

Non-Confidential



**Government of Pakistan
National Tariff Commission**

REPORT

ON

**Preliminary Determination Against Alleged Dumped Imports of Phthalic
Anhydride Originating in and/or Exported from Brazil, China, Indonesia, South
Korea And Taiwan**

**A.D.C No.17/2009/NTC/PA
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The National Tariff Commission (hereinafter referred to as the “Commission”) having regard to the Anti-Dumping Duties Ordinance, 2000 (LXV of 2000) (hereinafter referred to as the “Ordinance”) and the Anti-Dumping Duties Rules, 2001 (hereinafter referred to as the “Rules”) relating to investigation and determination of dumping of goods into the Islamic Republic of Pakistan (hereinafter referred to as “Pakistan”), material injury to the domestic industry caused by such imports, and imposition of antidumping duties to offset the impact of such injurious dumping, and to ensure fair competition thereof and owing 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 preliminary determination under the above mentioned Ordinance and Rules.

2. In terms of Section 37 of the Ordinance, the Commission is required to “make a preliminary determination of dumping and injury, if any, not earlier than sixty days and not later than one hundred and eighty days, after initiation of an investigation. Such preliminary determination shall be based on the information available with the Commission at that time.” The preliminary determination in this investigation has been made on the basis of information available with the Commission. Report on preliminary determination is prepared in accordance with Article 12.2 of Agreement on Anti-dumping.

A. PROCEDURE

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

4. Receipt of Application

The Commission received a written application from Nimir Chemicals Pakistan Limited, 51-N, Industrial Area, Gulberg-II, Lahore (the “Applicant”) on behalf of the domestic industry producing Phthalic Anhydride (hereinafter referred to as “PA”) on April 16, 2009. The Applicant alleged that PA produced in the Federal Republic of Brazil, (hereinafter referred to as “Brazil”), People’s Republic of China, (hereinafter referred to as “China”), Republic of Indonesia, (hereinafter referred to as “Indonesia”), Republic of Korea (hereinafter referred to as “Korea”), and Republic of Taiwan (hereinafter referred to as “Taiwan”), hereinafter collectively referred to as the “Exporting Countries” is exported to Pakistan at dumped prices. The High Commissions/Embassies of the Exporting Countries in Islamabad were informed

through note verbale dated April 23, 2009, sent through the Ministry of Foreign Affairs, Pakistan, of the receipt of application in accordance with the requirements of Section 21 of the Ordinance and Article 5.5 of the Agreement on Antidumping.

5. Antidumping duty already in force

Commission imposed a definitive anti-dumping duty @ 10.94 percent *ad val* on dumped imports of PA, originating in and/or exported from India for a period of five years effective from February 13, 2006.

6. Evaluation and Examination of the Application

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

7. Domestic Industry

7.1 Domestic industry in terms of Section 2(d) of the Ordinance is defined as follows:

““domestic industry” means the domestic producers as a whole of the domestic like product or those of them whose collective output of that product constitutes a major proportion of the total domestic production of that product, except that when any such domestic producers are related to the exporters or importers, or are themselves importers of the dumped investigated product in such a case “domestic industry” shall mean the rest of the domestic producers.”

7.2 The domestic industry manufacturing PA comprises of only one unit i.e., the Applicant. Its installed production capacity is 24,000 MT per annum on three shifts basis.

8. Standing of the Application

8.1 In order to determine whether the application was made by or on behalf of domestic industry and to assess the standing of the domestic industry on the basis of the degree of support for or opposition to the application expressed by the domestic producers of the like product, relevant provisions of Section 24 of the Ordinance have been considered. In terms of Section 24(1) of the Ordinance, an application shall be considered to have been made by or on behalf of the domestic industry only if it is

supported by those domestic producers whose collective output constitutes more than fifty percent of the total production of a domestic like product produced by that portion of the domestic industry expressing opinion either support for or opposition to the application.

