locally is approximately 50% less than Pakistan waste broken rice starch at U.S.D 300/MT (year 2002). Even in this low season the cost of tapioca is still 30% less (year 2003).”

ii) Water

“There in Indonesia we are located on the Equator line, which give only 2 (two) seasons with plenty of rain as a source of water. Meanwhile, Pakistan facing water scarcity. The resources are not adequate to fulfill the demand for production of Sorbitol liquid 70% Solution. (30% of Sorbitol contents are purified and sterilized water). Water in Habib Arkady’s plant was delivered by tankers/lorry trucks which end-up for a high cost.”

iii) Capacity

c) P.T Sorini Corporation

“The production capacity of IP is 100,000 MT per annum. With this capacity, we are able to push and reduce our fixed and overhead cost to the MOST competitive level as a world player. Our company has been established since 1987.”

d) Habib Arkady Ltd

“Meanwhile the capacity of Habib Arkady is much less than PT. Sorini Corporation. And this company just being merged to the parent company within years and even without further products output.”

10. Submissions by the Importers/Industrial Users

The Commission sent Questionnaires to seven importers of the investigated product (identified by the Applicant in the application) on March 12, 2003. The Commission received filled Questionnaires along with submissions from four importers namely, (i) Abbott Laboratories (Pakistan) Ltd., on 12.4.2003, (ii) Unilever Pakistan Ltd., on 19.4.2003, (iii) GlaxoSmithKline Pakistan Ltd., on 21. 4. 2003 and (iv) Rhodia Pakistan (Pvt.) Ltd., on 23.4.2003. The written response received from above mentioned four importers is placed in the public file maintained by the Commission. The remaining three importers did not respond. Relevant extracts from the responses received from the importers of investigated product are set out as follows:

M/s Abbott Laboratories (Pakistan) Ltd.,

- i) “Our imports have been at the most competitive market prevailing prices and is not correct to state that they have been on the basis of dumping of Sorbitol 70% Solution in our region.”
- ii) “The C&F prices of Sorbitol 70% Solution of the French, Indonesian and also of third origin, i.e Thailand, are within the range of US\$300 to US\$340 per MT during the last two years.”
- iii) “Possibility of dumping of Sorbitol 70% Solution by the major producing countries in this region does not exist as the products are from Europe and Asia.”

- iv) “We have in the past tried to source Sorbitol 70% Solution from M/s Habib Arkady (Pvt.) Ltd., but they refused to arrange audit of their facility, which is a GMP requirement and also essentially required as per policy of any multinational including Abbott Laboratories. Their sample was also not found as per our approved specifications.”
- v) “Habib Arkady (Pvt.) Ltd., the local producer of Sorbitol 70% Solution intends to create a monopolistic situation in this region and to increase their prices.”

M/s Unilever Pakistan Ltd.,

M/s Unilever stated that they use Sorbitol 70% Solution to manufacture toothpaste. They do not resell the imported Sorbitol in the market.

M/s GlaxoSmithKline Pakistan Ltd.,

- i) “Sorbitol is manufactured locally using rice as the raw material, whereas Sorbitol imported by us is manufactured from Corn/Maize.”
- ii) “GlaxoSmithKline (GSK) is one of the largest pharmaceutical consumer of Sorbitol 70% Solution (approximately 800MT/annum). Due to the large volume, GSK is able to negotiate an attractive price for the award of annual contract. Award of the contract is based on competitive bids from potential approved suppliers received through sealed quotations.”
- iii) “Being a Pharmaceutical/Healthcare manufacturer, GSK has strict quality standards, for which purpose GSK may conduct audits of the manufacturing facilities of the suppliers. Unfortunately, the local manufacturer does not allow access to its facilities to be technically audited for validation of process and quality. This is an essential corporate requirement in order to ensure quality of the life saving drugs manufactured by GlaxoSmithKline.”

M/s Rhodia Pakistan (Pvt.) Ltd.,

- i) “On behalf of Roquette Freres, France, we are marketing their range of products including Sorbitol 70% Solution in Pakistan market mainly to Pharmaceutical, Food and Personal Care Industries since early 1980’s.”
- ii) “To meet the small end users requirements we are importing Sorbitol 70% Solution in our own account and sell it locally.”
- iii) “Keeping in view the pressure on pharmaceutical industry by the Government of Pakistan and Ministry of Health to reduce the prices, most of the pharmaceutical units are looking for the cheapest sources of Sorbitol 70% Solution. The CRF prices of the product during last two years have

come down in the range of US\$310/MT to US\$350/MT.”

- iv) “As far as we understand, the locally produced product is based on broken rice, whereas, product supplied by Roquette Freres, France is based on Maize Starch.”

11. Preliminary Determination

11.1 The Commission made a preliminary determination in this investigation on July 17, 2003, in terms of Section 37 of the Ordinance. In the absence of complete and sufficient response from French Producer/Exporter and the Indonesian Producer/Exporter, the Commission made its preliminary determination based on the best information available in terms of Section 32 of the Ordinance. However, the limited information provided by the French Producer/Exporter and the Indonesian Producer/Exporter and, the comments received from other interested parties were taken into consideration for the purposes of the preliminary determination.

11.2 The Commission issued a notice of preliminary determination notifying the imposition of provisional antidumping duty on Sorbitol 70% Solution @ 91.12 percent ad val of C&F price importable from the Indonesian Producer/Exporter (P.T Sorini Corporation), and @ 96.50 percent ad val of C&F price importable from the French Producer/Exporter (Roquette Freres) for a period of four months effective from July 19, 2003. The Commission also sent the notice of preliminary determination to the Embassies of Indonesia and France in Islamabad, the Indonesian Producer/Exporter, the French Producer/Exporter, the known Pakistani importers, and the Applicant in accordance with the requirements of Section 37(4) of the Ordinance and Article 12.2 of Agreement on Antidumping. The findings of the Commission in the preliminary determination were as follows:

- i. The application is lodged by the domestic industry;
- ii. the investigated product and the domestic like product are like products;
- iii. The investigated product was exported to Pakistan by the Indonesian Producer/Exporter and the French Producer/Exporter below its normal value, during the POI;
- iv. The volume of dumped imports from Indonesia and France and dumping margin established for the Indonesian Producer/Exporter, the French Producer/Exporter, on the basis of the analysis are above the *de-minimis* level;
- v. The domestic industry suffered material injury during the POI;
- vi. A significant part of material injury to domestic industry is caused by dumped imports from Indonesia and France;
- vii. The dumping margin on the basis of C&F export price works out to be 96.50 percent for French Producer/exporter and 91.12percent for the

Indonesian Producer/Exporter; and

- iv) Imposition of provisional antidumping duty on investigated product is needed to prevent further injury to the domestic industry by dumped imports.”

