



**Government of Pakistan
National Tariff Commission**

REPORT

ON

**Final Determination and Levy of Definitive Anti-Dumping
Duties on Dumped Imports of Tinsplate into Pakistan Originating
in and/or Exported from People's Republic of China, European
Union, Republic of South Africa and the United States of America.**

A.D.C No. 53/2018/NTC/TP

May 29, 2019

Final Determination and Levy of Definitive Antidumping Duties on Dumped Imports of Tinplate Originating in and/or Exported from China, European Union, South Africa and United States of America

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 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 has conducted an investigation on alleged dumping of Tin Plate of thickness of less than 0.5 mm and of a width of 600 mm or more (“Tinplate”) into Pakistan originating in and/or exported from the People's Republic of China, European Union, Republic of South Africa and the United States of America (hereinafter referred to as the “Exporting Countries”), under the Act and the Rules. The Commission has made final determination in this investigation under Section 39 of the Act. This report on final determination has been issued in accordance with Section 39(5) of the Act and Article 12.2 of the Agreement on Antidumping.

A. PROCEDURE

3. The following procedure has been adopted to undertake the investigation.

4. Receipt of Application

4.1 On June 28, 2018, the Commission received a written application under Section 20 of the Act from Siddiqsons Tin Plate Limited, Karachi (the “Applicant”). The application was filed by the Applicant, who is the sole producer of Tinplate in Pakistan.

4.2 The Applicant alleged that the Exporting Countries have been exporting Tinplate to Pakistan at dumped prices, causing material injury to Pakistan’s domestic industry producing Tinplate.

4.3 The Commission, in accordance with Section 21 of the Act, notified the receipt of application on July 3, 2018 to Embassies of Exporting Countries through Ministry of Foreign Affairs.

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5. Evaluation and Examination of the Application

The examination of the application showed that it contained sufficient evidence of alleged dumping of Tinplate into Pakistan from the Exporting Countries and injury to the domestic industry, thereby, meeting the it met the requirements of Section 20 of the Act. Requirements of Rule 3 of the Rules, which relate to the submission of information prescribed therein, were also found to have been met.

6. The Domestic Industry

6.1 The domestic industry manufacturing Tinplate comprises of only one unit i.e. the Applicant.

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

“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” may 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”.

6.3 The Applicant itself has imported Tinplate during the period of investigation (“POI”). It has imported xxx MT of Tinplate from the Exporting Countries during the period between July 1, 2017 to June 30, 2018. The Applicant has stated as follows in this regard:

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“At times there was either factory shut down or non-availability of its basic material at competitive prices. In order to maintain its existence in the market as well as satisfy the need of its customers small quantity of ETP was also imported by the applicant during the proposed dumping POI of April 2017 – March 2018. For the reason of import of meager quantity of the allegedly dumped investigated product, the applicant may not be excluded from the definition of domestic industry as it is the sole producer of the domestic like product and it has not behaved differently specially with reference to this antidumping application. The question of different behavior has already been decided by the National Tariff Commission (the commission) in a number of such cases.”

6.4 Keeping in view the definition of the domestic industry set out in Section 2(d) of the Act, provisions of the WTO’s Antidumping Agreement and jurisprudence of WTO’s Dispute Settlement Body, the Commission determined at the time of initiation of the investigation and in preliminary determination that the Applicant is the domestic Tinplate industry and is eligible to file an application under Section 20 of the Act. After initiation of the investigation certain interested parties submitted that as the Applicant has imported itself the Tinplate during the POI, therefore, it cannot be considered as “the domestic industry” for the purposes of the Act and it cannot file an application under Section 20 of the Act.