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

8.3 The application fulfils the requirements of Section 24 of the Ordinance and Article 5.4 of the Agreement on Antidumping, as the Applicant is the only domestic producer of PA and thereby represents 100 percent of the total domestic production. Therefore, the application is considered to have been made by the domestic industry as it is supported by 100 percent of the total domestic production of the like product produced by that portion of the domestic industry expressing its opinion.

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

9. Exporters/Foreign Producers Involved in Alleged Dumping of the PA

9.1 The Applicant identified 17 exporters/foreign producers involved in alleged dumping of the investigated product from the Exporting Countries. The Applicant stated that there may be other producers and exporters but the Applicant does not have the names and addresses of these producers/exporters. Therefore, the Applicant requested that anti-dumping duty may be imposed on all imports of PA from the Exporting Countries.

9.2 Upon initiation of the investigation copy of the notice of initiation was sent to the exporters/foreign producers (identified by the Applicant) on May 29, 2009, whose complete postal addresses were available. For the other exporters/foreign producers from the Exporting Countries the Commission requested the High Commissions/Embassies of the Exporting Countries to forward notice of initiation to all exporters/foreign producers of PA in their respective countries.

10. Applicant's Views

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

- i. PA imported from the Exporting Countries into Pakistan and PA produced by the domestic industry in Pakistan are like products;

ii. the exporters/producers from the Exporting Countries are exporting PA to Pakistan at dumped prices; and

iii. export of PA by the exporters/producers from the Exporting Countries to Pakistan at dumped prices has caused and is causing material injury to the domestic industry producing PA, mainly through:

- a. price suppression
- b. decline in profits/profitability;
- c. decline in output;
- d. decline in capacity utilization;
- e. decline in return on investment;
- f. negative effect on employment;
- g. negative effect on cash flows; and
- h. negative effect on wages and salaries.

10.2 The Applicant also claimed threat of injury because India has imposed provisional safeguard duty @25 percent on PA in January 2009 and exporters from Indonesia, Korea and Taiwan (who are allegedly dumping PA into Pakistan) are also subject to safeguard duty in India. After the imposition of final safeguard duty on PA by India, the Applicant feels imminent threat of material injury to the domestic industry from increased volume of dumped imports from Korea, Indonesia and Taiwan. It is likely that the exporters from Korea, Indonesia and Taiwan would divert their exports from Indian market to Pakistan, which would cause further injury to the domestic industry.

11. Initiation of Investigation

11.1 The Commission upon examining the accuracy and adequacy of the evidence provided in the application established that there is sufficient evidence of alleged dumping of PA from the Exporting Countries and consequent injury to the domestic industry, to justify initiation of an investigation. Consequently, the Commission decided to initiate an investigation on May 26, 2009. In terms of Section 27 of the Ordinance, the Commission issued a notice of initiation, which was published in the Official Gazette¹ of Pakistan and in two widely circulated national newspapers² (one in English language and one in Urdu Language) on May 29, 2009. Investigation concerning imports of PA into Pakistan (classified under PCT³ No. 2917.3500) contained in the First Schedule of Customs Act, 1969 (IV of 1969) originating in

¹ The official Gazette of Pakistan (Extraordinary) dated May 29, 2009.

² The dailiy "Dawn" and the 'Daily Asas' of May 29, 2009 issue.

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

and/or exported from the Exporting Countries was thus initiated on May 29, 2009.

11.2 The Commission notified the High Commissions/Embassies of the Exporting Countries in Pakistan on May 29, 2009 with a request to forward notice of initiation to all exporters/producers of PA in their respective countries. Copies of Notice of Initiation were also sent to the exporters/foreign producers of the Exporting Countries whose complete addresses were available with the Commission, the known Pakistani importers, and the Applicant on May 29, 2009, in accordance with the requirements of Section 27 of the Ordinance.

