



**Government of Pakistan  
National Tariff Commission**

**REPORT**

**ON**

**PRELIMINARY DETERMINATION AND LEVY OF PROVISIONAL ANTI-DUMPING  
DUTIES ON DUMPED IMPORTS OF ALUMINIUM BEVERAGE CANS INTO  
PAKISTAN ORIGINATING IN AND/OR EXPORTED FROM JORDAN, SRI LANKA,  
UAE  
AND TERMINATION OF INVESTIGATION ON IMPORTS OF  
ALUMINUM BEVERAGE CANS FROM TURKEY**

**A.D.C No. 54/2018/NTC/ABC**

**April 29, 2019**

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**Preliminary Determination In Anti-Dumping Investigation Against Dumped Imports of Aluminium Beverage Cans into Pakistan  
Originating in and/or Exported from Jordan, Sri Lanka and UAE and Termination of Investigation on Imports of Aluminum Beverage  
Cans from Turkey**

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The National Tariff Commission (hereinafter referred to as the “Commission”) having regard to the Anti-Dumping Duties Act, 2015 (hereinafter referred to as the Act) 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, threat of material injury or material retardation to the domestic industry caused by such imports, and imposition of anti-dumping 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 Anti-dumping).

2. The Commission is conducting this investigation, on imports of Aluminium Beverage Cans into Pakistan originating in and/or exported from Jordan, Sri Lanka, Turkey and UAE (the “Exporting Countries”), under the Act and the Rules. The Commission has made preliminary determination in this investigation under Section 37 of the Act. This report on preliminary determination has been issued in accordance with the Rule 10 of the Rules.

3. In terms of Section 37 of the Act, the Commission shall make a preliminary determination of dumping and injury, if any, not earlier than sixty days and not later than one hundred and eighty days, after initiation of an investigation. Such preliminary determination shall be based on the information available to the Commission at that time.

#### **A. PROCEDURE**

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

##### **5. Receipt of Application**

5.1 On September 04, 2018 (formal acceptance date), the Commission received a written application under Section 20 of the Act from Pakistan Aluminium Beverage Cans Limited, Faisalabad (the “Applicant”) on behalf of the domestic industry. The application has been filed by the Applicant, who is the sole producer of Aluminium Beverage Cans.

5.2 The Applicant alleged that dumped imports of Aluminium Beverage Cans from the Exporting Countries has caused and is causing material retardation of the establishment of the Pakistan’s domestic industry producing Aluminium Beverage Cans.

5.3 The Commission informed the Embassies of Exporting Countries in Islamabad through note verbale dated September 12, 2018, of the receipt of application in accordance with the requirements of Section 21 of the Act.

## **6. Evaluation and Examination of the Application**

The examination of the application showed that it met the requirements of Section 20 of the Act as it contained sufficient evidence of dumping of Aluminium Beverage Cans into Pakistan from the Exporting Countries and causing material retardation of the establishment of the domestic industry producing Aluminium Beverage Cans. Requirements of Rule 3 of the Rules, which relate to the submission of information prescribed therein were also found to have been met.

## **7. The Domestic Industry**

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

*“domestic industry” means the domestic producers as a whole of a domestic like product or those of them whose collective output of that product constitutes a major proportion of the total domestic production of that product, except that when any such domestic producers are related to the exporters or importers, or are themselves importers of the allegedly dumped investigated product in such a case “domestic industry” shall mean the rest of the domestic producers”. Explanation.- For the purposes of this clause, producers shall be deemed to be related to exporters or importers only if;*

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

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

7.2 The domestic industry manufacturing Aluminium Beverage Cans comprises of one unit i.e. the Applicant. The Applicant is, neither related to any importer or exporter, nor it import Aluminium Beverage Cans itself. Therefore, the Applicant is eligible to apply for anti-dumping investigation.

## **8. Standing of the Application**

8.1 The application fulfills the requirements of Section 24 of the Act, which enjoins upon the Commission to assess the standing of the application on the basis of the degree of support for or opposition to the application expressed by domestic industry.

8.2 In terms of Section 24(1) of the Act, an application shall be considered to have been made by or on behalf of the domestic industry only if it is supported by those domestic

producers whose collective output constitutes more than fifty percent of the total production of a domestic like product produced by that portion of the domestic industry expressing either support for or opposition to the application. Furthermore, Section 24(2) of the Act 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 has been filed by the Applicant, who is the sole producer of the domestic like product and represents 100 percent of domestic production. The Applicant produced \*\*\* Kg of domestic like product during the POI.

8.4 On the basis of the above information and analysis it is determined that the application has been made by or on behalf of domestic industry as it fulfills the requirements of Section 24 of the Act.

9. **Applicants' Views**

The Applicant, *inter alia*, raised the following issues in application regarding alleged dumping of Aluminium Beverage Cans and causing material retardation of the establishment of the domestic industry caused there from:

- i. Initiate an investigation against alleged dumping of Aluminium Beverage Cans from the Exporting Countries under Section 23 of the Act;
- ii. Impose provisional measures under Section 43 of the Act to prevent injury being caused during the investigation;
- iii. Impose appropriate antidumping duties on alleged dumped imports of Aluminium Beverage Cans in accordance with Section 50 of the Act and
- iv. Exports of Aluminium Beverage Cans by the exporters/producers from the Exporting Countries to Pakistan at dumped prices have caused and is causing material retardation of the establishment of domestic industry producing Aluminium Beverage Cans mainly through:-
  - i. volume of alleged dumped imports;
  - ii. price undercutting;
  - iii. price suppression;
  - iv. market share;
  - v. sales & inventories;
  - vi. profits/profitability;
  - vii. wages & Productivity
  - viii. return on Investment
  - ix. cash flow

- x. ability to Raise capital and
- xi. magnitude of dumping margin.

**10. Exporters/Foreign Producers of Aluminium Beverage Cans**

As per information available with the Commission, there are 05 exporters/foreign producers involved in alleged dumping of the investigated product from the Exporting Countries. The Applicant has requested for imposition of anti-dumping duty on all imports of the investigated product originating in and/or exported from the Exporting Countries

**11. Initiation of Investigation**

11.1 The Commission, in accordance with Section 23 of the Act examined the accuracy and adequacy of the evidence provided in application, and established that there was sufficient evidence of alleged dumping of Aluminium Beverage Cans into Pakistan from the Exporting Countries and such imports are causing material retardation of the establishment of the domestic industry. Accordingly, the Commission issued a notice of initiation in accordance with Section 27 of the Act, which was published in the Official Gazette<sup>1</sup> of Pakistan and in two widely circulated national newspapers<sup>2</sup> (one in English language and one in Urdu Language) on November 01, 2018. Investigation concerning alleged dumped imports of Aluminium Beverage Cans into Pakistan classified under PCT No<sup>3</sup>. 7612.9010 and 7612.9030 originating in and/or exported from the Exporting Countries was thus initiated on November 01, 2018.

11.2 In pursuance of Section 27 of the Act, the Commission notified Embassies of the Exporting Countries in Islamabad of the initiation of investigation (by sending a copy of the notice of initiation) on November 07, 2018 with a request to forward it to all exporters/producers involved in production, sales and export of Aluminium Beverage Cans. Copy of the notice of initiation was also sent on November 07, 2018 to known exporters/producers of Aluminium Beverage Cans from the Exporting Countries whose addresses were available with the Commission with a request to be registered as an interested party in the investigation with-in 15 days of publication of the notice. Copy of the notice of initiation and importer's questionnaire was also sent to known Pakistani importers on November 07, 2018.

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<sup>1</sup>The official Gazette of Pakistan (Extraordinary) dated November 01, 2018.

<sup>2</sup>"Daily Express Tribune" and "Daily Nawa -i-Waqt" of November 01, 2018.

<sup>3</sup> PCT heading in Pakistan is equivalent to Harmonized Commodity Description and Coding System up to six-digit level.

11.3 In accordance with Section 28 of the Act, on November 07, 2018, the Commission sent copy of full text of the written application (non-confidential version) and Exporter's Questionnaire to the exporters of the Exporting Countries. On November 09, 2018, copy of the full text of the written application (non-confidential version) along with Exporter's Questionnaire was also sent to the Embassies of the Exporting Countries in Pakistan with a request to forward it to all exporters/producers involved in production and/or sale/export of Aluminium Beverage Cans.

## **12. Investigated Product, Domestic Like Product and Like Product**

12.1 Section 2 of the Act defines investigated product, domestic like product and 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**  
*"means a like product that is produced by the domestic industry".*
- iii. Like Product**  
*"a product which is alike in all respects to an investigated product or, in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the investigated product".*

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

### **12.3 Investigated Product**

12.3.1 Section 2(k) of the Act defines the "Investigated Product" (IP) as a product, which is subject to an investigation under the Act.

12.3.2 The investigated product is Aluminium Beverage Cans imported from the Exporting Countries. It is classified under Pakistan Customs Tariff ("PCT") Heading Nos.7612.9010 and 7612.9030. Upon query, it was informed that domestic industry is not producing Aluminium Beverage Cans of 500ml. Thus, at the time of initiation, the investigated product was defined as, Aluminium Beverage Cans upto 300ml. During the course of investigation, interested parties informed the Commission that domestic industry is not manufacturing Aluminium Beverage



Cans of 185ml. During on-the-spot verification of the domestic industry, it was confirmed that domestic industry is not manufacturing Aluminium Beverage Cans of 185 ml capacity. Therefore, investigated product is re-defined as Aluminium Beverage Cans having capacity of 250ml to 300ml.

12.3.3 Aluminium Beverage Cans are manufactured through DW&I process and used for packaging of beverage. Investigated product has been re-classified in PCT Heading 7612.9030 for Financial Year 2018-19.

12.3.4 Tariff structure for the three years applicable on import of Aluminium Beverage Cans is given in the following table:

**Table-I  
Tariff Structure**

Period	PCT #	Description	Customs Duty	Regulatory Duty	Duty under FTA
			Cans		
2015-16	7612.9010	Round Cans in diameter exceeding 45mm	10%	0	0% from Sri Lanka
	7612.9030	Of a capacity up to 400ml and bearing brand name and /logo	10%	0	0% from Sri Lanka
2016-17	7612.9010	Round Cans in diameter exceeding 45mm	11%+1%	0	0% from Sri Lanka
	7612.9030	Of a capacity up to 400ml and bearing brand name and /logo	11%+1%	0	0% from Sri Lanka
2017-18	7612.9010	Round Cans in diameter exceeding 45mm	20%+1%	0	0% from Sri Lanka
	7612.9030	Of a capacity up to 400ml and bearing brand name and /logo	20%+1%	5%*	0% from Sri Lanka
2018-19	7612.9030	Round cans of a capacity up to 300 ml	20%+2%	5%*	0% from Sri Lanka

\*Regulatory Duty imposed @ 5% on import of Round Cans of a capacity up to 300 ml under PCT No. 7612.9030 w.e.f 24th May,2018 vide S.R.O No.640(I)/2018,as amended vide SRO NO.1265 dated 16-10-2018.

#### 12.4 **Domestic Like Product**

12.4.1 Under Section 2(f) of the Act, “Domestic Like Product” means a like product that is produced by the domestic industry.

12.4.2 The domestic like product is Aluminium Beverage Cans which is used for packaging of beverage. It was classified under Pakistan Customs Tariff ("PCT") Heading Nos. 7612.9010 and 7612.9030. The domestic industry is only producing 250 ml to 300 ml cans. During the course of investigation, interested parties informed the Commission that domestic industry is not manufacturing Aluminium Beverage Cans of 185 ml. During on-the-spot verification of the domestic industry, it was confirmed that domestic industry is not manufacturing Aluminium Beverage Cans of 185 ml capacity. Thus domestic like product is re-defined as, Aluminium Beverage Cans of 250 ml to 300 ml manufactured by domestic industry.

12.5 **Like Product:**

12.5.1 The like product is aluminum beverage cans of 250 ml to 300 ml produced and sold by the foreign producers/exporters of the Exporting Countries in their domestic market and export to countries other than Pakistan and aluminum beverage cans imported into Pakistan from countries other than the Exporting Countries. The like product is classified under PCT/H.S heading Nos. 7612.9010 to 7612.9030. Major uses of the like product are identical to those of the investigated product and domestic like product.

12.5.2 There is no difference between investigated product and the domestic like product. Both products are produced with same/similar inputs and manufacturing process. Both the products have same appearance. Both products are substitutable in use and application.

12.5.3 All the three products (investigated product, domestic like product and the like product) are like products in terms of Section 2(m) of the Act.