6.5 During the hearing held on March 12, 2019 in this investigation (paragraph 18.2 infra) some interested parties raised concerns on interpretation of the Commission of Section 2(d) of the Act, specifically discretion or authority of the Commission provided in this section by using the word “may” for the purposes of exclusion of a producer from the domestic industry based on its relationship with the importer/exporter or the producer itself is importer of the investigated product. According to them, the discretion may only be exercisable in relation to “related parties” and not in relation to domestic producers who themselves are importing the investigated product. For this purpose, a reference was made to: “*A Handbook on Anti-dumping Investigations*” by Judith Czako, Johann Human and Jorge Miranda.

6.6 Pakistan Vanaspati Manufacturer Association (“PVMA”) filed an appeal No. 321/ 2019 at Anti-Dumping Appellate Tribunal, Islamabad (“Tribunal”) on February 27, 2019 and challenged the Commission’s preliminary determination dated January 28, 2019 including determination of the domestic industry. After hearing the Tribunal vide judgement dated April 23, 2019 has held as under;

“In the circumstances, we understand that the Commission may take necessary action as to the locus standi of respondent no. 2 and competency of his application keeping in view the observation of this Tribunal made in this behalf and strictly in accordance with the spirit of the definition of “domestic industry” provided in the Act.

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In view of the above, while partially accepting the appeal to the extent of definition of "domestic industry", the matter is remanded to the Commission with the direction to take necessary action in view of the aforementioned observations while making final determination report".

6.7 The Tribunal's observations are reproduced below:

- i. *"16. We have gone through the written material, provided by the parties and heard the parties counsel in detail. The issue whether the Respondent No-2 is qualified to file an application being domestic industry under the Anti-dumping law is the most significant in nature because if Respondent No-2 is disqualified under section 2 (d) of the Act to be called domestic Industry, the whole proceedings become a house of cards. All the three learned counsel appearing on behalf of Appellant, Respondent No-1 and Respondent No-2 have tried their best to assist this Tribunal on this issue coming up with their own arguments according to their own perception. However, this issue needs more clarification. Section 20 of the Act provides that; "subject to section 24 and save as provided for in section 25, an investigation by the Commission shall only be initiated upon a written application by or on behalf of "domestic industry". Section 24 of the Act provides that; "for the purposes of section 20, an application shall be considered to have been made by or on behalf of domestic industry only if it is supported by those domestic producers whose collective output constitutes more than 50 % of the total production of the domestic like product produced by that portion of the domestic industry, expressing either support for or opposition to the application".*
- ii. *"17 It is clear that an application can only be filed by or on behalf of domestic industry. Now to see how domestic industry is defined, we have to go through the definition of the "domestic Industry" provided in Section 2 (d) of the Act....." Now plain reading of the aforesaid provision indicates that the definition speaks about the domestic producers except when any such domestic producers are related to the exporters or importers, or themselves importers of allegedly dumped investigated products. The definition further says that in such a case "domestic industry" may mean the rest of the domestic producers. It means after excluding such disqualified domestic producers, the rest of the domestic producers would be called 'domestic industries'. The definition of Domestic Industry is clear and unambiguous. It is an admitted fact that the domestic industry manufacturing Tin plate comprises of only one unit i.e, Respondent No-2. Although Respondent No-2 is not related to any importer or exporter, however, it imported Tin Plate itself from exporting countries during the period of investigation. The plea that quantity imported by Respondent No-2 is not that enough which could earn significant financial benefit from the imports of the investigated product is not valid as in the Anti-Dumping Act, nowhere such quantity has been mentioned beyond which an import of the allegedly dumped investigated product is prohibited. The law clearly excludes such domestic producers from the definition of domestic industry,*

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who themselves import the alleged dumped investigated product leaving rest of the domestic producers to represent domestic industry.”