11.3 In accordance with Section 28 of the Ordinance, the Commission also sent copies of full text of the written application (non-confidential version) to the known exporters/producers in the Exporting Countries and High Commissions/Embassies of the Exporting Countries in Pakistan on June 1, 2009.

12. Investigated Product and Domestic Like Product

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

i. Investigated Product:

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

ii. Domestic Like Product:

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

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

i. Investigated Product:

The investigated product is PA originating in and/or exported from the Exporting Countries into Pakistan. It is classified under PCT No. 2917.3500. The investigated product is mainly used in the production of plasticizers, alkyd resins, polyester resins, dyes and pigments etc.

ii. Domestic Like Product

The domestic like product is PA produced by the domestic industry in Pakistan. The domestic like product is also classified under PCT No. 2917.3500. The domestic like product is mainly used in the production of plasticizers, alkyd resins, polyester resins, dyes and pigments etc.

12.3 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 in the following terms:

- i. the basic raw material used in the production of the investigated product and the domestic like product is identical i.e. Orthoxylene.
- ii. the two products (the investigated product and the domestic like product) are produced with a similar manufacturing process;
- iii. both the products have same/similar colour and appearance;
- iv. the two products are substitutable in use. They are mainly used in the production of plasticizers, alkyd resins, polyester resins, dyes and pigments etc.; and
- v. both the products are classified under the same PCT/HS No. 2917.3500

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

13. Period of Investigation

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

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

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

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

For determination of dumping:	From January 1, 2008 to December 31, 2008
For determination of material injury:	From January 1, 2006 to December 31, 2008

14. Information/Data Gathering

14.1 The Commission sent questionnaires on June 1, 2009 to 17 exporters/producers from the Exporting Countries, and asked to respond within 37

days of the dispatch of the questionnaires i.e by July 7, 2009. Questionnaires were also provided to the High Commissions/Embassies of the Exporting Countries in Islamabad with a request to forward it to all exporters/producers of the investigated product based in their respective countries in order to submit information to the Commission.

14.2 The Commission has access to the import statistics of Pakistan Revenue Automation Limited ("PRAL"), the data processing arm of the Federal Board of Revenue, Government of Pakistan. For the purpose of this preliminary determination the Commission has also used import data obtained from PRAL's database in addition to the information provided by the Applicant, and PT Petrowidada (a producer of investigated product in Indonesia).

14.3 Thus the Commission has sought from all available sources, relevant data and information deemed necessary for the purposes of this preliminary determination. In terms of Rule 12 of the Rules, during the course of this investigation, the Commission tried to satisfy itself as to the accuracy of information supplied by the interested parties to the extent possible, except for the discrepancies found in the data provided by Indonesian producer of PA.

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

15.1 The Commission sent questionnaire to 17 exporters/producers from the Exporting Countries on June 1, 2009 with a request to respond within 37 days. Only one producer of PA from Indonesia responded to the questionnaire.

15.2 The Commission, after expiry of the time period given for submission of information on questionnaire, informed the exporters/producers from the Exporting Countries through a letter dated July 11, 2009, that in case no information is provided in response to the questionnaire, the Commission would be constrained to make its determination based on the 'Best Information Available' in terms of Section 32 and the schedule to the Ordinance and Article 6.8 and Annex II of the Agreement on Anti-dumping.

15.3 PT Petrowidada, Indonesia provided information in response to the questionnaire. None of the exporters/producers from the Exporting Countries, other than Indonesia responded to the Commission's reminder letter of July 11, 2009.

15.4 Questionnaire Response from PT Petrowidada, Indonesia

15.4.1 Questionnaire was sent to PT Petrowidada (hereinafter referred to as Petrowidada) on June 1, 2009. Questionnaire response from Petrowidada, Indonesia was received in the Commission on July 14, 2009.

15.4.2 The information provided by Petrowidada in response to the questionnaire was examined and certain deficiencies were found. The data deficiencies were communicated to Petrowidada on July 19, 2009. Petrowidada provided the deficient data on August 10, 2009.