13. **Period of Investigation**

13.1 In terms of Section 36 of the Act, Period of Investigation ("POI") is:

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

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

13.2 The Commission received the application on September 04, 2018 and initiated the investigation on November 01, 2018. The Applicant has provided the information/data up to June 30, 2018 in the application. Therefore, to fulfill the requirement of Section 36 of the Act, the POI selected by the Commission for dumping and material retardation of the establishment of the domestic industry are, as follows:

For determination of dumping:	From September 01, 2017 to June 30, 2018
For determination of material retardation of the establishment of domestic industry:	From September 01, 2017 to June 30, 2018

#### **14. Information/Data Gathering**

14.1 The Commission sent Exporter's Questionnaire to all known exporters/foreign producers from the Exporting Countries whose addresses were available with the Commission on November 07, 2018 for collection of data/information. The exporters/foreign producers were asked to respond within 37 days of dispatch of the Questionnaire. On November 09, 2018, the Questionnaire was also sent to the Embassies of the Exporting Countries in Islamabad with a request to forward it to the all exporters/foreign producers of the investigated product in the Exporting Countries.

14.2 The Commission received request from one exporter of Sri Lanka, Ceylon Beverage and Crown Group for extension of one month time for submission of data on exporter questionnaire on December 07, 2018. After taking into account the due cause shown by these exporters in their requests, the Commission acceded to the requests and granted extension in time period for submission of information on Exporter's Questionnaire till December 30, 2018. The Commission again received request from Crown group on December 27, 2018 for extension of time which was given by the Commission till January 10, 2019. The Commission again received request from Crown group for extension of time on January 07, 2019 for submission of data on exporter's questionnaire. The Commission again granted extension till January 15, 2019. However, no data was received from Crown Group.

14.3 The Commission received filled-in Exporter's Questionnaires from Ceylon Beverage from Sri Lanka on December 30, 2018. The Commission sent deficiency letter to Ceylon Beverage on January 16, 2019 to provide the data within one week. However, the Ceylon Beverage requested for extension of one week time to provide the data. The Commission granted four days extension for submission of data. The deficiency response was received on January 28, 2019.

14.4 On November 07, 2018, Questionnaires were also sent to Pakistani importers of the investigated product known to the Commission and these importers were asked to respond within 37 days of dispatch of the Questionnaires. Only one importer, Coca Cola Pakistan has provided the data on importer questionnaire.

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

14.6 Interested parties were also invited to make their views/comments and submit information (if any) relevant to this investigation within 45 days of initiation of investigation. Few interested parties made comments /submitted information germane to this investigation.

14.7 Thus, the Commission has sought from all available sources the relevant data and information deemed necessary for the purposes of preliminary determination of dumping and material retardation of the establishment of the domestic industry there from in this investigation.

**15. Questionnaire(s) Response by Exporter/Foreign Producer:**

**15.1 Questionnaire Response by M/s Ceylon Beverage Can (Private) Limited, Sri Lanka**

15.1.1 The Commission sent the Exporter's Questionnaire to Ceylon Beverage on November 07, 2018 via email. Ceylon Beverage applied to the Commission in its letter dated December 07, 2018 for extension of time period for submission of response to questionnaire for one month. The Commission granted the extension vide its letter dated December 12, 2018 after considering the reasons given in the request for extension till December 30, 2018. Its response was received in the Commission on December 30, 2018.

15.1.2 According to the information provided in response to the questionnaire, Ceylon Beverage is a private limited company incorporated in Sri Lanka. Principal activity of the Company is to manufacture and sell aluminium cans and lids.

15.1.3 The information submitted by Ceylon Beverage in response to the questionnaire was analyzed at the Commission and certain deficiencies were identified. Accordingly, those data deficiencies were communicated to it vide the Commission's letter dated January 16, 2019.

15.1.4 Ceylon Beverage was asked to provide the deficient information/data no later than 07 days of issuance of the letter, so as to enable the Commission to consider and analyze the same for the purposes of this investigation. However, the Ceylon Beverage requested for extension of one week time to provide the data. The Commission granted four days extension for submission of data. The deficiency response was received on January 28, 2019.

**16. Verification of the Information**

16.1 In terms of Sections 32(4) and 35 of the Act and Rule 12 of the Rules, during the course of an investigation, the Commission shall satisfy itself as to the accuracy of the information and for this purpose verify the information supplied by the interested parties. Accordingly the Commission has satisfied itself as to the accuracy and adequacy of information supplied by the interested parties to the extent possible for the purposes of this preliminary determination.

16.2 In order to verify information/data provided by the Applicant and to obtain further information (if any), officers of the Commission conducted on the spot investigation at the Applicant office on January 16-18, 2019. On-the-spot investigation at the premises of exporter/producer from the Exporting Countries, who provided information/data in response to the questionnaire, would be conducted after this preliminary determination.

**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 (except public holidays). This file contains non-confidential versions of the application, responses to the questionnaires, submissions, notices, correspondence, and other documents for disclosure to the interested parties.

**18. Confidentiality**

18.1 In terms of Section 31 of the Act, 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 and interested parties have requested to keep confidential the information, which is by nature confidential in terms of Section 31 of the Act. 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.

18.3 On the basis of request made by the Applicant and interested parties, the Commission has determined the confidentiality in light of Section 31 of the Act and for 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. Therefore, the Commission kept all such information confidential for which the Applicant and interested parties made a request to keep it confidential.

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

18.5 After initiation of the investigation, Crown Group companies raised concerns regarding treatment of confidential information. Crown Group companies specifically pointed that following information has been kept confidential and non-confidential version of the same has not been provided:-

- i. Audited accounts of the Applicant
- ii. Calculation of normal value
- iii. Business plan

18.6 The Commission informed the Crown Group companies that copy of audited accounts has already been placed in the public file after obtaining consent of the Applicant. Furthermore, the non-confidential version of calculation of normal value and business plan was obtained from the Applicant and the same was place in the public file.

## **19. Views/Comments of Interested Parties**

The Commission received views/comments from few parties, regarding initiation of this investigation during the course of investigation. The comments which are germane to this investigation have been taken into consideration while making this preliminary determination. Comments and the Commission's response thereof have been placed at Annex-I.

## **B. DETERMINATION OF DUMPING**

### **20. Dumping**

In terms of Section 4 of the Act 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 Act “normal value” is defined as follows:

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

21.2 Further, Section 6 of the Act 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 Act 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 Act as “a price actually paid or payable for an investigated product when sold for export from an exporting country to Pakistan”.

**23. Dumping Determination**

23.1 As stated earlier (paragraph 10 supra) the Applicants identified 05 exporters/ producers from the Exporting Countries involved in alleged dumping of the investigated product. The Commission sent Exporter’s Questionnaire to all known exporters/producers of the Exporting Countries on November 07, 2018 for collection of data and information. Questionnaire was also provided to the Embassies of the Exporting Countries in Islamabad with a request to forward it to all exporters/producers of the investigated product based in their countries to submit information to the Commission.

23.2 Only one exporter/foreign producer namely Ceylon Beverage, provided information in response to the questionnaire. Individual dumping margin in this investigation is determined on the basis of the information provided by the cooperating exporter. However, a residual dumping margin has been determined for all other non-cooperating exporters/foreign producers of the Exporting Countries in terms of Section 32 of the Act and Schedule to the Act.

**24. Determination of Normal Value**

24.1 The Commission received information on cost to make and sell of the like product from Ceylon Beverage. The information submitted by exporter has been used for determination of normal value as discussed below. Normal value for other non-cooperating exporters/producers has been determined on the basis of best information available in accordance with Section 32 and Schedule to the Act.



**24.2 Determination of Normal Value for Ceylon Beverage**

24.2.1 In accordance with Section 6(1)(b) of the Act, Normal value for Ceylon Beverage is determined on the basis of the information provided by it on its cost to make and sell during the POI (provided in Attachment Appendix 2 of the questionnaire response).

24.2.2 According to the information, Ceylon Beverage manufactured Aluminium Beverage Cans of capacities 185ml, 250ml, 300ml, 330ml and 500ml. The company is only selling Aluminium Beverage Cans having capacity of 330ml and 500ml in its domestic market. However, the company is exporting the aluminum cans having capacity of 250ml and 300ml to Pakistan. For the purposes of like to like comparison, normal value is determined only for those models which were comparable to the models of the investigated product. Normal value for comparable models was determined on the basis of cost to make and sell plus a reasonable amount for profit. Summary calculation of normal value is placed at Annexure-II.

**24.3 Determination of Normal Value for All Other Exporters/Producers from Jordan and UAE**

24.3.1 As stated earlier, none of the exporters/foreign producers of the investigated product from Jordan and UAE 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 Act and Article 6.8 and Annex II of the Agreement on Anti-dumping.

24.3.2 It is important to point out here that the Commission informed the exporters/foreign producers from Jordan and UAE of reliance on the Best Information Available in its letters of January 08, 2019 and February 15, 2019.

24.3.3 To determine normal value for exporters/foreign producers from Jordan and UAE, the Commission has relied on the information provided by the cooperating exporter of Sri Lanka.

**25. Determination of Export Price**

25.1 The Commission received information on export sales of the investigated product in response to the questionnaires sent to various exporters/foreign producers from Ceylon Beverage. The information submitted by Ceylon Beverage has been used for determination of export price as discussed below. Export price for non-cooperating exporters/foreign producers has been determined on the basis of best information available in accordance with Section 32 and Schedule to the Act.

## **25.2 Determination of Export Price for Ceylon Beverage**

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

25.2.2 According to the information, Ceylon Beverage exported the investigated product to Pakistan during the POI. Its exports of the investigated product to Pakistan during the POI were \*\*\* MT. All export sales to Pakistan, during the POI, were made to un-related customers.

25.2.3 During the POI, Ceylon Beverage exported investigated product on Payment against documents and LC basis. To arrive at the ex-factory level, it has reported adjustments on account of commission, inland freight, ocean freight and bank charges. The Commission has provisionally accepted the adjustments. The adjustments claimed would be verified during on-the-spot investigation visit. The export price at ex-factory level is worked out by deducting values reported for accepted adjustments from the gross value of sales transactions. Summary calculations of export price are placed at Annexure-III.

## **25.3 Determination of Export Price for All Other Non-Cooperating Exporters.**

25.3.1 Export price for non-cooperating exporters from the Exporting Countries has been determined on the basis of best information available in accordance with Section 32 of the Act. Information obtained from PRAL is used for the purposes of determination of export price for non-cooperating exporters from the Exporting Countries. This is the best information available with the Commission on export sales of the investigated product by the non-cooperating exporters from the Exporting Countries.

25.3.2 Values in PRAL's information are reported at C&F level. The C&F export price has been adjusted to the ex-factory level. For this purpose, adjustments on account of commission, inland freight, ocean freight, and bank charges have been made in the C&F price. Information submitted by Ceylon Beverage on these adjustments has been used for non-cooperating exporters/producers. Calculations of export price for non-cooperating exporters/producers from the Exporting Countries are placed at Annexure-IV.

## **26. Dumping Margin**

26.1 The Act defines "dumping margin" in relation to a product to mean "*the amount by which its normal value exceeds its export price*". In terms of Section 14(1) of the Act the Commission shall determine an individual dumping margin for each known exporter or producer of an investigated product. In this preliminary determination, the Commission has determined individual dumping margin for one exporter who cooperated with the Commission and supplied

necessary information and the provisional antidumping duty rate for the exporters is established on the basis of individual dumping margin. However, residual dumping margins/antidumping duty rates have been determined for non-cooperating exporters/foreign producers of the Exporting Countries.

26.2 Section 12 of the Act provides three methods for fair comparison of normal value and export price in order to establish dumping margin. The Commission has established dumping margin by comparing weighted average normal value with weighted average export price at ex-factory level.

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

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

**Table-II  
Dumping Margin**

Country	Exporter Name	Dumping margin as % of	
		Export price	C & F price
Sri Lanka	Ceylon Beverage Cans.	18.43	17.14
	All other exporters/producers	18.43	17.14
Jordan	All exporters/producers	23.71	21.86
UAE	All exporters/producers	19.55	18.26

**27. Termination for insufficient evidence, negligible dumping margin or negligible volume of dumped imports**

27.1 In terms of Section 41(2) of the Act *“an investigation may be terminated at any time by the Commission if it is satisfied that there is not sufficient evidence of either dumping or injury to justify proceeding with an investigation.”* Upon examination of imports data, it was found that all imports, of Aluminium Beverage Cans, originating from Turkey were of 500ml capacity. As stated earlier, the domestic industry is not manufacturing Aluminum Beverage Cans of 500ml, the same does not fall under scope of the investigated product. Investigated product is not originated from Turkey, therefore, investigation, to the extent of Turkey, is terminated.

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27.2 In terms of Section 41(2) of the Act “an investigation shall be immediately terminated if Commission determines that the dumping margin is negligible or that volume of dumped imports, actual or potential, or injury is negligible.”