12. COMMENTS/Written SUBMISSIONS BY THE EXPORTERS AND IMPORTERS ON THE PRELIMINARY DETERMINATION

The Commission received comments/written submissions from French Producer/Exporter, the Government of Indonesia and Importers on the Preliminary Determination made by the Commission in this investigation. Such Comments received and germane to the investigation under the Ordinance are summarized in Column A below and the Commission’s analysis and findings in respect of these comments are set out in Column B as follows:

Column A	Column B
Comments of French Producer/Exporter (Roquette Freres)	Commission’s Response/Findings
<u>Comment 1.</u> “Much to our surprise, we have been informed by your notice dated 17 July 2003 of the antidumping measures imposed on Sorbitol 70/70 without any hearing notice from our company”.	<p>There is no provision for a “hearing” prior to the issuance of the notice of preliminary determination in the Ordinance.</p> <p>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 a notice of preliminary <u>determination</u>, hold a hearing at which all interested parties may present information and arguments.</p> <p>A hearing was held on September 8, 2003 upon request of Abbott Laboratories (Pakistan) Ltd. All interested parties were invited, including Roquette Freres, to present their comments (see paragraph 14 below). In accordance with Rule 7 of the Rules, record of the hearing was placed in the public file, in addition to all other documents relevant to this investigation (see paragraph 5.6 above).</p>

<p><u>Comment 2.</u></p> <p>“We would like to confirm that we export Sorbitol 70/70 in a lot of countries, such as Taiwan, Philippines, India, Bangladesh, at a similar price as in Pakistan. Prices are quoted according to market conditions of each country”.</p>	<p>Dumping has been defined in Article 2.1 of Agreement on Antidumping and Section 4 of the Ordinance to mean that “when a product is introduced into the commerce of another country at less than normal value (the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country)”.</p> <p>Thus, to establish dumping in this case, the export price of Roquette Freres to Pakistan is compared with the price at which it sold Sorbitol 70% Solution in its domestic market.</p>
<p><u>Comment 3</u></p> <p>“Furthermore, a substantial increase of import duties and taxes will deeply impact the cost of finished products of our customers and final users”.</p> <p style="text-align: center;">Comments of Government of Indonesia</p>	<p>The Ordinance has been promulgated by the Government of Pakistan to protect the domestic industry from being materially injured due to dumped imports. This protection is provided for under the Agreement of Antidumping.</p> <p>Furthermore, in terms of Section 50 of the Ordinance, it is mandatory upon the Commission, after establishment of dumping, injury and causal link, to impose an antidumping duty in an amount equal to dumping margin established by it.</p> <p style="text-align: center;">Commission’s Response/Findings</p>
<p><u>Comment 1.</u></p> <p>Best information available - Where information is used from a secondary source, Annex II-6 of the Agreement requires an investigating authority to exercise due circumspection. In this respect our Government respectfully considers that normal value based on non-subject goods should not have been used for the preliminary determination. All export to the US consists of Sorbitol in powdered form from Sorini Towa Berlian, a related party to PT Sorini Corporation.</p>	<p>Against the statutory requirement of providing a period of 37 days to submit information on Exporter Questionnaire, as set out in Rule 8 and Article 6.1 of Agreement on Antidumping, the Commission allowed 88 days to the Indonesian Producer/Exporter to provide information, especially, on its domestic sales. Since the Indonesian Producer/Exporter did not provide the requisite data, the Commission had no option but to rely on best information available. Furthermore, the Commission also informed the Indonesian Producer/Exporter in its letter dated May 26, 2003 that if the requisite information is not provided to the Commission within the extended time limit,</p>

	the Commission may make the preliminary determination on the basis of best information available in terms of Section 32 of the Ordinance. ⁵
<p><u>Comment 2.</u></p> <p>Article 7 of the agreement requires an affirmative determination of dumping and consequent injury before provisional measures can be imposed. However, the preliminary determination reached by the Commission does not justify the application of measures.</p>	<p>The Commission made an affirmative preliminary determination of dumping and injury caused therefrom. On the basis of its analysis of the facts as set out in the report of preliminary determination, the Commission made the decision to impose provisional antidumping duty, equivalent to the margin of dumping provisionally determined, for a period of four months to prevent the domestic industry from further injury till the final determination of this investigation.</p>
<p><u>Comment 3.</u></p> <p>Alleged injury - The WTO dispute settlement ruling on Thailand v Poland on Hbeam states that an Authority must not adopt a check list approach to the factors listed under article 3.4. While several factors may be positive or negative, the Authority must explain why and how the factors listed have been affected by the dumped imports. The Commission has failed to do this. While a number of factors are found to be negative such as cash flow, return on investment, losses, no attempt is made to explain how and the extend to which this is attributable to the dumped imports.</p>	<p>In the injury analysis, all the relevant economic factors (mentioned in Article 3.4 of the Agreement on Antidumping) having a bearing on the state of the domestic industry were analysed in addition to other known factors that may have also caused injury to the domestic industry. It was found that the main cause of injury to the domestic industry was dumped imports. Had there been no dumped imports the domestic industry would have been in a better condition. Analysis of all these factors was incorporated into the Report of Preliminary Determination, which was placed in the public file and on NTC website⁶.</p>

Comments of Importers/Industrial Users

Comments of Abbott Laboratories (Pakistan) Ltd.	Commission's Response/Findings
<p><u>Comment 1.</u></p> <p>Sorbitol 70% solution is imported at price prevailing in the market, as Habib Arkady (being the only manufacturer) refused to arrange technical audit of their facility, which is essentially required for GMP compliance.</p>	<p>Commission asked the domestic producer of Sorbitol 70% Solution to comment on the allegation made by the industrial users that it does not allow access to its facility for technical audit. Habib Arkady's response was as follows:</p> <p style="text-align: center;">“Habib Arkady Ltd (HAL) is the global pioneer in producing starch sugars from</p>

⁵ Subsequently the Commission conducted On-the-Spot investigation at the premises of Indonesian Producer/Exporter from August 11 -15, 2003 and obtained requisite data/information relating to normal value and export price, see para 13 below.