15.4.3 Petrowidada is a private limited company. It is the only manufacturer of PA in Indonesia, which set-up its first plant in 1989 with installed production capacity of 30,000 MT per annum. Petrowidada doubled its production capacity to 60,000 MT by adding another production line of 70,000 MT per annum in 1998. Petrowidada expanded its production capacity by adding another advanced third PA plant having capacity of 70,000MT per annum, which started commercial production in 2001. However, presently only the third PA production plant of 70,000 MT is in operation and two production lines of 30,000MT, each severely damaged by fire in 2004 are inoperative.

16. Verification of the Information

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

16.2 In order to verify the information provided by the Applicant and to obtain further information (if any), on-the-spot-investigation was conducted at the offices and plant of the Applicant from May 13, to 15, 2009.

16.3 To verify the information/data provided by Petrowidada, in response to the questionnaire and to obtain further information (if any), on-the-spot-investigation was conducted at the premises of Petrowidada in Indonesia from Oct. 14 to 16, 2009.

17. Public File

The Commission, in accordance with Rule 7 of the Rules, has established and maintained a public file at its office. This file 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, response to the questionnaires, submissions, notices, reports, correspondence, and other documents for disclosure to the interested parties.

18. Confidentiality

18.1 In terms of Section 31 of the Ordinance, the Commission shall keep confidential any information submitted to it, which is by nature confidential, or determined by the Commission to be of confidential nature for any other reason, or

provided as confidential by parties to an investigation, upon good cause shown to be kept confidential.

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

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

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

19. **Written Submissions by the Interested Parties**

19.1 All interested parties were invited to make their views/comments known to the Commission and to submit information and documents (if any) not later than 45 days from the date of publication of notice of initiation. The Commission received written submissions/comments on injury to the domestic industry from importers/industrial users i.e. (i) A.T.S Synthetic (Pvt.) Ltd., (ii) AHN Colloids Chemicals (Pvt.) Ltd., and (iii) Qaiser LG Petrochemicals (Pvt.) Ltd.

19.2 The Commission will consider these comments in final determination.

B. **DETERMINATION OF DUMPING**

20. **Dumping.**

In terms of Section 4 of the Ordinance dumping is defined as follows:

“an investigated product shall be considered to be dumped if it is introduced into the commerce of Pakistan at a price which is less than its normal value”.

21. **Normal Value**

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

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

21.2 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:”.

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

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

- “(a) within an extended period of time which shall normally be a period of one year and in no case less than a period of six months;
- “(b) in substantial quantities; and
- “(c) at prices which do not provide for the recovery of all costs within a reasonable period of time.

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

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

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

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

22. Export Price

The “export price” is defined in Section 10 of the Ordinance as “a price actually paid or payable for an investigated product when sold for export from an exporting country to Pakistan”.

23. Determination of Export Price

23.1 As stated earlier, none of the exporters/producers of the investigated product provided requisite information except a producer from Indonesia (paragraph 15.3 supra). Thus, the export price for investigated product for all non-cooperating exporters/producers is determined on the basis of the best information available to the Commission in terms of Section 32 of the Ordinance, and Article 6.8 and Annex II of the Agreement on Antidumping.

23.2 Export price for the exporters/producers from the Exporting Countries (except for Indonesia) has been determined on the basis of figures of their exports of PA to Pakistan, obtained from PRAL. Weighted average C&F prices have been calculated from PRAL imports data. To arrive at the ex-factory level, weighted average C&F export price has been adjusted on account of ocean freight, inland freight and insurance cost. The Applicant has provided average ocean freight rates per 20 feet container for 2008 for each exporting country (quoted by CEI Logistics (Pvt.) Ltd., Gulberg, Lahore) and average ocean freight per MT has been worked out from freight of a container load. To arrive at FOB export price ocean freight has been deducted from C&F export price. The Commission has taken US\$^{***}/MT as inland freight and insurance as ^{***} percent of C&F value to reach at ex-factory level. After making these adjustments, the Commission arrived at weighted average export price at ex-factory level for the Exporting Countries (except Indonesia). The ex-factory export price for exporters/producers from the Exporting Countries (except Indonesia) are given in table below:

Table-I (US\$/MT)

	Weighted Average Gross Export Price	Adjustments	Weighted Average Net Export Price
Brazil	***	***	***
China	***	***	***
South Korea	***	***	***
Taiwan	***	***	***

23.3 Petrowidada's Sales to a Trader for Export to Pakistan

23.3.1 Petrowidada sold PA to Continental Chemical Corporation Private Limited (CCCPL), Singapore (a trading company) for sale to unrelated customers in Pakistan. Petrowidada does not directly export PA to Pakistan and has no direct customers in Pakistan. Petrowidada sold *** MT of PA having gross value of US\$*** to CCCPL, which was exported to Pakistan during the POI. However, these figures of Petrowidada do not reconcile with the figures of imports of PA from Indonesia as shown in PRAL data. The Commission vide its letter dated November 4, 2009 asked Petrowidada to examine and explain the reasons for discrepancy in the figures of its export sales to Pakistan and PRAL data. However, despite reminders the requisite clarification and reconciliation from Petrowidada is still awaited.

23.3.2 Unless the discrepancies in the information provided by Petrowidada relating to export sales to Pakistan are removed, the Commission is unable to determine the export price of Petrowidada and hence the dumping margin for it. The Commission would determine export price for Petrowidada once the correct figures of export sales of Petrowidada to Pakistan (which reconcile with PRAL data) are received.

24. Determination of Normal Value

24.1 In terms of Section 5 of the Ordinance, normal value is a "comparable price paid or payable, in ordinary course of trade, for sales of a like product when destined for consumption in an exporting country". However in terms of Section 6 of the Ordinance when there are no sales of a like product in the ordinary course of trade in domestic market of an exporting country, or when such sales do not permit a proper comparison because of any particular market situation or low volume of sales in the domestic market of the exporting country, the normal value of an investigated product would be determined on the basis of either:

- i) A comparable price of the like product when exported to an appropriate third country, provided that this price is representative; or
- ii) The cost of production in the exporting country, plus a reasonable amount for administrative, selling and general costs and for profits.

24.2 Petrowidada's Domestic Sales in Indonesia

24.2.1 Petrowidada sold ***MT PA having gross value of US\$ *** in the domestic market during the POI to industrial users. Domestic sales were made at CFR prices and payment terms were 14 days after delivery. Petrowidada explained that no credit cost is charged for 14 days payment terms, as these are considered sales on cash. Domestic sales transactions are made on the basis of ICIS weekly prices (ICIS pricing is an independent price benchmark for the global chemical industry) or at spot prices.

24.2.2 In order to determine whether the sales in the domestic market during the POI were made in the ordinary course of trade pursuant to Section 7 of the Ordinance, the Commission has examined the domestic sales of Petrowidada during the POI and found that out of total sales of *** MT, below cost sales were *** MT (which were sold over a period of three months i.e. October to December 2008).

Section 7 of the Ordinance states 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

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(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.

24.2.2 The Commission has determined the normal value for Petrowidada on the basis of its total domestic sales during the POI as only *** MT (i.e.11.46 percent) of its total domestic sales were below cost over a period of three months. The weighted

average gross domestic sales price of Petrowidada was US\$ ***/MT. Petrowidada claimed adjustment in its domestic sales only on account of inland freight charges. To arrive at ex-factory domestic sales price, average inland freight charges of US\$***/MT have been deducted from weighted average gross domestic sales price. The ex-factory domestic sales price works out to US\$***/MT.

24.2.3 The normal value for exporters/producers from Brazil, China, South Korea and Taiwan have been determined on the basis of constructed cost.