27.3 Section 41(3) of the Act states that the dumping margin shall be considered to be negligible if it is less than two percent, expressed as a percentage of the export price. Dumping margin for the alleged dumped imports of the investigated product, set out in paragraph 26.4 supra, are above negligible (*de minimis*) level.

27.4 As regards the volume of dumped imports, Section 41(3) of the Act provides that the volume of such 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 a like product unless imports of the investigated product from all countries under investigation which individually account for less than three percent of the total imports of a like product collectively account for more than seven per cent of the imports of like product. The information/data on alleged dumped imports of the investigated product and other imports of Aluminum Beverage Cans has been obtained from PRAL. Volume of alleged dumped imports of the investigated product and Aluminum Beverage Cans imported from other sources during the POI (September 1, 2017 to June 30, 2018) is given in a table below:

**Table-III**  
**\*\*\* Volume of Imports of Aluminum Beverage Cans during POI**

Country	Volume of Imports in Percentage
Jordan	30.81
Sri Lanka	9.70
UAE	55.91
Others Countries	3.57
Total	100.00

Period: September 1, 2017 to June 30, 2018

Source: PRAL

\*\*\* Volume of Aluminum Beverage Cans having capacity of 250 ml and 300 ml

27.5 On the basis of above information, the Commission has preliminarily determined that the volume of dumped imports of the investigated product from the Exporting Countries was well above the negligible threshold (less than three percent of volume of total imports of the like product) during the POI.

**C. MATERIAL RETARDATION OF THE ESTABLISHMENT OF THE DOMESTIC INDUSTRY**

**28. Material Retardation**

28.1 The Applicant has claimed that it is facing material retardation to its establishment. First question before the Commission was whether the domestic industry producing Aluminum Beverage Cans is already established and second if the domestic industry is not established, whether the establishment of the un established industry appears to have been materially retarded by the dumped imports.

28.2 In case it is determined that the domestic industry is established, the material retardation standard is not applicable, and the Commission focuses on the standards of material injury and/or threat of material injury.

28.3 As there are no clear provisions on how to apply material retardation standard in the Act and the Agreement on Antidumping, the Commission has sought guidance from practices of traditional users of anti-dumping and Commission's earlier practice.

**29. The Domestic Industry producing Aluminium Beverage Cans is not yet established:**

29.1 The domestic industry started producing Aluminium Beverage Cans on commercial basis in September 2017, therefore the Commission must determine whether the domestic industry has stabilized its operations and is an established industry or whether it is a nascent industry. In order to make this assessment, the Commission has taken guidance from the Commission's earlier practice and practices of other WTO member countries that are traditional users of antidumping law. The Commission analyzed the following factors to determine whether the domestic industry was an established industry during the POI:-

- i. the date of production began;
- ii. whether production of the domestic industry is steady or start-and-stop;
- iii. the size of domestic production compared to size of the domestic market as a whole;
- iv. whether the domestic industry has reached a "break-even point"; and
- v. whether the activities involve the establishment of a new industry or are merely a new product line of an established firm.

29.2 The Commission has considered the issue of date of start of commercial production of the Applicant. It may be mentioned that the Applicant started commercial operations in September 2017. The Applicant started its commercial operations at the start of POI and the Applicant has not been operating its production facility long enough to allow for a standard material injury analysis.

29.3 In case the domestic industry has not been in operation for considerably long period of time so that an inference can be drawn from trends, it would be inappropriate to use trends of actual operations for injury analysis. Therefore, it is essential that inference may be drawn from feasibility study and projections.

29.4 In order to determine whether the production of the domestic industry was steady or start-and-stop during the POI, actual and projected production of the Applicant were examined. Following table show quarterly quantity produced by the applicant during POI:-

**Table-IV**  
**Comparison of actual and projected production (Kg.)**

Period/Quarter	Actual Production	Projected Production
Sep 17 - Dec 17	1	100
Jan 18 - Mar 18	34	88
Apr 18 - Jun 18	86	175
<b>Total</b>	<b>121</b>	<b>363</b>

Source: the Applicant

Note: For the purpose of confidentiality, the actual figures have been indexed w.r.t projected production for the period Sep 17- Dec 17 as base.

29.5 The Aluminum beverage cans are an industrial input for units involved in production of carbonated soft drinks. Demand of aluminum beverage cans varies according to season. During summer season, demand of aluminum beverage cans is at its peak whereas it is at its lowest during the winter season. Variation in demand is aggravated by the fact that Pakistan has extreme weather in most of its parts. The demand of aluminum beverage cans has been estimated at 20 percent, 40 percent, 30 percent and 10 percent during the first, second, third and fourth quarter of calendar year respectively.

29.6 Referring to above table IV, there were two reasons for low production during the period Sep 17 – Dec 17. Firstly, due to seasonal factor, demand was at its lowest during the last quarter of the calendar year. It is the same period in which domestic industry started its commercial operations. Secondly, as per industrial norms, the Applicant has to get approvals of specification of aluminum beverage cans from carbonated soft drink fillers before starting the sales of the product. It took, the Applicant, sometime to get approvals of domestic like product from its customers. By January 2018, the Applicant secured approvals from the major customers. Necessary approvals from major customers coupled with seasonal factor led to increase in Applicant’s production during first and second quarter of year 2018. However, as per business plan, the Applicant’s production was expected to reach the level of \*\*\* kgs. Contrary to expectations, its production level only reached level of \*\*\* kgs.

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**Table-V**  
**Size of production for domestic sales as percentage of total domestic market (Kg.)**

Month	Domestic Production	Production for Domestic Sales	Domestic Sales	Total Imports	Total Domestic Market	Production for domestic sales as percentage of Total Domestic Market (%)	Dumped imports as percentage of Total Domestic Market (%)
Sep. 2017	0.06	0.06	-	3.86	3.86	1.64	100.00
Oct.2017	0.28	0.28	0.36	2.32	2.68	10.31	86.66
Nov.2017	0.21	0.21	0.08	7.76	7.84	2.66	99.00
Dec. 2017	0.21	0.18	0.32	3.39	3.71	4.79	91.39
Jan. 2018	1.09	0.95	0.58	9.99	10.57	8.97	94.54
Feb.2018	6.44	5.40	2.37	13.55	15.92	33.95	85.13
Mar. 2018	10.26	8.48	4.58	6.43	11.00	77.05	58.40
Apr. 2018	16.31	3.41	3.12	9.81	12.93	26.41	75.88
May-18	15.39	9.32	7.21	6.93	14.14	65.94	49.02
Jun. 2018	13.11	9.72	9.16	8.18	17.35	56.05	32.29
Total POI	63.35	38.02	27.77	72.23	100.00	38.02	69.65

Source: the Applicant and PRAL

Note: For the purpose of confidentiality, the actual figures have been indexed w.r.t total domestic market for the POI as base.

29.7 The Commission has also examined the size of domestic production compared to size of the domestic market of Aluminium Beverage Cans during the POI. It is pertinent to mention that before entry of the Applicant in domestic market, the entire demand for Aluminium Beverage Cans was met through imports. The existing capacity of Applicant is sufficient to meet 100 percent of total domestic demand against which its production could only achieve 38.02 percent share in the domestic market. It may also be added that with coming into production of the Applicant the domestic industry was capable to cater 100 percent of domestic demand for Aluminium Beverage Cans within a reasonable period of time. Since the start of production of domestic like product in Pakistan by the domestic industry in September 2017, its production share in total domestic market has not increased significantly. Its production level achieved only 38.02 percent share of the total domestic market, whereas, dumped imports had major portion of the total domestic market. Monthly imports figures for the month of April 2018 are indicative of the fact that the dumped imports have the ability to substitute the production for domestic sales. As stated earlier, Applicant's production level was expected to reach \*\*\* kgs according to business plan. Out of total projected production, 48.68% was meant for domestic market and 51.32% was for exports. This means, it was expected that production for domestic market would reach the level of \*\*\* kg. At this production level, the Applicant would have accounted for 83.38

percent of the total domestic market. However, the Applicant's production share was only 38.02 percent which was much lower than the projections made in business plan.

29.8 The Commission has analyzed the fixed, variable costs and sale price of the domestic industry to calculate the contribution margin i.e. the unit sale price minus the unit variable cost. In this preliminary determination, the Commission has calculated break-even point of the domestic industry by dividing total fixed cost by unit contribution margin. As per business plan, on the basis of projected contribution margin, the domestic industry has projected break-even point at 64 percent of the installed capacity. It was forecasted that the Applicant will achieve break-even point during the year 2019. As per business plan, the Applicant was expected to sell one can @ Rs. \*\*\*. However, contrary to the estimation, the Applicant was able to sell one can in domestic market @ Rs. \*\*\*. The domestic industry was expected to earn contribution margin of Rs.\*\*\* per can for the year. The domestic industry was able to earn contribution margin of Rs. \*\*\*per can during the POI. Due to lower contribution margin, the breakeven point for the domestic industry producing Aluminum Beverage Cans was 113 percent of the installed capacity at the prices prevailed during POI. As per its business plan, the domestic industry has not reached a breakeven point even once since it started its operations and is not likely to achieve projected breakeven point with current sales prices and costs.

29.9 The Commission has also examined whether the nascent industry is truly a new industry or is merely a new product line of an established firm. An established industry introducing a new product line, for example, might be able to promote sales of the new product line through its established distribution and marketing networks and industry contacts thereby hastening the establishment of the new product in the market. The Applicant unit is a joint venture project of Ashmore group and Liberty group and has not taken any benefit from the established parent group companies. The Applicant has separate production plant and sales network etc. The Applicant unit is a new business entity and its operations are not aided by the existing companies of the parent groups.

29.10 On the basis of analysis in previous paragraphs, the Commission has determined that the domestic industry started producing Aluminium Beverage Cans in September 2017 and the period of operation is not long enough to apply material injury analysis. The Commission has also determined that although the production of the domestic industry increased, it was not been able to achieve production level as projected in the business plan. Further, the Commission has determined that the domestic industry has not yet reached a break-even point, and the size of its production compared to size of the domestic market of Aluminium Beverage Cans as a whole was much lower. The domestic industry has not gained significant share of the domestic market, whereas the dumped imports had major share of the total domestic market. Further, the Applicant is a newly established business entity and its shareholders were not involved in Can manufacturing or marketing/distribution business. For these reasons, the



Commission has determined that there is reasonable indication/evidence that the domestic industry producing Aluminium Beverage Cans has not yet been established and is a nascent industry.

29.11 As the Commission has determined that the domestic industry has not yet established and was a nascent industry during the POI, the material retardation standard is applicable only, and the Commission will not use other standards of material injury and threat of material injury.

**30. Whether the domestic industry was materially retarded**

30.1 Having determined that the domestic industry producing Aluminium Beverage Cans is not yet established and was a nascent industry during the POI, the Commission has examined whether the establishment of this nascent industry has been materially retarded by reason of dumped imports from the Exporting Countries.

30.2 Section 15 of the Act 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...."*

30.3 The Commission has used same principles for determination of material retardation as laid down in Section 15 and 17 of the Act for determination of material injury, because the Act or Agreement on Antidumping are silent on factors to be taken into consideration for determination of material retardation.

30.4 Material retardation to the establishment of the domestic industry is summarized in the following paragraphs.

**31. Cumulation of Dumped Imports**

31.1 As per Section 16 of the Act:

*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 the investigated product from each countries is more than the negligible amount, and volume of*

*dumped imports from each investigated country is not less than the negligible quantity; 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.*

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

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

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

Country	Weighted Average C&F Price (US\$/MT)
Jordan	100.00
Sri Lanka	102.95
UAE	106.81

Sources: PRAL

Note: For the purpose of confidentiality, the actual figures have been indexed w.r.t weighted average C&F Price of Jordan as base.

31.4 The investigation revealed that there was a competition between investigated product and the domestic like product in terms of price, market share, and sales etc. Conditions of competition between imports of the investigated product and the domestic like product are discussed in detail in paragraphs 35 to 42 infra.

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

**32. Domestic Industry**

32.1 In terms of Section 2(d) of the Act, domestic industry means the domestic producers as a whole of a domestic like product or those of them whose collective output of that product constitutes a major proportion of the total domestic production of that product.

32.2 As mentioned in paragraph 8.3 supra, the application is filed by the domestic industry producing 100 percent of the domestic production of domestic like product in Pakistan. Thus the Applicant is considered as domestic industry and material retardation analysis is based on the information/data of the Applicant.

### **33. Volume of Dumped Imports**

#### **Facts**

33.1 With regard to the volume of dumped imports, in terms of Section 15(2) of the Act, it is considered whether there has been a significant increase in dumped imports, either in absolute terms or relative to the consumption or production of the domestic like product by the domestic industry.