⁶ NTC website www.ntc.gov.pk

	<p>rice. Today HAL remains the only producer in the world successfully producing the entire range of starch sugars, including Sorbitol from rice. Understandably, the production process employed by HAL is unique and secrecy remains a top priority to safeguard HAL's interests. Despite the need for secrecy, HAL may be willing to allow customers access for technical audit if required, provided that the customers are willing to offer a normal value for HAL's products. As the situation stands today, HAL feels that the prevailing prices of Sorbitol are artificially low due to dumping and therefore, the impediment is not the lack of plant audit, but HAL's reluctance to sell Sorbitol at prices substantially below normal value".</p>
<p><u>Comment 2.</u></p> <p>Imposition of 96.50 % and 91.12% antidumping duty on import of Sorbitol 70% solution from French and Indonesian producers/exporters would enhance the cost of material, which would ultimately increase the cost of pharmaceutical products.</p>	<p>The provisional antidumping duty was imposed under the Ordinance only against one Producer/Exporter from France and one Producer/Exporter from Indonesia. Sorbitol 70% Solution may be imported from other sources.</p> <p>Furthermore, in terms of section 50 of the Ordinance, it is mandatory upon the Commission, after establishment of dumping, injury and causal link, to impose an antidumping duty in an amount equal to dumping margin established by it.</p>

13. ON-THE-SPOT INVESTIGATIONS

On-the-Spot Investigation at the Premises of Applicant

13.1 The Commission sought the relevant data/information deemed necessary for the purposes of determination of dumping and injury from all available sources. In terms of Rule 12 of the Rules and Article 6.7 of Agreement on Antidumping the Commission shall, during the course of an investigation, satisfy itself as to the accuracy of information supplied by the interested parties upon which its findings are based. Thus, the Commission conducted on-the-spot investigation at the premises of the Applicant from April 10 to 12, 2003 in order to verify the information provided by the Applicant and to obtain further details. The report of the On-the-Spot investigation (non-confidential) is placed in the public file as required by Rule 12(3) of the Rules.

On-the -Spot Investigation at the Premises of Indonesian Producer/Exporter

13.2 As mentioned in paragraph 9.5, On-the-Spot investigation was also conducted at the premises of Indonesian Producer/Exporter from August 11-15, 2003 to verify the data/information provided in its questionnaire response dated June 10, 2003 and also to obtain information regarding sales of Sorbitol 70% Solution in the domestic market of Indonesia as well as export sales to Pakistan (and such other information as may be relevant for the purposes of this investigation), which had not been adequately provided in its reply to the questionnaire.

13.3 Following are the reasons that the Commission considered for conducting On-the-Spot investigation at the premises of Indonesian Producer/Exporter:

- a. In response to the Commission's request communicated to the Indonesian Producer/Exporter through letter dated March 12, 2003, the Commission received partially filled Questionnaire along-with submissions from the Indonesian Producer/Exporter on May 12, 2003. Although the Questionnaire and the submissions were received well after the expiry of extended time period (i.e. May 2, 2003) provided for the purpose, the Commission considered the same in good faith. The information submitted was examined and it was found that the information was deficient in the following respects:
 - i) Particulars of sales of Sorbitol 70% Solution in its domestic market during POI; and
 - ii) Particulars of export sales to Pakistan during POI; were not provided.
- b. Data deficiency was communicated to the Indonesian Producer/Exporter through letter dated May 13, 2003 and the Commission requested that the deficient data be provided by May 25, 2003.
- c. The Indonesian Producer/Exporter through an e-mail dated May 26, 2003 requested for an extension in time period for the removal of deficiencies. The Commission reviewed the request and communicated an extension of two weeks in the time period through its letter No. 02/2003/SB-1032 dated May 28, 2003. Thus the Indonesian Producer/Exporter was allowed a time period, in total, of 88 days (from March 12, 2003 to June 8, 2003) to provide the requisite information (as compared with the statutory requirement of 37 days in terms of Article 6.1 of Agreement on Antidumping and Rule 8 of the Rules).
- d. The Indonesian Producer/Exporter sent a revised reply to the Questionnaire on June 10, 2003 through e-mail, in particular, clarifying the data on quantities exported to Pakistan and cost of these exports. Upon review of the same, it was found that the data deficiencies, pertaining to details of sales in the domestic market and of export sales to Pakistan during POI, had not been removed.

- e. Nonetheless, it may be noted that the Indonesian Producer/Exporter invited, of its own accord, the Commission to inspect its relevant record (relating to its domestic sales) maintained in its offices.

13.4 During On-the-Spot investigation the Indonesia Producer/Exporter provided the documentary evidence in support of the information provided by it in reply to the questionnaire. The Indonesian Producer/Exporter provided details of its sales of Sorbitol 70% Solution in the domestic market as well as its export sales to Pakistan during POI alongwith documentary evidence in support of it. The full report (non-confidential) of the On-the-Spot investigation at the premises of Indonesian Producer/Exporter is placed in the public file as per the requirement of Rule 12(3) of the Rules.

14. **HEARING**

Upon the request of Abbott Laboratories (Pakistan) Ltd, a hearing was held on September 8, 2003 under Rule 14 of the Rules. List of participants who attended the hearing is placed at Annexure I. The information and comments submitted by the participants during the hearing, verbally (verbal statements were subsequently confirmed in writing as per Rule 14 of the Rules) as well as in writing, were placed in the public file maintained by the Commission. Comments submitted by the interested parties and germane to the investigation are summarized in Column A below and the Commission’s analysis and findings on these comments are set out in Column B as follows:

Column A	Column B
Comments of Rhodia Pakistan (Pvt) Ltd.	Commission’s Findings
<p><u>Comment 1.</u></p> <p>We have advised in previous letter also that our principal Roquette France is not offering any dumped or special CFR prices to Pakistan as they are offering the similar prices to other importers in the region, such as India / Srilanka / Thailand etc i.e. US\$ 310-350/MT. Copies of evidences are enclosed.</p>	<p>Dumping has been defined in Article 2.1 of Agreement on Antidumping and Section 4 of the Ordinance to mean that “when a product is introduced into the commerce of another country at less than normal value (the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country)”.</p> <p>Thus, to establish dumping in this case, the export price of Roquette Freres to Pakistan is compared with the price at which it sold Sorbitol 70% Solution in its domestic market.</p>