- iii. *“18 Coming to the contents of the hand book of Anti-Dumping Investigations, published by World Trade Organization (WTO), admittedly it as been provided in the hand book that the authority concerned in such kind of situation has discretion in determining on a case-by-case basis whether circumstances justify excluding related producers or domestic producers who also import from the domestic industry. The aforesaid guidance provided in the hand book on the Anti-dumping Investigations has weightage, however, in the presence of clear provision in Law of Land, such weightage has become neutral. The law of land providing something very specifically has to prevail upon, such guidelines and likewise precedents established by different authorities. In these circumstances, we understand that the definition of domestic industry provided in the Act disqualifies Respondent No-2 to use the title of domestic industry.”*
- iv. *“19 As regards the issues like material injury and maintenance of confidentiality, we understand that the National Tariff Commission has very clearly established in its impugned Preliminary Determination that material injury of that volume has been occurred to the domestic industry which has compelled the Commission to impose Anti-Dumping Duties on dumped imports of the investigated product strictly observing the criteria prescribed under the Act. Regarding confidentiality, section 31 of the Act clearly provides that subject to sub section 2, the Commission shall, during and after investigation, keep confidential any information submitted to it and such information shall not be disclosed without specific permission of the party submitting it. In presence of the aforesaid provision, the Commission has no choice but to keep the information confidential if so desired by the party submitting it. Section 31 (5) on the other hand provides that any party submitting any information with the request to keep it confidential shall furnish non confidential summary of all such information. These non confidential summaries have been placed in the public file for information and inspection of all stake holders. After going through the record and listening the parties we understand that all such information which were not confidential as provided under section 31 of the Act have been placed on the file for perusal of the parties concerned. In these circumstances, no violation of, the law and procedure could be seen. Even the appellants could not specifically mention anything neither in its Appeal nor during the arguments by his learned counsel which could cause damage to its interest. In such kind of situation, we are of the view that the objection raised by the appellants in this regard has no substance for any remedy.”*
- v. *“20 After hearing learned counsel for the parties and analyzing the material available with us we conclude that material injury is quite evident on the basis of which the Commission has imposed anti-dumping duties on the dumped products. Even we could not see any breach with reference to the discipline of confidentiality to be observed in this regard under the Act by the Commission taking care of the interest of all stake holders involved in the matter. Further, issues raised in the Appeal and responded by the*

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Respondent No-2 in its Para-wise comments have also been examined with the assistance provided by learned counsel for the parties during the hearing. We understand that all such objections have no such direct bearing which could affect the Preliminary Determination dated 28th January, 2019 made in the matter by the Commission. However, we have observed that the Commission has grossly mistaken while interpreting the definition of 'domestic industry'. Reliance on the contents of a Hand Book on Anti-Dumping Investigation, published by World Trade Organization is not that relevant because in the presence of specific provision involved in this regard available in the Act, we can not deviate for any other option. The law is very much clear and clearly excludes such domestic producers, who are related to the exporters or importers and are themselves importers of the allegedly dumped investigated product. To save the interest of this area the aforesaid provision further provides that; in such a case "domestic industry" may mean the rest of the domestic producers. In this way the, legislatures has taken care of ' danger of vacuum which could have been created in the absence of such provision."

6.8. The Commission has carefully studied the judgment of the Tribunal. The Commission has also examined the relevant literature including practice of the other countries, jurisprudence of WTO's Dispute Settlement Body and the Handbook on Anti-dumping Investigations published by the WTO. Section 2(d) of the Act is a mirror provision of the Article 4.1 of the WTO's Anti-Dumping Agreement. The Commission is of the view that Section 2(d) of the Act as well as Article 4.1 of the WTO's Anti-Dumping Agreement give an option and discretion to the authority in both cases i.e. related parties as well as importing producers. It does not impose an obligation to exclude related and/or importing producers from the definition of the domestic industry, rather these provisions empowers the authority to exercise discretion on a case to case basis to determine whether circumstances justify exclusion of a producer from the domestic industry. Therefore, the Commission respectfully disagree with Tribunal's observations with respect to the determination of domestic industry in this case.

6.9 It is worth mentioning that Pakistan's earlier anti-dumping law i.e. 'Anti-Dumping Duties Ordinance 2000' did not provide such discretion to the Commission rather, that law imposed an obligation to exclude related and/or importing producers from the definition of the domestic industry. Following was the definition under Section 2(d) of the Anti-Dumping Duties Ordinance 2000:

““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.”