33.2 In order to assess the impact of volume of dumped imports of the investigated product in relation to production and consumption of the domestic like product, the information obtained from PRAL has been used. The following table shows imports of the investigated product and production of the domestic like product by the nascent domestic industry during the POI:

**Table-VII**  
**Volume of dumped imports**

Period	Volume of Dumped Imports (MT)	Increase/ (Decrease) (MT)	Increase/ (Decrease) (%)	Domestic production (MT)	% of dumped imports to domestic production
Sep-Dec 17	77.17	----	----	3.23	2,387.35
Jan-Mar 18	133.41	56.24	72.87	66.02	202.08
Apr-Jun 18	99.48	(33.93)	(25.44)	100.00	99.48

Source: the Applicant and PRAL.

Note: For the purpose of confidentiality, the actual figures have been indexed w.r.t total domestic production during Apr-Jun 18 quarter as base.

#### **Analysis**

33.3 It appears from the above tables that the volume of dumped imports decreased as domestic production of newly set-up unit substituted imports. Furthermore, dumped imports increased from \*\*\* MT to \*\*\* MT, an increase of \*\*\* MT in Jan-Mar 18 over Sep-Dec 17. However, dumped imports decreased from \*\*\* MT to \*\*\* MT, a decrease of \*\*\* MT in Apr-Jun 18 over Jan-Mar 18. Dumped imports in last quarter of POI were still at higher level as compared to first period i.e. Sep-Dec 2017.

33.4 As stated earlier, in case of material retardation, the inference from trend is not appropriate as domestic industry is likely to increase production and the imports are likely to decrease. However, the question for material retardation is whether such increase in domestic production is according to projections or not. Therefore, in the following analysis, the projections and feasibility study figures are frequently used.

**Table-VIII**  
**Projected and Actual Sales & Actual Dumped Imports (M. Tons)**

<b>During POI</b>	<b>Projected total market</b>	<b>Actual market</b>	<b>Projected total market (%)</b>	<b>Actual market (%)</b>	<b>Deviation from Projection</b>	<b>Percentage of Deviation from Projection</b>
Sales by domestic industry	66.88	23.82	67	28	43.07	64.39
Total imports	33.12	61.95	33	72	-28.83	-83.43
Total domestic market	100.00	85.76	100	100	14.24	14.24

Source: the Applicant and PRAL.

Note: For the purpose of confidentiality, the actual figures have been indexed w.r.t total projected domestic market during POI as base.

33.5 Analysis of the above data reveals that it was projected that size of domestic market will be \*\*\* MT approximately. According to projections, sales of domestic industry and imports will be at the level of \*\*\* MT and \*\*\*MT respectively. However, there were few deviations from the projections. Firstly, size of domestic market remained at \*\*\*MT which was lower than the projected level. Secondly, it was projected that sales by domestic industry will have a major share in the domestic market. The share of domestic industry and imports were projected at the level of 67 percent and 33 percent respectively. However, in actual, the share of domestic industry and import were at the level of 28 percent and 72 percent respectively. This shows that imports were having major share in the domestic market contrary to projections made in the business plan.

33.6 The above information and analysis reveals that there was decrease in the volume of dumped imports in absolute terms during the POI. The decrease in volume of dumped imports is due to coming into production of domestic producer. However, the domestic industry could not sell as per the expected sales mentioned in the business plan due to level of dumped imports during the POI. Therefore, the domestic industry is materially retarded on account of volume of dumped imports.

#### **34. Price Effects**

34.1 Effect of dumped imports on sales price of domestic like product in the domestic market has been examined to establish whether there was significant price undercutting (the extent to which the price of the investigated product was lower than the price of the domestic like product), price depression (the extent to which the domestic industry experienced a decrease in

its selling prices of domestic like product over the time), or price suppression (the extent to which increased cost of production could not be recovered by way of increase in selling price of the domestic like product). Effects of dumped imports on price of the domestic like product are analyzed in following paragraphs:

### 34.2 Price undercutting

#### **Facts**

34.2.1 Price undercutting is calculated in the following table on the basis of the information provided in the application on ex-factory price of the domestic like product and landed cost of the investigated product:

**Table-IX**  
**Calculation of Price Undercutting**

<b>Period</b>	<b>Average Domestic Price (Rs/Kg)</b>	<b>Average Projected Domestic Price (Rs./Kg)</b>	<b>Average Landed Cost (Rs/Kg)</b>	<b>Deviation from Projection (%)</b>	<b>Actual Price Undercutting (Rs/Kg)</b>	<b>Price Undercutting w.r.t projection (Rs/Kg)</b>
Sep-Dec 17	90.58	92.21	93.47	1.77	-----	-----
Jan-Mar 18	85.13	96.40	96.69	11.68	-----	-----
Apr-Jun 18	100.00	101.25	95.21	1.23	4.79	6.04

Source: the Applicant

Note: For the purpose of confidentiality, the actual figures have been indexed w.r.t average domestic price during Apr-Jun 18 quarter as base.

#### **Analysis**

34.2.2 The information provided in the above table shows that the weighted average landed cost of the investigated product imported from the Exporting Countries was lower than ex-factory price of the domestic like product during the last quarter of POI by Rs. \*\*\*/kg. During the POI, the weighted average domestic price deviated from the projected domestic price within the range of 1.23% to 11.68% of the projected domestic price. The applicant was not able to fetch the price of its product as projected in the business plan. It was forecasted that domestic price will be Rs. \*\*\*/kg during the last quarter of POI however, actual price was Rs. \*\*\*/kg. The prices of dumped imports were lower than the projected and actual domestic prices resulting in price undercutting. It is clear from the above analysis that due to availability of cheap imported product in the domestic market, the Applicant could not get the projected price for its product, as per business plan.

### 34.3 Price Depression

#### **Facts**

34.3.1 The weighted average ex-factory price of the domestic like product for the POI is given in the following table:

**Table-X**  
**Ex-factory Price** (Rs./kg)

Year	Prices of domestic like product	Price Depression	Average Projected Domestic Price
Sep-Dec 17	89.47	---	91.08
Jan-Mar 18	84.09	(5.38)	95.21
Apr-Jun 18	98.77	---	100.00

Source: the Applicant

Note: For the purpose of confidentiality, the actual figures have been indexed w.r.t average projected domestic price during Apr-Jun 18 quarter as base.

#### **Analysis**

34.3.2 The above table shows that ex-factory sales price of the domestic like product experienced downward and upward trend during the POI. The ex-factory sales price of the domestic like product decreased during the Jan-Mar 18 by an amount of Rs. \*\*\*/kg. However, ex-factory sales price of the domestic like product increased during the Apr-Jun 18 by an amount of Rs. \*\*\*/kg. it was projected in the business plan that prices of domestic like product will increase during every quarter. However, in order to get some market share, the domestic industry had to decrease its prices during the second quarter. It may be noted that imports of the investigated product were at peak, during the period, domestic industry faced price depression.

### 34.4 Price Suppression

#### **Facts**

34.4.1 the information/data submitted by the Applicant on weighted average cost to make and sell and ex-factory price of the domestic like product during the POI is given in the following table:-

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**Table-XI  
Cost to Make and Sell and Ex-factory Price of the Domestic Like Product**

Period	Average Cost to Make & Sell of domestic like product per unit (Rs/Kg)			Total Projected Cost (Rs/Kg)	Average Domestic Price (Rs./Kg)	*Projected Variable Cost (Rs./Kg)	Projected Sale Price (Rs./Kg)	Deviation in Variable Cost from Projection
	Total	Fixed	Variable					
Sep-Dec 17	1,925.77	1,715.80	209.97	100.00	75.94	56.78	77.31	153.19
Jan-Mar 18	245.84	107.02	138.82	79.19	71.37	55.70	80.82	83.12
Apr-Jun 18	167.33	39.78	127.56	83.17	83.84	58.50	84.88	69.05

Source: the Applicant

Note: For the purpose of confidentiality, the actual figures have been indexed w.r.t Total projected cost per unit for period Sep-Dec 17 as base.

\*Change in per Kg variable cost is due to conversion rate of US\$ to PKR.

### **Analysis**

34.4.2 The above table shows that the average cost to make and sell of the domestic like product exceeds the projections as made in the business plan. The actual variable cost of the Applicant was higher than the projections made in the business plan. The sales price of the domestic like product was lower enough not to cover the variable cost. The average cost to make and sell of domestic like product registered a decrease over the POI due to sharp decrease in per unit fixed cost hence domestic industry did not experience price suppression during the POI.

## **35. Market Share**

### **Facts**

35.1 The total domestic demand of Aluminum Beverage Cans in Pakistan is met through local production and imports. To establish the size of the domestic market, the Commission used sales of domestic like product by the domestic industry, imports of the Aluminum Beverage Cans from dumped sources and imports of Aluminum Beverage Cans from other sources. Following table shows market share from each source during the POI:

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**Table-XII  
Market Share (MT)**

Period	Domestic Sales	Imports from		Total Domestic Market
		Dumped Sources	Other Sources	
Sep 17- Dec 17	0.76	17.33	-	18.09
Jan 18 - Mar 18	7.52	29.97	-	37.49
Apr 18 - Jun 18	19.49	22.35	2.58	44.42
POI Sep 17 - Jun 18	27.77	69.65	2.58	100.00

Sources: the Applicant and PRAL

Note: For the purpose of confidentiality, the actual figures have been indexed w.r.t Total domestic market for POI as base.

### **Analysis**

35.2 The above table shows that the domestic market of Aluminum Beverage Cans increased by 107.22 percent during Jan-Mar 2018 as compared to Sep-Dec 2017 and further increased by 18.50 percent during Apr-Jun 2018 as compared to previous quarter. The domestic industry was set up to fulfill 100 percent of domestic requirement of Aluminum Beverage Cans within a reasonable period of time. Since the start of production of Aluminum Beverage Cans in Pakistan by the domestic industry in September 2017, it was able to achieve market share of 27.77 percent during the POI whereas dumped imports were having major portion of the total domestic market i.e. 69.65 percent. The share of dumped imports decreased gradually over the POI and the reason for this decrease was natural as there was no domestic industry at the start of POI. However, as per business plan of the Applicant, it was expected to sell \*\*\* MT of the domestic like product and its share would have been 78% of the total domestic market which was not the case. The Commission is of the view that the share of domestic industry in domestic market increased, but this increase was not adequate and far below what has been projected in the business plan by the Applicant.

### **36. Production and Capacity Utilization**

#### **Facts**

36.1 The installed capacity, quantity produced and the capacity utilization of the Applicant during the POI, were as follows:



**Preliminary Determination In Anti-Dumping Investigation Against Dumped Imports of Aluminium Beverage Cans into Pakistan  
Originating in and/or Exported from Jordan, Sri Lanka and UAE and Termination of Investigation on Imports of Aluminum Beverage  
Cans from Turkey**

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**Table-XIII  
Installed Capacity and Capacity Utilization (Qty = MT, Domestic = D, Export = E)**

Quarter/Period	Installed Capacity		Projected Production		Actual Production		Actual Capacity Utilization (%)		Projected Capacity Utilization (%)	
	D	E	D	E	D	E	D	E	D	E
Sep 17- Dec 17	54.65	73.10	23.66	31.65	0.75	0.04	1.37	0.05	43.30	43.30
Jan 18 - Mar 18	50.30	45.04	25.45	22.78	15.33	3.20	30.47	7.11	50.59	50.59
Apr 18 - Jun 18	50.30	45.04	50.89	45.56	23.22	24.28	46.15	53.91	101.17	101.17
For POI Sep 17 - Jun 18	155.25	163.18	100.00	100.00	39.29	27.52	25.31	16.86	64.41	61.28

Source: the Applicant

Note: For the purpose of confidentiality, the actual figures have been indexed w.r.t Total projected Production for Export and Domestic Purpose for POI as base.

### **Analysis**

36.2 Size of domestic market of aluminum beverage cans is 250-300 million aluminum beverage cans per annum. The Applicant has installed a plant with the capacity of 700 million aluminum beverage cans to target the export as well as domestic market. The business plan of the Applicant bifurcated the installed capacity and its usage for domestic and export market on yearly basis.

36.3 As per table above, the production and capacity utilization of the domestic industry increased during POI. Quarterly analysis of the data for POI shows that the capacity utilization of domestic industry for domestic market increased from 1.37% in Sep-Dec 17 to 30.47 % during the quarter Jan-March 18 and further increased to 46.15 % during the quarter April-June 18 and 25.31% during the POI. However, the domestic industry projected domestic production of \*\*\* M.T, i.e. 64.41% of the installed Capacity during the POI, whereas, it only achieve the domestic capacity utilization of 25.31 percent. The Applicant could not utilize the installed capacity as per projections due to the fact that dumped imports had major share in the domestic market.