<p><u>Comment 2.</u></p> <p>Roquette is not the only supplier who is offering this price, i.e., US\$ 310-350/MT as all other suppliers including other European supplier Cerestar Germany (who is a neighbouring country / supplier of Roquette France) is offering the similar C&F price i.e. US\$ 340-350/MT.</p>	<p>The Applicant filed an antidumping application, duly substantiated by relevant evidence, against alleged dumping by the Indonesian Producer/Exporter and the French Producer/Exporter. The Commission has not so far received complaint against any other exporter of Sorbitol 70% Solution.</p>
<p><u>Comment 3.</u></p> <p>The levy of antidumping duty on Sorbitol of France & Indonesian origin has led to increase in price of Sorbitol offered by all suppliers. This has affected severely the Pharma units as the end price of their product is controlled by Ministry of Health.</p>	<p>In terms of Section 50 of the Ordinance, it is mandatory upon the Commission, after establishment of dumping, injury and causal link, to impose an antidumping duty in an amount equal to dumping margin established by it.</p>
<p><u>Comments of Colgate Palmolive (Pakistan) Ltd.</u></p>	<p><u>Commission's Findings</u></p>
<p><u>Comment 1.</u></p> <p>To the best of our knowledge, Habib Arkady have never offered their manufacturing operation to their clients for Validation and Audit of their facilities and as such for Sorbitol users are not confident enough to use their product on regular basis.</p>	<p>Commission asked the domestic producer of Sorbitol 70% Solution to comment on the allegation made by the industrial users that it does not allow access to its facility for technical audit. Habib Arkady's response was as follows:</p> <p>“Habib Arkady Ltd (HAL) is the global pioneer in producing starch sugars from rice. Today HAL remains the only producer in the world successfully producing the entire range of starch sugars, including Sorbitol from rice. Understandably, the production process employed by HAL is unique and secrecy remains a top priority to safeguard HAL's interests. Despite the need for secrecy, HAL may be willing to allow customers access for technical audit if required, provided that the customers are willing to offer a normal value for HAL's products. As the situation stands today, HAL feels that the prevailing prices of Sorbitol are artificially low due to dumping and therefore, the impediment is not the lack of plant audit, but HAL's reluctance to sell Sorbitol at prices substantially below normal value”.</p>

<p><u>Comment 2.</u></p> <p>Other suppliers (exporters) prices are also in line with C&F prices of \$350/- to \$360/- per Metric Ton compared with the two sources, on whose imports antidumping duties has been imposed.</p>	<p>The Applicant filed an antidumping application, duly substantiated by relevant evidence, against alleged dumping by the Indonesian Producer/Exporter and the French Producer/Exporter. The Commission has not so far received complaint against any other exporter of Sorbitol 70% Solution.</p>
<p><u>Comments of Abbott Laboratories (Pakistan) Ltd.</u></p>	<p><u>Commission's Findings</u></p>
<p><u>Comment 1.</u></p> <p>The market situation in France does not permit a proper comparison in the present circumstances. France is an industrialized, developed with a much higher income per capita compared to Pakistan. The general price level of pharmaceutical products and their raw materials in First World countries such as France far exceeds the price level of similar products in developing countries including Pakistan.</p>	<p>Normal value has been defined in Section 5 of the Ordinance and Article 2.1 of Agreement on Antidumping as comparable price paid or payable, in ordinary course of trade, for sales of a like product when destined for consumption in an exporting country. The Commission has taken into account the domestic sale price of Sorbitol 70% Solution provided by the French Producer/Exporter in terms of Section 5 of the Ordinance.</p>
<p><u>Comment 2.</u></p> <p>Most of raw materials such as Sorbitol 70% Solution are provided to customers in Third World countries at vastly subsidized rates. The local economic conditions (such as the general income level of the population) prevailing in such countries do not permit First World pricing. Further, many Third World countries (including Pakistan) have legislation in place that strictly regulates/determines the prices of pharmaceutical product, hence, the price of raw materials used in the production of pharmaceutical products must be low enough in order to enable pharmaceutical companies to manufacture and distribute pharmaceutical products at the government prescribed prices. In fact the prices of pharmaceutical products in Pakistan are strictly regulated by the Government of Pakistan. Therefore, given the vast difference in the market conditions of France and Pakistan, it is clear that to adopt the price of Sorbitol in France as the normal value of Sorbitol with reference to determining whether Sorbitol is being dumped in Pakistan, would be in breach of the Section 6(1) of the Ordinance.</p>	<p>Dumping in terms of Section 4 of the Ordinance and Article 2.1 of Agreement on Antidumping occurs when a product is introduced into the commerce of Pakistan at a price, which is less than its normal value (the price at which a like product is sold in the domestic market of exporting country).</p> <p>Dumping margin is therefore, the difference between the normal value and export price. The Commission has determined the dumping margin in terms of Section 12 of the Ordinance.</p>

15. **Disclosure of Essential Facts**

15.1 In terms of Rule 14(8) of the Rules, the Commission disclosed the essential facts, and in this context dispatched Statement of Essential Facts (hereinafter referred to as the “SEF”) on October 8, 2003 to all interested parties including the Applicant, the Indonesian Producer/Exporter, the French Producer/Exporter, the Importers/Industrial users of investigated product and to the Embassies of Indonesia and France, respectively.

15.2 Under Rule 14(9) of the Rules, the interested parties were required to submit their comments (if any) on the information disclosed to them, in writing, not later than fifteen days of such disclosure. None of the interested parties submitted written comments on the SEF within the stipulated time period or thereafter.

16. **De Minimis Level of Imports**

16.1 In terms of Section 41(3) of the Ordinance the volume of dumped imports shall normally be regarded as negligible if the volume of dumped imports of an investigated product is found to account for less than three percent of total imports of like product. In this regard, the data and information received from PRAL reveals that the total volume of dumped imports of the investigated product from French Producer/Exporter accounts for fifty-four percent (54%) of the total imports of the investigated product into Pakistan during the POI (which is above the de minimis level of three percent set out above).

16.2 Similarly, the total volume of dumped imports of the investigated product from Indonesian Producer/Exporter accounts for twenty-six percent (26%) of the total imports of the investigated product into Pakistan during the POI (which is also above the de minimis level of three percent).

17. **Examination of the Materials with the Commission**

The Questionnaires and submissions filed before the Commission by the Applicant, the French Producer/Exporter, the Indonesian Producer/Exporter and the importers; data and information obtained during on-the-spot investigation; and data obtained from PRAL were examined and analyzed for the purposes of making the preliminary determination, and wherever appropriate, have been considered for this final determination. Information gathered or supplied after the preliminary determination has also been taken into account for the purpose of this final determination.