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6.10 Accordingly the earlier law, (the Anti-Dumping Duties Ordinance 2000) contained the word “**shall**” for exclusion of the related and/or importing producers from the definition of the domestic industry. However, the legislator intentionally replaced the word “**shall**” with the word “**may**” in the Act (Anti-Dumping Duties Act 2015) to empower the Commission to exercise discretion on a case to case basis to determine whether circumstances justify exclusion of a producer from the domestic industry. The relevant provision of the Act is reproduced below:

*““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” **may** mean the rest of the domestic producers”*

6.11 The difference between the words “shall” and “may” has been explained by the Supreme Court of Pakistan in case of JJ Abu Bakar Siddique and others versus Collector of Customs, Lahore and another (2004 P T D 2187) as follows:

“(e) Words and phrases-----

“-----May----Connotation and applicability--- Word 'may' is discretionary and an enabling word and unless the subject-matter shows that the exercise of power given by the provision using the word 'may' was intended to be imperative for the person to whom the power was given, it might not put him under obligation to necessarily exercise such power but if it is capable of being construed as referring to a statutory duty, it is not entirely for such person to exercise or not to exercise the power given to him under the law-- Use of word 'may' in statute in plain meanings is to give discretion to public authorities to act in their option in the manner in which such authorities deem proper but if the public authorities are authorized to discharge their functions in their option in a positive sense, the word 'may' used in the provision can be suggestive of conveying the intention of Legislature of imposing an obligation on them---Word 'may' usually and generally does not mean 'must' or 'shall' but it is always capable of meaning 'must' if the discretionary power is conferred upon a public authority with an obligation under law--- Word 'may' is not always used in statute with the intention and purpose to give uncontrolled powers to an authority rather oftenly it is used to maintain the status of authority on whom the discretionary power is conferred as an obligation and thus the legislative expression in the permissive form sometimes is construed mandatory---- Such however, is only in exceptional circumstances that a power is conferred on a person by saying that he may do a certain thing in his discretion but from the indication of the relevant provisions and the nature of the duty to be done, it appears that exercise of power is obligatory.”

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6.12 The Commission agrees with Tribunal's observation that the Act does not provide guidance or factors and threshold to exercise this discretion by the Commission. Therefore, the Commission has relied on WTO's jurisprudence and practice of the other countries, so that discretion should be exercised in a fair and transparent manner.

6.13 Based on the following, the Commission has determined that the Applicant is the domestic tinplate industry and is eligible to file an application under Section 20 of the Act:

- i. The word "may", which appears in the last sentence of Section 2(d) of the Act gives a discretion to the Commission for exclusion of the producer from the domestic industry. The word "may" is applicable for both situations i.e. related parties as well as importing producer.
- ii. The WTO panel in *EC – Fasteners (China)* found that "*the use of the term 'may' in Article 4.1 makes it clear that investigating authorities are not required to exclude related producers or importing producers*" and that "*there is nothing in Article 3.1, or in Article 4.1, that limits the discretion of investigating authorities to exclude, or not, related or importing domestic producers.*"
- iii. Following is stated at pages 279-280 of the Handbook on Anti-dumping Investigations (which is referred by the interested parties, see paragraph 11.2 supra):

“Article 4.1(i) permits the exclusion from the domestic industry of domestic producers that “are related to the exporters or importers or themselves importers of the allegedly dumped product.” This related party issue is likely to rise in the early stages of the anti-dumping investigation, but need to be revisited based on information collected in the course of the investigation.

Exclusion of related producers is not mandatory, and investigating authorities may exercise their discretion in determining on a case-by-case basis whether circumstances justify excluding related producers or domestic producers who also import.....”
- iv. Exclusion of any producer from the definition of the domestic industry is conditional i.e. dependent upon the behavior of the producer concerned. Section 2(d) of the Act stipulates that the concerned producer may be excluded from domestic industry if it behaves differently from other producers. The question of different behavior does not arise in this case as the importing producer itself is the Applicant.