### **37. Effects on Sales**

#### **Facts**

37.1 Sales of the domestic like product are given in the following table:

**Table-XIV**  
**Sales of the Applicant (MT)**

Period	Projected Sales		Actual Sales		Deviation from projection		Percentage of deviation from projection	
	Domestic	Export	Domestic	Export	Domestic	Export	Domestic	Export
Sep17-Dec17	44.92	66.67	1.84	0.09	43.08	66.57	95.90	99.86
Jan18-Mar18	50.00	50.00	18.30	7.61	31.70	42.39	63.40	84.77
Apr18-Jun18	100.00	100.00	47.43	57.71	52.57	42.29	52.57	42.29

Source: the Applicant

For the purpose of confidentiality, the actual figures have been indexed w.r.t Total projected Production for Export and Domestic Purpose for Apr18-Jun18 as base.

### **Analysis**

37.2 In the business plan, the Applicant bifurcated its sales projections for domestic and export market. The same have been reproduced in the table above. The above table shows that the sales by the Applicant in domestic market increased by \*\*\* MT during Jan-Mar 18 as compared to Sep-Dec 17 and further increased by \*\*\* MT during Apr-Jun 18 as compared to the previous quarter. Although, the sale of domestic industry increased during the POI but it is unable to achieve the domestic sales projected in the business plan. As per business plan, projected sales for domestic market were \*\*\* MT, \*\*\* MT and \*\*\* MT for Sep-Dec17, Jan-Mar 18 and Apr-Jun 18 respectively. However, the actual sales were \*\*\* MT, \*\*\* MT and \*\*\*MT for Sep-Dec 17, Jan-Mar 18, and Apr-Jun 18 respectively. The Applicant's domestic sales were far below the projections as made in the business plan. Actual sales deviated significantly from the projected sales. The Applicant was unable to achieve its sales target due to dumped imports from the Exporting Countries.

### **38. Effects on Inventories**

#### **Facts**

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

**Preliminary Determination In Anti-Dumping Investigation Against Dumped Imports of Aluminium Beverage Cans into Pakistan Originating in and/or Exported from Jordan, Sri Lanka and UAE and Termination of Investigation on Imports of Aluminum Beverage Cans from Turkey**

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**Table-XV**  
**Inventories of the Domestic Like Product (MT)**

Period	Opening Inventory			Production			Sales			Ending Inventory		
	Domestic	Export	Total	Domestic	Export	Total	Domestic	Export	Total	Domestic	Export	Total
Sep.17-Dec-17	8.32	-	4.64	9.51	0.47	9.98	9.91	0.47	10.37	4.24	-	4.24
Jan.18-Mar.18	4.24	-	4.24	194.29	38.64	232.93	98.54	38.64	137.17	100.00	-	100.00
Apr.18-Jun.18	100.00	-	100.00	294.30	292.81	587.11	255.39	292.81	548.20	138.91	-	138.91

Source: the Applicant

Note: For the purpose of confidentiality, the actual figures have been indexed w.r.t Opening Inventory for Domestic for the quarter Apr18-Jun18 as base.

**Analysis**

38.2 The above table shows that inventories of the domestic industry of the domestic like product increased from \*\*\* MT during Sep17-Dec17 to \*\*\* MT during Jan-march 18 and further increased to \*\*\* MT during April-June 18. The inventories piled up due to dumped imports from the Exporting Countries and the applicant was not able to sell its product in the domestic market. Thus the domestic industry was materially retarded on account of inventories.

**39. Effects on Profit/Loss**

**Facts**

39.1 The verified figures of the Applicant on its profits and loss of the domestic like product is given in the following table:

**Table-XVI**  
**Profit/(Loss) Position of Aluminum Beverage Cans (Rs.)**

Quarter/Period	Actual Profit/(Loss)	Projected Profit/(Loss)
Sep 17- Dec 17	(264)	(100)
Jan 18 - Mar 18	(289)	(29)
Apr 18 - Jun 18	(212)	(62)

Source: the Applicant

Note: For the purpose of confidentiality, the actual figures have been indexed w.r.t Projected Profit/(Loss) for the quarter Sep 17-Dec 17 as base.

**Analysis**

39.2 It appears from the above table that the Applicant's loss, which was Rs.\*\*\* in the period Sep-Dec 17 increased to Rs. \*\*\* in the period Jan-Mar 18. The Applicant loss decreased to Rs.\*\*\* in Apr-Jun 18 as the applicant sale started increasing during this period. The reason for

net loss during second and third quarter is price depression and price undercutting respectively. Moreover, actual losses were far more than the projected loss.

#### **40. Effects on Employment, Productivity and Salaries & Wages**

##### **Facts**

40.1 There were, on average following employees associated with the production, sales and administration of Aluminium Beverage Cans. The employees are/were working on permanent as well as on contract basis. The Applicant's employment, production and the salaries and wages paid during the POI is given in following table:

**Table-XVII**  
**Employment and Productivity**

<b>Quarter/Period</b>	<b>Average Number of Employees</b>	<b>Salaries &amp; Wages (Rs.)</b>	<b>Domestic Production (Kg.)</b>	<b>Productivity Per Worker in Kg</b>	<b>Salaries and Wages Rs. Per Kg.</b>
Sep 17- Dec 17	75.90	20.29	1.20	4.77	1,687.17
Jan 18 - Mar 18	101.20	31.31	28.06	83.52	111.57
Apr 18 - Jun 18	124.10	48.40	70.73	171.68	68.43
POI Sep 17 - Jun 18	100.00	100.00	100.00	100.00	100.00

Source: The Applicant

Note: For the purpose of confidentiality, the actual figures have been indexed w.r.t Average Number of Employees, Salaries & Wages, Domestic Production, Productivity Per Worker, Salaries and Wages Per Kg. for POI as base for respective columns.

##### **Analysis**

40.2 The above table shows that the employment in the domestic industry increased during the POI. Productivity per worker increased due to increase in production. Furthermore, salaries and wages per kg decreased from Rs. \*\*\*/kg to Rs. \*\*\*/kg during the POI.

#### **41. Effects on Cash Flow**

##### **Facts**

41.1 The cash flow from operating activities is as under:-

**Table-XVIII**  
**Operating Cash Flow**

<b>Quarter/Period</b>	<b>Cash flow (Rs.)</b>
Sep 17- Dec 17*	(100)
Jan 18 - Mar 18	(37)
Apr 18 - Jun 18	(68)

Note: Cash flow for Sep 17 – Dec 17 is calculated on pro rata basis.

Note: For the purpose of confidentiality, the actual figures have been indexed w.r.t Cash Flow for the period Sep 17-Dec 17 as base.

**Analysis**

41.2 The above table shows that the domestic industry suffered on account of cash flow as the cash flows of Applicant was negative in all quarters of POI for injury.

**42. Effects on Return on Investment**

**Facts**

42.1 The figures for profit after tax and equity were obtained from annual audited and quarterly unaudited accounts of the applicant and return on investment has been calculated as follows:-

**Table-XIX**  
**Return on Investment**

<b>Period/Quarter ending as on</b>	<b>ROI</b>	<b>Projected ROI (for the Year)</b>
Dec 17	(4.26)	(8)
Mar 18	(4.59)	(2)
Jun 18	(2.20)	(2)

Source: the Applicant

**Analysis**

42.2 Return on investment remained negative throughout the POI. The Applicant also projected that its ROI will be negative however, the actual negative ROI was greater than the projected one. There is likelihood that no new investment will be made by the Applicant due to negative rate of return on investment.

**43. Growth and Investment**

**Facts**

43.1 Figures for total assets were obtained from the annual audited accounts and un-audited quarterly accounts for calculation growth as under:-

**Table-XX  
Growth**

<b>Period/Quarter ending as on</b>	<b>Total Assets (Rs.)</b>	<b>Growth in (Rs.)</b>
Dec 17	100	----
Mar 18	101	1
Jun 18	117	16

Source: The Applicant

Note: For the purpose of confidentiality, the actual figures have been indexed w.r.t Total Assets for the period ending on Dec 17 as base.

**Analysis**

43.2 At present, total installed production capacity of the domestic industry is more than the domestic market demand. In this situation, no further investment in the industry can be expected. However, as per Applicant business plan, it can increase its capacity to 1.2 billion aluminum beverage cans per annum.

**44. Forced reduction in prices**

44.1 The Applicant has provided a copy of agreement dated September \*\*\*\*\* with one of its customer. The name of the customer has not been disclosed to keep confidentiality of the commercial entities. Following prices were agreed upon by the Applicant and its customer, based on LME Aluminium Price of US\$, \*\*\*/MT.

- a) 300ml cans with 202 dia ends: US \$ \*\*\* per 1000 pcs
- b) 250ml cans with 200 dia ends: US \$ \*\*\* per 1000 pcs

44.2 The price was agreed to be increased for every increase in price of raw material as under:-

For every US\$ \*\*\*change (addition for increase and subtraction for decrease) in base price of LME

- a) US\$ \*\*\* for 250ml cans with 200 dia ends will be added/subtracted in base price
- b) US\$ \*\*\* for 300ml cans with 200 dia ends will be added/subtracted in base price

44.3 LME prices of major raw material increased by \*\*\* percent during the POI. As per agreement, the customer was bound to increase the price. However, the customer forced the Applicant to reduce its price and purchase order was issued by the customer at a price which was lower than initially agreed price. The Commission is of the view that this persistent demand of reduction in prices is due to presence of low-priced dumped imports. As a result of this price war, the Applicant could hardly get a small share in the domestic market and that too at much lower prices causing heavy losses to domestic industry.

45. **Ability to Raise Capital**

According to the Applicants, ability to raise capital is contingent upon financial results of the company. With losses and decreasing cash flow it would be difficult to raise equity through financial institutions or capital market. Investors/lenders will only be willing to inject more equity if the industry shows increasing sales and profits. However, due to the dominance of dumped imports in domestic market, the industry's ability to raise capital is materially weakened.

46. **Summing up of Material Retardation**

On the basis of the information/data and analysis in forgoing paragraphs the Commission has determined that the domestic industry was not established as it could not achieve a steady production trend; the domestic industry could not achieve a reasonable share in the domestic market and it could not reach a "break-even point" and its establishment was materially retarded during the POI. Domestic industry producing Aluminum Beverage Cans was materially retarded on the following accounts:-

- i. volume of dumped imports;
- ii. could not achieve market share as per projections;
- iii. price undercutting;
- iv. price depression;
- v. profits and profitability;
- vi. output;
- vii. capacity utilization;
- viii. return on investment;
- ix. negative effects on inventories;
- x. negative effects on cash flows;
- xi. negative effects on ability to raise capital; and
- xii. forced reduction in prices.

**D. CAUSATION**

**47. Effect of Dumped Imports**

47.1 The Commission has determined in this preliminary determination that the imports of the investigated product from the Exporting Countries were at dumped prices during POI. The volume of dumped imports increased from \*\*\*MT to \*\*\*MT, an increase of \*\*\* MT in second quarter of POI over the first period Sep – Dec 17. However, dumped imports decreased from \*\*\* MT to \*\*\* MT, a decrease of \*\*\* MT in Apr-Jun 18 over Jan-Mar 18. Dumped imports in last quarter of POI were still at higher level as compared to first period i.e. Sep-Dec 2017. Domestic production of newly set-up unit substituted imports. However, contrary to projections made in the business plan, dumped imports had dominance in the market during the POI.

47.2 In order to get market share, the domestic industry decreased its selling price significantly which resulted into losses. The domestic industry could not achieve a steady production trend. Further, since the start of production of aluminum beverage cans by the domestic industry in September 2017, its market share has not increased significantly, as it could achieve 27.77 percent share of total domestic market, whereas, dumped imports were having major portion of the total domestic market i.e. 69.65 percent. The Commission has also determined that the domestic industry has not yet reached a break-even point. The Commission also determined that due to presence of low-priced dumped imports, the domestic industry is being forced to reduction in prices at the time when prices of its major raw material is increasing. As a result of this price war, the Applicant could hardly get a small share in the domestic market and that too at much lower prices causing heavy losses to domestic industry.

47.3 The main reasons for material retardation of the establishment of domestic industry was dominance of dumped imports in domestic market, price undercutting, price depression and losses incurred during the POI.

**48. Other Factors**

48.1 In accordance with Section 18(2) of the Act, the Commission also examined factors, other than dumped imports of the investigated product, which could at the same time causing material retardation for the establishment of the domestic industry, in order to ensure that possible injury caused by other factors is not attributed to the dumped imports. The Commission has found that scrap generated in forms of spoiled cans (\*\*\*\*% of aluminum coil used: Jan - Jun 2018) is also affecting the domestic industry negatively.



48.2 The investigation of the Commission revealed that the domestic industry is not materially retarded due to imports of Aluminum Beverage Cans from sources other than dumped sources during the POI, as its volume was negligible @ \*\*\*% of total domestic market.