B. DUMPING

18.1 In terms of Section 4 of the Ordinance⁷ “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”.

⁷ also see Article 2.1 of Agreement on Antidumping

18.2 In terms of Section 5 of the Ordinance “normal value” means “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”. Whereas, the “export price” is defined in terms of Section 10 of the Ordinance to mean “a price actually paid or payable for an investigated product when sold for export from an exporting country to Pakistan”.

18.3 Based on the available information, the Commission has established the normal value and the export price as follows:

19. **Normal Value**

19.1 As stated earlier, the Commission sent Questionnaires to the French Producer/Exporter and the Indonesian Producer/Exporter to gather information including data relating to their sales in their domestic markets. The French Producer/Exporter did not provide requisite data pertaining to its sales of like product in domestic market neither did it provide requisite data on its export sales to Pakistan during POI. However, it did state in the partially filled Questionnaire that the “Normal Value” of Sorbitol 70% Solution in its domestic market during POI was Euro 634.01/MT. The French Producer/Exporter did not claim any adjustment to the domestic sales price. The weighted average ex-factory normal value of French Producer/Exporter has therefore, been taken as Euro 634.01/MT or US\$ 623.47/MT (at an exchange rate of US\$1= Euro 1.0169 prevailing during POI).

19.2 As stated earlier in paragraph 9.2 to 9.5, the Indonesian Producer/Exporter had not provided the requisite information of its domestic sales as well as export sales to Pakistan of Sorbitol 70% Solution on the Exporter Questionnaire. Thus, in the preliminary determination, the normal value for Indonesian Producer/Exporter was based on the USITC statistics showing price at which Sorbitol was exported from Indonesia to USA using the best information available provision under the Ordinance.

19.3 However, the Indonesian Producer/Exporter provided details of its all domestic sales of Sorbitol 70% Solution made during POI in the course of On-the-Spot investigation conducted by the Commission from August 11-15, 2003. The Commission examined data relating to sales made in the domestic market by the Indonesian Producer/Exporter and has taken comparable sales of 8,719MT (33.51 percent of its total domestic sales), made in the ordinary course of trade, for the purposes of determining normal value. The weighted average sales price of US\$382.66/MT charged from the domestic customers on domestic sales of 8,719MT has been used.

19.4 Section 11 of the Ordinance⁸, requires that “normal value and export price shall normally be compared at ex-factory level, to ensure a fair comparison between normal

⁸ also see Article 2.4 of Agreement on Antidumping

value and export price". The Indonesian Producer/Exporter claimed the following adjustments to the weighted average domestic sales, to arrive at ex-factory normal value:

i) Inland Freight/Trucking Charges:

In the domestic market of Indonesia Sorbitol 70% Solution was mainly sold (66.49% of total domestic sales) to four major customers in tankers and about 33.51% of domestic sales were made in drums/other packing during POI. The domestic freight/trucking cost comes to US\$ 10.84/MT.

(ii) Credit Cost:

Sales in domestic market are normally made at a credit of 30-45 days, and the average interest rate during the year 2002 was 20%. The weighted average interest charges were US\$10.03/MT during POI.

(iii) Handling Charges:

Sales in the domestic market involve handling cost, which was US\$6.50/MT during POI.

19.5 After making adjustments for trucking (inland freight) charges, credit cost and handling charges, the weighted average ex-factory domestic sales price comes to US\$355.29/MT.

20. Export Price

20.1 To determine the export price charged by the French Producer/Exporter from Pakistani customers during POI, the Commission has used the "Export Price" of Euro 343.30/MT (US \$ 337.59/MT) provided by the French Producer/Exporter in the partially filled questionnaire. In order to arrive at weighted average ex-factory export price for the purposes of fair comparison, appropriate deductions have been made for ocean and inland freight charges. Ocean freight from a French port to Karachi port is Euro 51.91/MT (This information is provided by French Producer/Exporter). By deducting ocean freight charges of Euro 51.91/MT from weighted average export price, the weighted average FOB export price is established, which comes to Euro 291.39/MT. The inland freight and handling charges are assumed to be 9 percent of FOB price amounting to Euro 26.23/MT. After deducting the inland freight and handling charges from weighted average FOB export price, the weighted average ex-factory export price works out to be Euro 265.16/MT.

20.2 The French Producer/Exporter has stated that under the Common Agriculture Policy (CAP) of the EU, the Government provides them Export Refund of Euro 37.58/MT on account of buying corn (basic raw material of Sorbitol) at prices higher than that prevailing in the world market. To establish adjusted weighted average ex-factory export price the amount of export refund of Euro 37.58/MT has been added to the weighted average ex-factory export price of Euro 265.16/MT. The adjusted weighted average ex-factory export price comes to Euro 302.74/MT or **US\$ 297.71/MT**.

20.3 The Indonesian Producer/Exporter provided details of its export sales to Pakistan during POI in course of On-the-Spot investigation. According to the information, it exported 940.5 MT of Sorbitol 70% Solution to Pakistan in 36 transactions during the POI. The gross weighted average export price of these export sales comes to US\$325.47/MT.

20.4 Section 11 of the Ordinance⁹ requires that “normal value and export price shall normally be compared at ex-factory level, to ensure a fair comparison between normal value and export price”. The Indonesian Producer/Exporter claimed the following adjustments in this export price, so as to arrive at an “ex-factory” export price:

i) Inland Freight/Trucking charges:

The weighted average inland freight charges are US\$ 2.63/MT from PT Sorini to port of exportation at Surabaya. Documentary evidence in support of the above freight charges was provided.

ii) Ocean Freight Charges:

The weighted average ocean freight charges from Surabaya port to Karachi port were US\$32.09/MT. Documentary evidence in support of ocean freight charges was provided.

iii) Commission to the Agent:

The Indonesian Producer/Exporter pays commission ranging from one to three percent of CFR^{10*} price. The weighted average commission paid to M/s Mansoor Chemicals, Karachi (the agent of PT Sorini Corporation) during the POI was US\$ 6.26/MT. Documentary evidence in support of the commission paid was provided.

iv) Document Fee and Insurance Charges:

The weighted average document fee is US\$ 0.77/MT. There is no adjustment involved in respect of the insurance cost, as the importer himself pays the insurance charges. These charges were verified with documents and books of account.

v) Credit Cost

PT Sorini sold 167.2MT Sorbitol 70% Solution to Unilever Pakistan on 60 days credit at an interest rate of 9 percent per annum, being the rate of export finance made available to PT Sorini Corporation by Indonesian banks. The weighted average interest charges of sales on credit, therefore, work out to US\$0.88/MT during POI.