24.2.4 As stated in paragraph 15.3 supra, none of the exporters/producers of the investigated product from the Exporting Countries (except Indonesia) provided requisite information, therefore, normal value for the purposes of this preliminary determination for the investigated product is determined on the basis of the best information available in terms of Section 32 of the Ordinance and Article 6.8 and Annex II of the Agreement on Antidumping.

24.2.5 It is important to identify here that the Commission informed the exporters/foreign producers from the Exporting Countries (except Indonesia) of reliance on the Best Information Available in its letters of July 11, 2009 (paragraph 15.2 supra).

24.2.6 In order to determine the normal value on the basis of the cost of production, information/data submitted by the Applicant is used, in keeping with Paragraph 1 of Annex II of the Agreement on Antidumping. For this purposes, the cost of raw material (Ortho-xylene) has been taken on the basis of actual C&F (Karachi) price paid by the Applicant in the year 2008. The actual cost incurred by the Applicant on: packing material, manufacturing salaries and wages, other factory overheads, administrative expenses, and selling and distribution expenses for production of the domestic like product in the year 2008 have been used for construction of the normal value. Normal profits @ ** percent of cost to make and sell has been added to arrive at a constructed normal value.

24.2.7 On the basis of above, the normal value (ex-factory level) for the investigated product in the Exporting Countries (except Indonesia) is given in table below:

Table-II (US\$/MT)

	Constructed Normal value
Brazil	***
China	***
South Korea	***
Taiwan	***

25. Determination of Dumping Margin

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

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

25.3 As stated earlier (paragraph 15.3 supra) none of the exporters/producers of the investigated product from the Exporting Countries (except Indonesia) provided requisite information, therefore, individual dumping margin has not been determined for these exporters/producers.

25.4 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.

25.5 Taking into account all requirements set out above, a single dumping margin has been calculated for all exporters/producers from the Exporting Countries (except Indonesia) as per the following table:

Table-III

	Net Normal Value (US \$/kg)	Net Export Price (US \$/kg)	Dumping Margin (US \$/kg)	Dumping Margin in % of ex-factory Export Price	Dumping Margin as % of C&F price
Brazil	***	***	***	6.75	6.17
China	***	***	***	12.39	11.84
South Korea	***	***	***	7.73	7.36
Taiwan	***	***	***	28.72	27.28

25.6 As stated in paragraph 22.4.2 the Commission can not determine the export price for Petrowidada on the basis of information provided in response to the

Questionnaire, unless discrepancies found in the said information are removed, therefore, the Commission would not determine its dumping margin in this preliminary determination.

C. INJURY TO DOMESTIC INDUSTRY

26. Material Injury to the Domestic Industry

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...”

27. Cumulation of Dumped Imports

27.1 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 investigated product imported from each country is more than the negligible amount as specified in, and volume of dumped imports from each investigated country is not less than the negligible quantity as; 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.”

27.2 As mentioned in paragraph 24.6, since the Commission has not determined the dumping margin for producer of PA in Indonesia, therefore, it would cumulatively assess the effects of dumped imports on the domestic industry in the final determination.

27.3 Since the Commission has not determined the dumping margin for Indonesian producer of PA in this preliminary determination, therefore, it has also not determined the total volume of dumped imports from the Exporting Countries subject to this investigation. Thus the Commission will determine the volume of dumped imports and its effect on prices and other injury factors in its final determination. Furthermore, the Commission is gathering data/information on threat of injury to the domestic industry to determine the threat of material injury to the domestic industry.

D. Conclusions

The Commission has made this preliminary determination on the basis of information available with the Commission at this point of time. Since certain issues relating to the export sales of Petrowidada, Indonesia, volume of dumped imports and information of threat of material injury are being further probed, the Commission was constrained not to make a determination of dumping of investigated product of PT Petrowidada, Indonesia and injury to the domestic industry producing domestic like product in this preliminary determination.

(Bilal Khan)
Member
November 23, 2009

(Batoool Iqbal Qureshi)
Chairperson
November 23, 2009