48.3 The factors mentioned in Section 18(3) of the Act were also analyzed and it was found that:

- i. There was no contraction in demand;
- ii. There was no change in trade restrictive practices and competition between foreign producers other than producers from the Exporting Countries and domestic producers; and
- iii. There was no considerable change in technology;

**E. CONCLUSIONS**

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

- i. the application was filed on behalf of the domestic industry as the Applicant represent 100% of the domestic production.
- ii. the investigated product and the domestic like product are like products;
- iii. the volume of dumped imports of the investigated product and the dumping margins established for the exporters/producers of the investigated product from the Exporting Countries were above the negligible and *de minimis* levels respectively.
- iv. the domestic industry was materially retarded during the POI on account of volume of dumped imports, could not achieve market share as per projections, price undercutting, price depression, profits/profitability, output, capacity utilization, return on investment, negative effects on inventories, negative effects on cash flows, negative effects on ability to raise capital, and forced reduction in prices in terms of Section 15 and 17 of the Act; and
- v. there was a causal relationship between dumped imports of the investigated product and the material retardation of the establishment of the domestic industry.

**F. IMPOSITION OF PROVISIONAL ANTIDUMPING DUTY**

50. In view of the analysis and conclusions with regard to dumping, material retardation, and causation, the Commission is of the view that imposition of provisional anti-dumping duty on the investigated product is necessary to prevent injury being caused to the domestic industry due to dumped imports during the course of an investigation in accordance with Section 43 of the Act.

51. Individual dumping margin has been determined for one exporter/foreign producer from Sri Lanka who has provided the information/data during the investigation. A residual dumping margin and anti-dumping duty rate for all the non-cooperating exporters/producers from the Exporting Countries is determined on the basis of best available information in terms of Section 32 of the Act.

52. For the purpose of imposition of lesser duty rule in terms of Section 43 (1) of the Act the Commission has considered injury margin to see whether a lower duty would be adequate to remove injury of the domestic industry. The calculations of injury margin are given below:

**Table-XIX**  
**Calculation of Injury Margin** (Rs.)

Injury Margin (Non-injurious price-landed cost)/C & F Price *100	87.76
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For the purpose of confidentiality, the actual figures have been indexed w.r.t Cost to make and sell of domestic industry as base.

53. It may be observed from the above that injury margin i.e. 87.76 percent is considerably higher than the dumping margins. The Commission has, therefore, decided to impose antidumping duties on the basis of dumping margins.

54. In terms of Section 43 of the Act provisional duties are necessary to prevent injury being caused during the course of the investigation, therefore, provisional antidumping duties given in the following table are hereby imposed on the dumped imports of the investigated product classified under PCT heading No. 7612.9030 importable from the Exporting Countries for a period of four months effective from publication of notice in the press. The provisional anti-dumping duty rates are determined on C&F value in ad val. terms as under:

**Table-XX**  
**Provisional Anti-dumping Duty Rates**

<b>Country</b>	<b>Exporter/Foreign Producer</b>	<b>Provisional Antidumping Duty Rate (%)</b>
Sri Lanka	Ceylon Beverage Cans	17.14
	All other Exporters/ Foreign Producers	17.14
Jordan	All Exporters/Foreign Producers	21.86
UAE	All Exporters/Foreign Producers	18.26

55. Exporters namely Crown Emirates Company Ltd, U.A.E, Crown Bevcan Turkiye Ambalaj Sanayi Ve Ticaret Ltd, Turkey and Crown Middle East Can Co. Ltd, Jordan collectively known as Crown Group instituted a Writ Petition No.277/2019 dated January 23, 2019 at Islamabad High Court, Islamabad challenging the initiation of the investigation. The Honorable Islamabad High Court passed an interim order on January 28, 2019 that “No Adverse Action shall be taken against the Petitioners”. Anti-dumping investigation in respect of Turkey has been terminated. The Commission has decided to hold in abeyance the imposition of provisional measures to the extent of Crown Emirates Company Ltd, U.A.E and Crown Middle East Can Co. Ltd, Jordan till the decision of the above mentioned petition.

56. In accordance with Section 51 of the Act, the provisional 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. Release of the investigated product for free circulation in Pakistan shall be subject to imposition of such antidumping duty.

57. Provisional anti-dumping duties levied would be in addition to other taxes and duties leviable on import of the investigated product under any other law. However, it would not be levied in terms of Section 51(1) e of the Act on imports that are to be used as inputs in products destined solely for export.

58. The provisional anti-dumping duties would be collected in the same manner as customs duty is collected under the Customs Act, 1969 (IV of 1969) and would be deposited in Commission’s Non-lapsable PLD account No. 187 with Federal Treasury Office, Islamabad.

(Mrs. Anjum Assad Amin)  
Member  
April 29, 2019

(Mrs. Robina Ather)  
Member  
April 29, 2019

Mr. Abdul Khaliq  
Chairman  
April 29, 2019

**Annexure-I**

The comments received on during the course of investigation and germane to this investigation under the Act are given in Column A below and the Commission’s response thereto is set out in Column B in the following table. Following interested parties commented during the course of investigation.

- i. Crown Group Companies (Exporters/foreign producers of aluminium beverage cans)
- ii. Murree Brewery Co. Ltd, Pakistan (an importer of aluminium beverage cans)
- iii. Karachi Chamber of Commerce & Industry, Pakistan
- iv. Ceylon Beverage Cans Pvt. Ltd, Sri Lanka (an exporter of aluminium beverage cans)
- v. Pakistan Aluminum Beverage Cans, Pakistan (domestic producers of aluminium beverage cans and the Applicant)

Summary of the comments made by representative of the above mentioned parties made is as follows:-

**Comments of Interested Parties**

<b>Column – A (Comments of Interested Parties)</b>	<b>Column – B (Commission’s Response)</b>
<p><b><u>Comments by Crown Group Companies</u></b></p> <p>01. PABC has produced audited/unaudited financial statements for the financial year 2017. However, PABC has only disclosed these statements to the NTC on the grounds that the “disclosure of such information may lead to the disclosure of information which is by nature confidential under Section 31(3) of the Act.”</p> <p>02. Table 1 of the Complaint provides data regarding weighted average C &amp; F export prices of the product allegedly being dumped into Pakistan. The information in this form has again been claimed to be confidential and instead of the correct information, a weighted average and indexed form of the underlying information, has been presented. Once again, PABC has only disclosed the actual data to the NTC on the grounds that the “disclosure of such information may lead to the disclosure of information which is by nature confidential under section 31(3) of the Act.”</p> <p>03. As already noted, the argument that</p>	<p>The Commission asked the Applicant to declare the audited accounts as non-confidential. The Applicant agreed to it and the same were placed in the public file.</p> <p>The Applicant has provided the non-confidential version of the said table which was placed in public file for review of the interested parties. Furthermore, the Commission has disclosed export prices of investigated product from alleged dumped sources, in indexed form, in its initiation memo.</p> <p>The Applicant has provided the non-confidential version of the said data which was</p>

<p>information cannot be revealed because it may in turn lead to the disclosure of confidential information is invalid. Furthermore, the information in question is data regarding the C &amp; F export prices of the exporters. How can such data be claimed by the Applicant as confidential? After all, this is an allegation regarding the prices charged by the respondents (such as the Crown Companies), not regarding prices charged by the Complainant.</p> <p>04. The same arguments apply with equal force to the information provided by PABC in Table 1 regarding "Normal Value." Once again, this is an allegation regarding the goods produced by the Crown Companies. Once again, no actual data is provided, only a table which refers to Table 1, itself a weighted averaged index of C &amp; F Export Prices. In addition, Para 8-D of the Complaint states that this Table 2 has been worked "as per the attached Appendix 4." However, the actual Appendix 4 states that the information in question is incapable of summarization.</p> <p>05. This same secretive approach is present in relation to the Complainant's allegations of injury. Since the Complainant is admittedly not an established domestic industry, it is the Complainant's position that it has been prevented from becoming established by the dumping of the product in question. The Complainant relies in this regard on the feasibility studies and projections on the basis of which it was established but fails to produce these studies and projections on the grounds that they are "confidential," Once again, this leaves the Crown Companies at a complete disadvantage.</p> <p>06. In the instant case, it does not appear as if the Commission has made any determination of confidentiality regarding the material provided to it</p>	<p>placed in public file for review of the interested parties.</p> <p>The Commission asked the Applicant to provide non-confidential version of the Appendix-4 which contained detailed working of Normal Value. The same was provided by the Applicant which was placed in the public file.</p> <p>The Commission has obtained the non-confidential version of the business plan and placed the same in the public file.</p> <p>The Commission has determined, the confidentiality of the information provided in the application, in initiation memo.</p>
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<p>by the Complainant. It also does not appear as if the Commission has examined the rationale asserted by the Complainant to determine whether or not it forms a valid basis for withholding data as confidential.</p> <p><b><u>Comments from Murree Brewery Co.Ltd.</u></b></p> <p>01. As the only user of 500ml aluminum cans in the country, the Company has been uniquely impacted and has suffered the negative fallout impact from the increase in customs. While other beverage producers have been able to offset the impact of the increase in customs duty by procuring their requirement of 250ml and 300ml cans from PABL instead of importing them, there is no such alternative available to the Company.</p> <p>02. While the objective of protecting local industry is indeed laudable, the aluminum beverage manufacturing industry can only be protected to the extent of the products that it manufactures. Increasing customs duty across the board on aluminum cans, regardless of their size, particularly in case of 500ml cans, does not protect local can manufacturing industry (as no entity in Pakistan manufactures 500ml cans).</p> <p>03. It is also worth mentioning that Commission is misled that cans are being imported at throw away rates from China. These cans are not imported from China, infact all these cans are imported from UAE, Turkey and other first class countries of the world on very high rates. No cans are imported into Pakistan from China.</p> <p><b><u>Comments from Karachi Chamber of Commerce &amp; Industry (KCCI)</u></b></p> <p>01. Single supplier will create Monopolistic Situation: There is only a single manufacturer of Aluminum Cans in Pakistan which is M/s Pakistan</p>	<p>The Commission has excluded the aluminum beverage cans of 500 ml from the scope of investigation.</p> <p>China is not amongst the alleged dumped sources.</p> <p>The Commission is not restricting imports in any way. Investigation is being carried out to the extent of imports originating in/and or</p>
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<p>Aluminum Beverage Cans Ltd. (PABC). Therefore, restricting imports of Aluminum Cans will definitely create monopoly of this manufacturer in the country who will dictate the local prices and will be tempted to inflate its sale price to domestic beverage industry to reap extraordinary returns.</p> <p>02. Already high incidence of duty on the imported product. This product is already subjected to a very high rate of tax even though it is actually a raw material of beverage industry. There is customs duty of 20% additional customs duty of 2% as well as regulatory duty of 5% which makes a total of 27% duty to protect the domestic industry and generate more revenue collection.</p> <p>03. Domestic Industry already incentivized by reduced rate of import duty on raw material: The import duty on raw material i.e. aluminum coil has been reduced to just 11% to enable local manufacturer to compete with the global competitors. Even though Aluminum Lid is a finished product, it is subject to a reduced rate of 11% Custom Duty which is imported as raw material by PABC. Such incentives should ideally have paved way for the local manufacturer to meet the local demand of cans at even more competitive rates doing away with the need of imposing any anti-dumping duty.</p> <p>04. Negative impact on beverage industry: The local beverage industry is a major contributor to the national exchequer. Some of the large companies import cans according to their unique specifications and standards. Such restrictions will be detrimental to the interests of these companies who will be forced to purchase the Cans from the only available local manufacturer on the terms dictated by PABC.</p> <p>05. Quality controls of Cans might be compromised: It is most likely that the quality of the</p>	<p>exported from alleged dumped sources. Importers/users are free to import aluminum beverage cans from non-dumped sources.</p> <p>Imposition of Customs Duty does not fall under the purview of the Commission.</p> <p>The Commission has considered the tariff structure of the domestic industry in its preliminary determination report and the same has been taken in consideration while making determination of material retardation of the establishment of the domestic industry.</p> <p>There is no bar on the customers to purchase from the PABC. Antidumping Duties will be imposed only on the dumped sources. Customers can purchase from non-dumped sources, even from dumped sources, after paying antidumping duties.</p> <p>As per industrial norms, customers of aluminum</p>
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<p>locally supplied cans may not be up to the required standards or the absence of any competition or checks. Any substandard lot of cans can turn in to a serious problem if it caused any harm to the consumers of any beverage. It will also tarnish the consumer confidence on the brand of the beverage.</p> <p>06. Minimal impact of preferential trade agreement: The import data reveals that the highest value of imports of cans is from Turkey, UAE and Jordan with whom Pakistan does not have any preferential trade agreement which means that the duty of 27% is being paid on imports of cans from these countries. Pakistan has a free trade agreement with Sri Lanka from where cans could be imported by paying lower rates of 7% duty. However, the share of imports of Aluminum Cans under HS Code of 761290 from Sri Lanka is mere 3.7% which means that there is no case of dumping of cans in Pakistan.</p> <p><b><u>Comments of Ceylon Beverage Can Private Limited</u></b></p> <p>1. Section 20 (b) of the Act requires the Application to include sufficient evidence of dumping and injury. Furthermore, the Application, under Rule 3 of the Rules, shall contain such information as is reasonably available to the Applicant on the following (among others): (i) information on prices of the investigated product both domestic and export; (ii) information on an evolution of volume of the allegedly dumped imports, (iii) the effect of such imports on prices of the domestic like product and the consequent impact of the imports on the domestic industry, as demonstrated by relevant factors and indices having a bearing on the state of the Pakistan industry, such as those listed in Section 15, 16, 17 and 18 of the Act.</p> <p>2. The Applicant has failed to provide any of the relevant information that is required for an</p>	<p>beverage cans check the specifications of the can prior to purchasing the product. Cans are purchased only if they meets the quality standards.</p> <p>Sri Lanka’s share in imports was 9.70 percent of total imports during the POI.</p> <p>Prior to initiation of the investigation, the Commission evaluated the information contained in the Application. The Commission determined that there is, prima facie, sufficient evidence to initiate this antidumping investigation.</p> <p>Non-Confidential summaries of the confidential</p>
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<p>interested party to draw an intelligible conclusion of the substance of the information provided, as <u>information relating to prices, information relating to volume of dumped products and effects of imports has been deliberately categorised as being confidential and the summaries provided of the same do not permit any interested party to draw the conclusion that dumping and/or material retardation has been caused by the import of Aluminium Beverage Cans into the economy of Pakistan.</u></p> <p>3. In the absence of such information, the requirements of Section 20 of the Act remain unsatisfied. It is to be noted that Section 20 of the Act is of cardinal importance as the absence of fulfilling its requirements question the sanctity of the entire investigation that the Commission will undertake.</p> <p>4. Section 155H of the Customs Act, 1969 requires mandatory respect of confidentiality of the information gathered by the relevant customs authority and only allows its usage in limited respects. For ease of reference, we have reproduced Section 155H as follows:</p> <p style="text-align: center;"><i>“All trade information gathered by Customs during clearance of goods shall be confidential and shall not be used except for</i></p> <p style="text-align: center;">–</p> <p style="text-align: center;"><i>(a) statistical purposes by the department and other Government organizations; or</i></p> <p style="text-align: center;"><i>(b) purposes of comparison and evidence [by the appropriate officer of customs] as against other imports and exports; or</i></p> <p style="text-align: center;"><i>(c) production as evidence before a legal forum or an organization explicitly so authorized by the Federal Government;</i></p> <p style="text-align: center;"><i>and any disclosure, publishing or</i></p>	<p>information were provided in the non-confidential version of the application. The Commission also prepared initiation memo in non-confidential version whereby it provided non-confidential summaries of the information withheld as confidential.</p> <p>The Commission initiated the investigation after complying with the requirement of Section 20 of the Act.</p> <p>There is no violation of Section 155H of the Customs Act 1969 since the Applicant has nowhere in the Application mentioned that imports figure are based on PRAL data.</p>
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*dissemination of trade information of any person except as provided above without his explicit permission to any other person shall be an offence."*