⁹ also see Article 2.4 of Agreement on Antidumping

¹⁰ *CFR acronym is used in Indonesia instead of C&F

20.5. After making adjustments for inland freight charges, ocean freight charges, commission, document fee, and credit cost, the weighted average ex-factory export price works out to **US\$ 282.84/MT**.

21. Dumping Margin

21.1 Section 12 of the Ordinance as well as Article 2.4.2 of the Agreement on Antidumping provide three methods for fair comparison of normal value and export price in order to establish the dumping margin. The Commission has established the dumping margin for, the Indonesian Producer/Exporter and the French Producer/Exporter by comparing weighted average normal value with weighted average export price.

21.2 The Ordinance defines “dumping margin” in relation to a product to mean “the amount by which its normal value exceeds its export price”. The Commission has also complied with the requirements of Section 11 of the Ordinance which states that “the Commission shall, where possible, compare export price and normal value with the same characteristics in terms of level of trade, time of sale, quantities, taxes, physical characteristics, conditions and terms of sale and delivery at the same place”.

21.3 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. In this case, since there are only two foreign producers/exporters, the dumping margin has been calculated individually for both.

21.4 Taking into account all the requirements set out above the dumping margin has been calculated by comparing weighted average ex-factory normal value with weighted average ex-factory export price, for France and Indonesia as follows:

	<u>France</u>	<u>Indonesia</u>
Weighted average ex-factory normal value	US\$623.47/MT	US\$ 355.29/MT
Weighted average ex-factory export price	<u>US\$297.71/MT</u>	<u>US\$ 282.84/MT</u>
Dumping Margin	US\$325.76/MT	US\$ 72.45/MT
Dumping margin as percentage of weighted average C&F export price	96.50%	22.26%

C. INJURY TO THE DOMESTIC INDUSTRY

22. Determination of Injury

22.1 Section 15 of the Ordinance sets out the principles for determination of injury 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...”

Section 15 further asserts that these factors are not exhaustive and the Commission may take into account such other factors, as it considers relevant for determination of injury. The Commission has taken into account all factors known and relevant in order to determine whether the domestic industry suffered material injury during the POI.

22.2 Injury to the domestic industry has been analyzed in the following paragraphs in accordance with Part VI of the Ordinance.

23. **Cumulative Assessment of the Effects of Dumped Imports on the Domestic Industry**

23.1 In terms of Section 16 of the Ordinance, where imports of a like product from more than one country are the subject of simultaneous investigation, the Commission may cumulatively assess the effects of dumped 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.

23.2 As mentioned in paragraph 16 and 21 above the volume of dumped imports from France and Indonesia is not less than the negligible quantity (i.e. 3% of total imports) and the margin of dumping from France and Indonesia is more than de minimis (i.e. 2%).

23.3 It is evident from the weighted average export price charged by the French Producer/Exporter and weighted average export price charged by the Indonesian Producer/Exporter during POI (as discussed in paragraph 20) that there is competition between the imports of dumped product. The weighted average C&F export price charged by the French Producer/Exporter was US\$337.59/MT (Euro343.30/MT) and by the Indonesian Producer/Exporter was US\$325.47/MT during the POI. Due to competition

between imports, the difference between the weighted average C&F export prices charged by the exporters of dumped product was only US\$12.12/MT.

23.4 The domestic industry producing like product has experienced price undercutting, price depression and price suppression due to dumped imports (see paragraph 26 below). The domestic industry reduced its sales price during the period from July to December 2002 to compete with dumped imports and to build its market share.

23.5 For the above reasons, the Commission has cumulatively assessed the effects of dumped imports on the domestic industry in the following paragraphs.

24. **The Domestic Industry**

Pakistan Sorbitol 70% Solution manufacturing industry comprises of one unit i.e. Habib Arkady (Pvt.) Ltd., representing 100 percent of the domestic production of Sorbitol 70% Solution and thus constitutes the domestic industry within the meaning of Section 2(d) of the Ordinance.

25. **Volume of Dumped Imports**

In order to ascertain the total volume of imports of Sorbitol 70% Solution from all sources, data was obtained from PRAL. Sorbitol 70% Solution is imported under PCT Heading No. 3824.6000 as well as PCT Heading No. 2905.4400. While compiling the table below imports of Sorbitol Powder have been excluded from the imports data since the same was not subject to investigation (as it is not a like product) and not produced by the domestic industry. The following table shows total imports of the investigated product from France, Indonesia and imports of the like product from other countries during POI:

(MT)

Year	Imports from		Imports from other Sources	Total Imports
	France	Indonesia		
1999-00	2,902 (88%)	124 (4%)	268 (8%)	3,294
2000-01	2,455 (80%)	215 (7%)	404 (13%)	3,074
2001-02	1,290 (57%)	829 (36%)	155 (7%)	2,274
July-Dec. 2002	1,227 (56%)	421 (19%)	552 (25%)	2,200

The share of dumped imports of the investigated product in total imports of like product was 92 percent, 87 percent, and 93 percent for financial year (“FY”) 2000, FY 2001 and FY 2002 respectively. However, it decreased to 75 percent during first six months of FY 2003. The market share of dumped imports of the investigated product was 40 percent of total domestic market during FY 2002, whereas, it rose to around 48 percent during first six months of FY 2003.

26. Price Effects

26.1. Price Undercutting

The price undercutting margins on account of dumped imports from France, expressed as a percentage of the ex-factory prices of domestic like product, work out to 9.14 percent in FY 2000. There was no price undercutting during FY 2001, and FY 2002 as the landed cost of dumped imports from France was higher than the ex-factory sales price of the domestic industry. Price undercutting margin was 12.91 percent for first six months of FY 2003 on account of dumped imports from France. Whereas, the price undercutting margins, on account of dumped imports from Indonesia come to 15.19 percent in FY 2000, 8.68 percent in FY 2001, 0.01 percent in FY 2002 and 13.14 percent for first six months of FY 2003.

26.2. Price Suppression

The average cost of production of the domestic industry increased by 4.71 percent per MT in FY 2001, by 8.04 percent per MT in FY 2002 and by 2.27 percent per MT during first six months of FY 2003. However, the domestic industry was not able to fully recover the increase in its cost of production in FY 2001 and FY 2002 respectively. However, during first six months of FY 2003 the domestic industry instead of increasing its ex-factory price, decreased the same by 1.57 percent per MT due to the dumped imports of investigated product, inspite of increase in cost of production by 2.27 percent per MT.

26.3 Price Depression

The average ex-factory price of domestic like product increased during the FY 2000 to FY 2002. However, it decreased by Rs.467/MT during first six months of FY 2003. The domestic industry reduced its average ex-factory sales price, during first six months of FY 2003, to compete with the reduced landed cost of dumped products and consequently experienced a price depression in this period only.

27. Production of Domestic Industry

The production of domestic industry increased by 65.82 percent in FY 2001 and by 16.18 percent in FY 2002. Though this increase in production during FY 2000 to FY 2002 prima facie seems quite reasonable, it is mainly because of low production volume in the initial year. During first six months of FY 2003 the production of the domestic industry decreased by 52.86 percent.

28. Capacity Utilization by the Domestic Industry

The capacity utilization of the domestic industry increased by 65.82 percent in FY 2001 and increased by 16.18 percent in FY 2002. However, it decreased by 52.86 percent during first six months of FY 2003.

29. Domestic Market and Market Share

The domestic consumption/demand for Sorbitol 70% Solution is around 5,000 - 6000 MT per annum. The total domestic demand of Sorbitol 70% Solution in Pakistan is met through local production and imports. Market share of the domestic industry increased

from 37 percent in FY 2000, to 46 percent in FY 2001 and to 57 percent in FY 2002. However, the market share of the domestic industry decreased to 36 percent during first six months of FY 2003. Market share of dumped imports of the investigated product decreased from 58 percent in FY 2000, to 47 percent in FY 2001 and to 40 percent in FY 2002; however, it increased to 48 percent during first six months of FY 2003. The domestic industry has the ability to take higher share of domestic market, but it failed in doing so mainly because of dumped imports of investigated product.

30. Sales

The sales of the domestic industry increased by 31.21 percent in FY 2001 and by 16.72 percent in FY 2002. The increase in sales of domestic like product is mainly due to:

- low production and sales volume in initial year;
- the domestic industry having increased its market share by incurring large losses;
- and
- the domestic industry, with a view to remaining competitive and to gain market share, kept its prices at a level lower than the level where they should have been.

The sales of the domestic industry decreased by 17.89 percent during first six months of FY 2003.

31. Stocks/Inventories

The inventory holdings of domestic like product were 6.88 percent of the total production of the domestic industry in FY 2000, the inventory holding increased to 11.45 percent of production in FY 2001 and to 16.73 percent of production in FY 2002. However, during first six months of FY 2003 the inventory decreased to 8.76 percent of production.

32. Profitability

The domestic industry has been operating at a loss during the POI.

33. Return on Investment

There was a negligible return on investment in FY 2000, and in FY 2001, and during the remaining period of POI there was “negative” return on investment to the domestic industry.

34. Cash Flow

Cash flow from the operations of the domestic industry was “negative” during the POI.

35. Investment and Growth

The domestic industry was not able to invest in planned expansion of its existing plant to include production of Sorbitol Powder, as it was incurring losses continuously and such losses kept on accumulating during the POI.

36. Employment

Employment in the domestic industry remained static because it suffered large losses

during the POI and could not afford to hire more employees.

37. Magnitude of Dumping Margin

As concerns the impact on the domestic industry of the magnitude of the dumping margins set out in paragraph 21 above, given the volume and the prices of the imports from the countries concerned, this impact cannot be considered to be negligible.

D. CONCLUSION OF MATERIAL INJURY ANALYSIS

38. The domestic industry has suffered material injury in terms of Section 15 and 17 of the Ordinance on account of dumped imports of investigated product during POI, with regard to the following factors:

- i) Price undercutting;
- ii) Price suppression;
- iii) Decline in capacity utilization;
- iv) Decline in market share;
- v) Decline in profits/increase in losses;
- vi) Decline in productivity;
- vii) Negative effect on inventories;
- viii) Decline in return on investment;
- ix) Negative effect on cash flow; and
- x) Negative effect on growth and ability to raise investment.

39. It has been found for the purposes of this final determination that the material injury suffered by the domestic industry is mainly due to dumped imports of the investigated product from Indonesia and France during the POI.

E. CAUSATION OF INJURY

40. Other Factors

40.1 In accordance with Section 18(2) of the Ordinance¹¹ the Commission 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. Factors other than those imputable to dumping of the investigated product, which contributed towards the material injury suffered by the domestic industry during the POI are set out below:

40.2 Excess installed Capacity

Installed capacity of the domestic industry is 7500MT per annum, whereas, total market demand of Sorbitol 70% Solution during the POI was in the range of 5268 to 5664MT per annum. The injury suffered by the domestic industry on account of low

¹¹ and Article 3.5 of Agreement on Antidumping

capacity utilization is partly due to the fact that the installed capacity of the domestic industry was higher than the total domestic demand.

40.3 Imports from Other Sources

Sorbitol 70% Solution is being imported from other sources (other than dumped sources). In 1999-00 the quantum of imports from other sources was 268MT, which was 8% of total imports. The imports from other sources increased to 552MT or 25% of total imports during the period from July to December 2002. The share of imports from other sources in the total domestic market was 5% in 1999-00, and this share has increased to 16% for the period July to December 2002.

40.4 However, where the share of these factors in overall material injury caused to the domestic industry has been established, it is relatively minor.

F. CONCLUSIONS

41. The conclusions after taking into account all the considerations set out in Section E above are as follows:

- i. the application was lodged by the domestic industry producing like product;
- ii. the investigated product and the domestic like product are like products;
- iii. the investigated product was exported to Pakistan from Indonesia and from France, at prices below its normal value during the POI;
- iv. the volume of dumped imports of investigated product from Indonesia and from France and the respective dumping margins established on the basis of the foregoing analysis, are above the de-minimis level;
- v. the domestic industry suffered material injury during the POI;
- vi. material injury to domestic industry is mainly due to dumped imports of investigated product from Indonesia and from France; and
- vii. the dumping margin expressed as a percentage of average C&F export price works out to be 22.26 percent for Indonesian Producer/Exporter, and 96.50 percent for French Producer/Exporter, of the investigated product.