5. Accordingly, the data gathered by customs authorities can only be used for purposes specified above and in case of its disclosure, explicit permission has to be sought from the person to whom it relates. As we understand, the Applicant had no authority to obtain import data especially in the absence of explicit authority from whom it relates to.

6. To our utter surprise, Section 7 of the Application has been provided on a confidential basis and the same data has been claimed confidential from whom it relates to. In the entire Application, the import data has been claimed confidential. The Commission should not have accepted the same as the Applicant is in clear violation of Section 155H and Section 31 of the Act and should have refused the Application on this ground alone.

7. It is to be noted that the Applicant does not have the authority to obtain information which relates to an Exporter without the express permission of the Exporter. Secondly, if any such information has been obtained, the Applicant is under a duty to provide the same information to the Exporters. Failure to do any of the above, renders an application null and void and loses any legal effect in the eyes of the law.

8. In light of the same, the Applicant was under a duty to furnish non-confidential summaries of confidential information and such non-confidential summaries should permit a reasonable understanding of the substance of the information submitted in confidence. The non-confidential version of the Application does not permit a reasonable understanding of the substance of the

In this investigation, number of exporters from each origin is very small. e.g. there is only one exporter each from Jordan, Turkey and Sri Lanka and there are only two exporters from UAE. In case the Commission discloses the actual export price from each dumped source, an exporter can easily calculate the export price of other exporter.

There is no violation of Section 155H of the Customs Act 1969 since the Applicant has nowhere in the Application mentioned that import figures are based on PRAL data.

The Application contains non-confidential summaries of the confidential information. The Commission prepared initiation memo, non-confidential version of which, provides information on the injury factors claimed by the Applicant. The non-confidential version of the initiation memo has information on how the Applicant has made allegation of dumping.