G. IMPOSITION OF DEFINITIVE ANTIDUMPING DUTY

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

43. In terms of Section 50 of the Ordinance, a definitive antidumping duty is imposed on Sorbitol 70% Solution @ 22.26 percent ad val of C&F price importable from the

Indonesian Producer/Exporter (PT Sorini Corporation) and @ 96.50 percent ad val of C&F price importable from the French Producer/Exporter (Roquette Freres), for a period of five years effective from July 19, 2003. The investigated product is imported under PCT Heading No. 3824.6000 as well as PCT Heading No. 2905.4400. The definitive antidumping duties at the rate of 22.26 percent and 96.50 percent of C&F price are equivalent to the dumping margins determined at ex-factory price level.

44. In accordance with Section 51 of the Ordinance, the antidumping duty shall take the form of ad valorem duty and be held in a non-lapsable personal ledger account established and maintained by the Commission for the purpose.

45. Producers/Exporters of Sorbitol 70% Solution from Indonesia and from France other than those specified in paragraph 4 above would not be subject to these definitive antidumping duties. Sorbitol Powder classified under PCT Heading No. 2905.4400 shall not be subject to antidumping duties specified in paragraph 43 above.

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

47. The definitive antidumping duty would be collected in the same manner as customs duty is collected under Customs Act, 1969 (IV of 1969) and would be deposited under the head 350/003 – Civil Deposits, for further deposit in National Tariff Commission's Non-lapsable A/C PLD No. 187 with Federal Treasury Office Islamabad.

48. The Commission had imposed a provisional antidumping duty on imports of Sorbitol 70% Solution @ 91.12 percent ad val of C&F price importable from the Indonesian Producer/Exporter (P.T Sorini Corporation) and @ 96.50 percent ad val of C&F price importable from the French Producer/Exporter (Roquette Freres), for a period of four months effective from July 19, 2003.

49. In terms of Section 55(2) of the Ordinance, if the definitive antidumping duty is lower than the amount of provisionally determined antidumping duty, the difference shall be refunded by the Commission within forty-five days of the final determination. The definitive antidumping duty imposed on Indonesian Producer/Exporter is lower than the amount of provisionally determined antidumping duty, therefore, the difference shall be refunded. Hence the Commission, informs the importers of Sorbitol 70% Solution from the Indonesian Producer/Exporter to send their request for refund of any duty that may have been paid (under the Commission's Provisional Determination on imports from Indonesian Producer/Exporter) to the extent of the difference between the rate of duty for the Final Determination and the rate of duty per the Provisional Determination to the Secretary, National Tariff Commission, State Life Building No. 5, Blue Area, Islamabad within a period of *thirty* days.

(Muhammad Ikram Arif)
Member
November 17, 2003

(Faizullah Khilji)
Chairman
November 17, 2003

List of Participants of the Hearing

Commission's Officers:

1.	Dr. Faizullah Khilji	Chairman
2.	Mr. Muhammad Ikram Arif	Member
3.	Mr. Mumtaz Haider Rizvi	Member
4.	Mrs. Batool Qureshi	Secretary
5.	Mr. M. Abdul Khaliq Chishty	Director General
6.	Mr. Abdul Khaliq	Director General
7.	Mr. Naeem Anwar	Director
8.	Mr. Khizar Hayat	Director
9.	Mr. Imran Zia	Director
10.	Mr. M. Hamood-ur-Rauf	Assistant Director
11.	Mr. Mazhar Bangash	Legal Counsel

Representatives of Interested Parties

Abbott Laboratories (Pakistan) Ltd

1.	Mr. Zafar Mooraj	Executive Director, Pharma Bureau of Information
2.	Mr. Masood-ur-Rehman	Material Manager

Colgate -Palmolive (Pakistan) Ltd

1.	Mr. S.A.S. Rizvi	General Manager Commercial
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ClaxoSmithKline (Pakistan) Ltd

1.	Mr. Muhammad Hanif	Head of Procurement
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Habib Arkady Ltd

1.	Mr. Owais G. Habib	Managing Director
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Rhodia Pakistan (Private) Limited

1.	Mr. Mosharraf-ul-Haq	Business Manager
2.	Mr. Tariq Zaman Ansari	Business Manger

Unilever Pakistan Ltd.

1.	Mr. Sherafzal Mazari	G.M. Corporate Affairs
2.	Mr. Basharat Ahmed	Manager Corporate Affairs
3.	Mr. Amin Razzaq	Chief Buyer

Annexure II**INTERESTED PARTIES IN THE INVESTIGATION AGAINST ALLEGED
DUMPING OF SORBITOL 70% SOLUTION FROM REPUBLIC OF
INDONESIA AND REPUBLIC OF FRANCE**

S.No.	Name	Address
	APPLICANT	
1.	Habib Arkady Ltd.,	Al-Rehman Building, I.I Chundrigar Road, Karachi Fax No: 021-263 7965
	EXPORTERS	
2.	Roquette Freres	62080 Lestrem, France Fax: +33-321-63 94 60 +33-321-63 38 50
3.	P.T Sorini Corporation	Desa Ngerong, Kecamatan Gempol, Kabupaten Pasuruan , East Java, Indonesia Fax: ++ 62 343- 633070 ++ 62 343-631779
	IMPORTERS	
4.	Rhodia Pakistan (Private) Ltd Formerly Rhone Polenc Chemical Pvt. Ltd.	D-185, Tipu Sultan Road, KDA Scheme No.1, Karachi Fax: 021-4549125 & 4534954
5.	Unilever Pakistan Ltd.	12-D, SNC Center, (East) Blue Area, Islamabad Fax No. 051-2201162
6.	Abbott Laboratories Pakistan Ltd.	Landi P.O. Box No. 7229, Karachi-74400 Fax 021-5013245
7.	GlaxoSmithKline Pakistan Limited	F-268, S.I.T.E., Karachi – 75700 Fax 021-2564375
8.	<u>Colgate-Palmolive (Pakistan) Ltd</u>	Lakson Square, Building No.5, Sarwar Shaheed Road, Karachi. Fax No. 021-568 4712
9.	Macter International Pvt. Ltd.	F-216, S.I.T.E. Karachi Fax 021-2564236
10.	Knoll Pharmaceuticals Ltd.	Plot No. 13, Sector 20, Korangi Industrial Area, Karachi Fax. 021- 5044258
11.	Transpak Corporatiion (Pvt.) Ltd	Dawlance Centre, 7/4, 9 Civil Lines, Dr. Ziauddin Ahmed Road, Karachi Fax 021-5674643