<p>information and, therefore, the Exporter and other interested parties are handicapped in commenting on substantial parts of the information provided by the Applicant.</p> <p>9. It is pertinent to note that in the situation where confidentiality is claimed by the Applicant, the underlining principle of such non-disclosure would be that disclosure of the same would be <u>of significant competitive advantage to a competitor or that the Applicant may be ominously affected by the supply of the same</u>. It is submitted that neither scenario is present in this situation as the Applicant has even kept such matters confidential which are in the public domain. A mere unsubstantiated statement has been provided and effectively the Applicant has failed to provide any reason how the disclosure of such information would affect them. Therefore, the Commission was under a duty placed by Section 23 and Section 31 of the Act to verify and check the accuracy and adequacy of any reasons provided, which the Commission has failed to do in this instance.</p> <p>10. In section 7 of the Non Confidential Application, the indexation does not permit a reasonable understanding of the substance of the information submitted and is a complete violation Section 31 of the Act;</p> <p>11. In Table-2 of the Non-Confidential Application, the indexation does not permit a reasonable understanding of the substance of the information submitted and is a complete violation Section 31 of the Act;</p> <p>12. In Table-2 of the Non-Confidential Application, the analysis that has been provided in the form of a summary pursuant to Section 31 (5) is defective and does not permit a reasonable</p>	<p>Ceylon Beverage Cans may kindly indicate specifically that information, which was available in the public domain, has been kept confidential by the Applicant.</p> <p>Section 7 of the Application contains information about Export Prices from alleged dumped sources.</p> <p>Table-2 contains the normal value of the alleged dumped sources in indexed form. Indexation provides reasonable understanding of the substance.</p> <p>Detailed working of the normal value from each alleged dumped source was obtained and the same was placed in the public file.</p>
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<p>understanding of the substance of the information provided; and</p> <p>13. It is pertinent to note that the information/data provided in Table 4, 6, 9, 11, 12, 13, 15, 20, 22, 23, 26 &amp; 29 of the Non-Confidential Application, which is indexed under the umbrella of Section 31, fail to permit interested parties from drawing a reasonable understanding of data/information at hand.</p> <p>14. The Non-Confidential Application shows significant shortcomings and does not provide a reasonable understanding of the information provided in confidence. Therefore, the Exporters have not been provided sufficient opportunity to raise objections on the allegations being made nor have other interested parties been given the opportunity to adequately comment on the same. The Application, therefore, does not comply with the necessary standards laid down according to the Act as well as the Anti-Dumping Agreements and should under no circumstances have been accepted.</p> <p>15. The Applicant has falsely claimed in the Application that it began commercial production in September 2017. This is factually incorrect as the Applicant started commercial production in May 2017 and was producing the Investigated Product for Mehran Bottlers Private Limited (with the brand Pakola) up until September 2017. It is pertinent to note that the reason why the Applicant was only selling to Mehran Bottlers Private Limited during this period was due to the fact that it only had approval from one customer – i.e. Mehran Bottlers Private Limited at that point. Moreover, on its website the Applicant claimed on August 2<sup>nd</sup> 2017 that it had produced 1 million cans.</p>	<p>The Applicant has provided non-confidential summary of the Table 4, 6, 9, 11, 12, 13, 15, 20, 22, 23, 26 &amp; 29 as per Section 31 (5) of the Act. This non-confidential summary permit reasonable understanding of the substance of the information submitted in confidence. The Commission has also analyzed these tables and summary of the same is also placed in non-confidential version of initiation memo.</p> <p>The Applicant have complied with Section 31 of the Act by providing the non-confidential summary of documents where required and the same has been elaborated in the non-confidential initiation memo which has been placed in public file for review of the interested parties.</p> <p>The Commission determined the confidentiality of the information provided on confidential basis in its initiation memo. Documents such as business plan and calculation of normal value, non-confidential version of which were not provided with the application, were subsequently obtained from the Applicant and the same were placed in the public file.</p> <p>The company announced to commence its commercial operations from May 22, 2017. However subsequent to the same, the can manufacturing plant and other equipment were encountering problems and were in the process of being tested/calibrated. Such testing and commissioning continued till September 12, 2017 and sales of cans up to that period were as a result of trial production.</p>
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<p>16. In Section 8 (page 12) of the Non-Confidential Application, it is stated that the Normal Value is based on the constructed cost method which is confidential in nature.</p> <p>17. Firstly, given limited access to the Applicant's determination of normal value, we believe that the construction of the same must have been through the use of information publically available. Why in such a case the same has been claimed "confidential".</p> <p>18. Secondly, the Commission is under a duty placed by Section 6 of the Act that only in the circumstances where there is evidence that there are no sales of a like product in the ordinary course of trade in the domestic market or when such sales do not permit a fair comparison, the Commission shall establish normal value by taking the comparable price paid in an appropriate third country or construct the normal value.</p> <p>19. The Applicant has not furnished any reasons as to why the methods provided by Section 5 of the Act were not employed to establish Normal value. A mere statement that "<i>efforts were made</i>" do not fulfil the requirements of Section 6 of the Act. Furthermore, the Applicant deliberately marked the calculations of normal value as confidential, therefore any interested party has to extinguish their rights as to respond to the accuracy of the same.</p> <p>20. In Table 1 of the Non-Confidential Application, the Applicant has claimed confidentiality on the calculations of Export price and has not provided reasons to substantiate such a claim. Again, since this relates to the Exporter, the illegally obtained information should have been shared with the Exporters.</p>	<p>The Applicant marked the calculation of normal value as confidential due to the fact that it was based on the cost of production of the Applicant. The Applicant did not provide the non-confidential version of the calculation of the normal value. However, the same was obtained by the Commission, after initiation of the investigation, and the same was placed in the public file.</p> <p>The representative of the Applicant has visited the exporting countries to get evidence of normal value but could not do so as the investigated product is not a retail sales product rather it is an industrial raw material of carbonated soft drink manufacturers.</p> <p>As above.</p> <p>The Applicant has provided alleged dumping margins in the Application. The Commission has also disclosed indexed figures of export price, normal value and dumping margin it is initiation memo.</p>
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<p>21. It is therefore to be noted that since the calculations of the dumping margin have been kept confidential, there is no positive evidence to substantiate that any significant or substantial margin of dumping has taken place.</p> <p>22. Firstly, the information on export price have been illegally obtained by violating Section 155H of the Customs Act and the illegality has rendered the application null and void.</p> <p>23. Secondly, even though Table-1 of the Application states that a confidential summary will be provided to explain the calculations of export price, no such summary has been provided. This has resulted in crippling the Exporters in providing a meaningful response or to articulate on whether the calculations follow the methodology prescribed by law.</p> <p>24. The Respondent most respectfully submits that the normal value constructed by the Applicant within the Application is totally incorrect and it does not represent the actual prices of the Investigated Product in Sri Lanka.</p> <p>25. While constructing the normal value, the Applicant in Section 8 of the Application had failed to provide reasons as to why the normal value has been constructed and why the requirements of Section 5 of the Act have been dispensed with. It is pertinent to note that the Commission does not bear the responsibility of accepting information that the Applicant provides, even if the information is incorrect and unsubstantiated in terms of fact and law. The Commission under Section 23 of the Act, is duty bound to verify the accuracy and adequacy of the information provided and also has the power to solicit, verify, gather or obtain any additional</p>	<p>As above.</p> <p>The Commission has provided non-confidential summary of the Export Price in the non-confidential version of the initiation memo.</p> <p>The Commission has determined normal value of Sri Lankan exporter on the basis of information provided by it for the purposes of this preliminary determination.</p> <p>The Applicant showed efforts made to obtain prices of investigated product from alleged dumped sources and was not been able to get these prices. Alternatively, the Applicant constructed the normal value. The Commission has examined the Adequacy and accuracy of the Application before initiation of the Application fulfilling the Section 20 of the Act.</p>
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<p>information required to ensure that the purview of the Anti-Dumping law is followed to its full letter and spirit.</p> <p>26. In the Application, the Applicant has claimed material retardation on account of the following:</p> <ul style="list-style-type: none"><li>- Volume of imports</li><li>- Price undercutting</li><li>- price depression</li><li>- Price suppression</li><li>- decline in net profit</li><li>- loss of market share</li><li>- decrease in capacity utilization</li><li>- decline in productivity</li><li>- decline in growth</li><li>- decrease in return on investment</li><li>- ability to raise investment</li><li>- cash flow</li><li>- increase in wages and salaries</li><li>- inventories</li></ul> <p>27. We take this opportunity to submit that the Applicant has stated that they are suffering injury based on the standard checklist of all possible forms of injury. Upon critical analysis of the information provided in the Application, market trends and other information publicly available concerning the Applicant it becomes apparent that the Applicant has formed a baseless claim of material retardation in its Application.</p> <p>28. It is imperative to note that imports from Sri Lanka only account for 6.25% of the total imports during the POI. Therefore, any assertion that material retardation to the establishment of the Domestic Industry is a result of imports from Sri Lanka is baseless. Moreover, between July 17 – June 18, the total imports of the Investigated Product saw a substantial decline which illustrates the gradual establishment of the nascent Domestic Industry.</p>	<p>The Applicant has claimed material retardation standard of injury in the Application.</p> <p>Imports from Sri Lanka accounts for 9.70 percent of total imports of investigated product.</p>
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<p>29. While looking at the volumes of imports in Table 5 of the Application, it is clearly evident that imports of Investigated Product from Sri Lanka is the lowest and the nearest volumes are from Turkey that stands at 15.17%. Given the marked difference between the volumes coming from other Exporting Countries <i>vis</i> Sri Lanka, cumulative assessment under Section 16 of the Act must not be allowed let alone assessed.</p> <p>30. The Applicant has claimed that its production capacity is 750 million cans, expandable up to 1.2 billion cans. Moreover, the Applicant claims the Pakistan market is 250-300 million cans per annum. It is pertinent to note that even if the Applicant caters for the whole of the domestic market, it will have a capacity utilization of only 33-40%. Further, even if the Applicant caters to the whole of the Afghanistan market, which is estimated to be 150-200 million cans, the combined complete Pakistan and Afghanistan market will result in a capacity utilization of 53% to 66%.</p> <p>31. Therefore the Applicant's projected capacity utilization at 83% is clearly unrealistic. The actual achieved capacity utilization of 46.41% is actually a very good achievement keeping in mind the capacities of the markets the Applicant was set up to sell to.</p> <p>32. It is to be noted that the indexation provided for Net Profit does not allow the Respondent to draw a reasonable understanding of the substance of the information that has been provided. It is claimed in the Application that due to increasing volumes of dumped imports which coincided with low-capacity utilization and a drop in unit sales values by the domestic industry and decreased profitability, net profit decreased and there was loss of revenue. This is directly</p>	<p>As per Section 16 of the Act, a cumulative assessment of the imports is appropriate in the light of (i) the conditions of competition between imports and (ii) the Conditions of competition between imports and domestic like product. The Commission analyzed the weighted average C&amp;F price of the investigated product from dumped sources and concluded that there was a competition between investigated product and domestic like product in terms of price, market share and sale etc.</p> <p>Please see Para 36 of this report.</p> <p>The Commission has examined the Applicant profit/loss of the Applicant and concluded that reason for net loss during the second and third quarter of POI is due to price depression and price undercutting.</p>
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<p>attributable to poor management decisions and failing marketing strategies on account of the Applicant.</p> <p>33. Taking into consideration the fact that the Domestic Industry is in its nascent stage coupled with poor management decisions and failing marketing strategies on account of the Applicant, it is unrealistic to assume that it would see return on investment at this stage.</p> <p>34. It is pertinent to note that the Applicant has failed to mention the aluminium 'ends' that are an essential part of the Investigated Product. Importers of the Investigated Product and customers of the Applicant generally do not buy the cans separate and ends separate as it can cause compatibility and quality issues. Therefore, the ends are an essential part of the finished product that is a can.</p> <p>35. The reason the Applicant has not mentioned this product in their Application is because they do not produce the ends themselves, rather they import them from different sources. After importing, the Applicant packages them with the cans and sell them to the customers. The customers prefer buying cans and ends that are manufactured from the same source to avoid compatibility and quality problems. Since the Applicant is unable to provide ends produced by itself, this hampers the attractiveness of the product offered by it. Moreover, the Applicant does not produce 330ml cans or 185ml cans which other exporters do and have been supplying in the market. Therefore, due to the aforesaid reasons, the Applicant has a reduced market share.</p> <p>36. There are various reasons why the sale of</p>	<p>The Commission has examined the Return on investment of the domestic industry and it was concluded that the low return on investment is attributed to dumped imports of investigated product. There is likelihood that no new investment will be made by the Applicant due to negative rate of return on investment. The Commission has not received any information from importers/users confirming that they prefer to buy cans from the manufacturer who also manufactures ends for the cans. Furthermore, no user/importer has highlighted any compatibility issues between cans produced by it and the ends produced by some other manufacturer.</p> <p>The Commission has also excluded 330ml and 185ml cans from the scope of the investigation. The market share has been only analyzed for the investigated product i.e. 250 ml and 300 ml only. The Applicant market share in absolute term has increased but less than projection made by the Applicant in its business plan.</p>
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<p>the Applicant was low during the POI, and especially during the first two quarters of POI. The biggest reason is that the Applicant did not have the required approvals to start selling to its customers. The customers 'Pakistan Beverages Limited' and 'Haidri Beverages Limited' are both part of the Pepsi Cola System. Combined, the customers form more than 50% of the domestic market. The approvals received by the Applicant from the Pepsi Cola system were on the following dates:</p> <ul style="list-style-type: none"><li>i. Jan 2018 – 250ml for 7up, 7up Free, and Pepsi</li><li>ii. Feb 2018 – 250ml for Sting Red, Dew, Mirinda</li><li>iii. March 2018 – 300ml for all flavours</li></ul> <p>37. The above dates give a clear indication as to why the Applicant had such low sales in the first two quarters of the POI. Also once approval has been received for the different sizes and flavours, it is a slow process to increase the sale because the customers want to test the products for quality for longer periods in the commercial market and receive feedback from consumers.</p> <p>38. The Applicant has admitted in the Application that it suffered on account of price effects due to a reduction in its selling price, which was adjusted because the Applicant was trying to increase its current market share in the total domestic market.</p> <p>39. The data that has been provided in the Application is clearly reflecting that not only have the salaries and wages of the employees increased, the productivity per worker has also increased. Therefore, we are unable to understand as to how the Domestic Industry has suffered injury.</p> <p>40. The Commission is obliged to examine known factors, other than imports of the Investigated Product, which are injuring the</p>	<p>There were two reasons for low production during the period Sep 17 – Dec 17. Firstly, due to seasonal factor, demand was at its lowest during the last quarter of the calendar year. It is the same period in which domestic industry started its commercial operations. Secondly, as per industrial norms, the Applicant has to get approvals of specification of aluminum beverage cans from carbonated soft drink fillers before starting the sales of the product. It took, the Applicant, sometime to get approvals of domestic like product from its customers. By January 2018, the Applicant secured approvals from the major customers. Necessary approvals from major customers coupled with seasonal factor led to increase in Applicant's production during first and second quarter of year 2018.</p> <p>The Commission has examined the sales and output of Applicant. The Applicant sales in absolute terms have increased during the POI but remained less than projection done by the Applicant in its business plan due to dumped imports. The Commission has analyzed price effect in preliminary determination and it was concluded that Applicant suffered material retardation on account of price undercutting and price depression.</p> <p>The Commission has examined the employment, salaries &amp; wages and productivity of the domestic industry. The Commission has concluded that domestic industry did not suffer material retardation of the establishment of the domestic industry on account of employment, salaries &amp; wages and productivity per worker. The Applicant has discussed other factors</p>
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<p>domestic industry to ensure that any injury caused by such other factors is not misattributed in accordance with Section 18 of the Act and Article 3.5 of the Anti-Dumping Agreement.</p> <p>41. There is ample protection provided to the Domestic Industry in the form of existing duty structure. The custom duty in place goes up to 20%, the sales tax up to 17%, withholding income tax 5.5%, regulatory duty 5% and additional customs duty goes up to 2%. The total aggregate becomes 49.5%. This clearly reflects that in terms of pricing, the Exporters of the Investigated Product are already handicapped and further imposition of definitive anti-dumping duties, will create an unequal playing field for the exporters.</p> <p><b><u>Comments by Pakistan Aluminum Beverage Cans, Pakistan</u></b></p> <p>01. Ceylon Beverage Cans has not provided the non-confidential version of the following:-</p> <ul style="list-style-type: none"><li>▪ Appendix A - Audited Accounts of Snackings (Private) Limited. (Related Company of Ceylon)</li><li>▪ Appendix –B - Information on exports to other countries</li><li>▪ Appendix C-3 - Information on exports to Pakistan</li><li>▪ Appendix C - Information on total quantity and value of sales</li><li>▪ Appendix-F - Production Process Flow Chart</li><li>▪ Appendix-H - Raw material calculation</li><li>▪ Table under para xii of Deficiency letter - Scrap percentages</li></ul> <p>02. It is submitted that commission payment when accrued is liable to be treated as an adjustment in the export price because irrelevant of time of payment, CEYLON after accrual of the</p>	<p>provided in Section 18 of the Act in detail in the Application which were also examined by the Commission while making preliminary determination as per Act.</p> <p>The Commission has considered the customs duty and regulatory duty while calculating the landed cost of the investigated product.</p> <p>The following documents were provided by the exporter and the same have been placed in the Public File.</p> <ul style="list-style-type: none"><li>▪ Audited Accounts of Snackings (Private) Limited.<ul style="list-style-type: none"><li>▪ Information on exports to other countries</li><li>▪ Information on total quantity and value of sales</li><li>▪ Production Process Flow Chart</li><li>▪ Raw material calculation</li></ul></li></ul> <p>Non Confidential summary of table under para-xii of Deficiency letter-Scrap Percentage is given in applicant's letter which has been placed in the public file.</p> <p>The commission has considered the adjustment</p>
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**Preliminary Determination In Anti-Dumping Investigation Against Dumped Imports of Aluminium Beverage Cans into Pakistan Originating in and/or Exported from Jordan, Sri Lanka and UAE and Termination of Investigation on Imports of Aluminum Beverage Cans from Turkey**

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<p>commission will have to pay the commission to the agent. Therefore, PABC requests the Commission to adjust the expenses of CEYLON on account of its commission both paid and payable in its export price.</p> <p>03. As per deficiency letter, the Commission has asked CEYLON to provide value of can ends which has been provided by CEYLON in its response to deficiency letter of the Commission as Appendix C-3. However, the revised Appendix-C3 is only provided to the Commission in confidence and non-confidential summary is provided for the same which is in violation of the provisions of Section 31 of the Act.</p> <p>04. The Commission is requested to use price of Aluminium Beverage Cans collectively for body of cans and Ends for the purpose of calculation of export price of Ceylon and hence its dumping margin.</p> <p>05. In response to E-1, CEYLON has provided a non-confidential summary of Appendix-1 which is not complying with the requirements of Section 31 of the Act. However non-confidential version is not properly indexed which does not provide a reasonable understanding of the substance of information kept confidential. The Commission is requested to ask CEYLON to provide proper non-confidential summary of Appendix-1 complying the requirements of Section 31(5) of the Act.</p> <p>06. In response to para F-1.1 of the exporter's questionnaire, CEYLON has specified types of scrap generated at different stages of production. The Commission, through its deficiency letter, asked CEYLON to specify percentage of scrap generated at each stage of production which was provided by CEYLON on confidential basis. CEYLON has actually violated the provisions of Section 31 of the Act since</p>	<p>of Commission (paid &amp;payable) in the Preliminary Determination.</p> <p>The export price of can body has been used for calculation of export price of Ceylon beverage cans.</p> <p>Revised Non Confidential summary of Appendix-I has been placed in the Public File.</p> <p>Non Confidential Summary of the percentage of scrap generated at various stages of production is provided by the CEYLON Beverages in its letter dated January 28, 2019 in the Public File.</p>
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Preliminary Determination In Anti-Dumping Investigation Against Dumped Imports of Aluminium Beverage Cans into Pakistan  
Originating in and/or Exported from Jordan, Sri Lanka and UAE and Termination of Investigation on Imports of Aluminum Beverage  
Cans from Turkey

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it kept such information without providing any reason to warrant confidentiality and without providing any non-confidential summary of the same.	
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