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- v. The Applicant is the legitimate producer of Tinsplate in Pakistan and has enough installed production capacity to fulfill entire Tinsplate demand of the country. Therefore, Applicant's primary objective lies in domestic production and sales of the domestic like product rather than in imports of the investigated product.
- vi. The Applicant is the only unit who produces and sells the domestic like product in the domestic market. Therefore, the Applicant's interest lies in domestic production instead of imports. Further, as the Applicant is only producer in the industry, therefore, if it is denied to file the application under the Act, the right of the domestic industry will be deprived. However, for domestic production, a level playing field should be available to the domestic industry.
- vii. Quantity imported by the Applicant from the Exporting Countries accounts for 11.00 percent of dumped imports during POI and 10.52 percent of total imports. However, the quantity imported by the Applicant accounts for 31 percent and 32 percent of its production and domestic sales respectively during the year July 2017 to June 2018.

7. Standing of the Application

7.1 The application fulfils 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.

7.2 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.

7.3 The application has been filed by the Applicant, who is the sole producer of the Tinsplate in the country and represents 100 percent of domestic production. Therefore, it is determined that the application has been made by the domestic industry as it fulfils the requirements of Section 24 of the Act.

8. Applicant's View

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

- i. Exporters/ producers from exporting countries are exporting Tinplate to Pakistan at dumped prices;
- ii. Tinplate imported from exporting countries and produced in Pakistan by the domestic industry are like products; and
- iii. Exports of Tinplate by the exporters/producers from the Exporting Countries to Pakistan at dumped prices have caused and is causing material injury to the domestic industry producing Tinplate mainly through:
 - a. Significant increase in alleged volume of dumped imports;
 - b. Price undercutting;
 - c. Price suppression;
 - d. Decline in market share;
 - e. Decline in sales;
 - f. Decline in profits;
 - g. Decline in production and capacity utilization;
 - h. Decline in return on investment;
 - i. Decline in cash flows;
 - j. Decline in employment;
 - k. Increase in salaries and wages; and
 - l. Increase in inventories.

8.2 The Applicant submitted to the Commission to;

- i. Initiate an investigation against alleged dumping of Tinplate from the Exporting Countries under Section 23 of the Act;
- ii. Impose appropriate antidumping duties on alleged dumped imports of Tinplate in accordance with Section 50 of the Act; and
- iii. Impose provisional measures under Section 43 of the Act to prevent injury being caused during the investigation.

9. Exporters/Foreign Producers of Tinplate

The Applicant identified only 12 exporters/foreign producers of Tinplate involved in alleged dumping of the Tinplate from the Exporting Countries. However, the Applicant has requested for imposition of anti-dumping duties on all exporters/foreign producers of the investigated product of the Exporting Countries.

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10. Initiation of Investigation

10.1 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 Tinplate into Pakistan from the Exporting Countries and consequent material injury to the domestic industry. The Commission decided to initiate an investigation in the matter and issued a notice of initiation in accordance with Section 27 of the Act. The notice was published in the Official Gazette¹ of Pakistan and in two widely circulated national newspapers² (one in English language and one in Urdu Language) on August 20, 2018. The investigation concerning alleged dumped imports of Tinplate into Pakistan is classified under Pakistan Customs Tariff ("PCT") No³. 7210.1210 and 7210.1290 originating in and/or exported from the Exporting Countries was thus initiated on August 20, 2018.

10.2 In pursuance of Section 27 of the Act, the Commission notified on August 20, 2018 the Embassies of the Exporting Countries in Islamabad of the initiation of investigation (by sending a copy of the notice of initiation) with a request to forward it to all exporters/ producers involved in production, sales and export of Tinplate from the Exporting Countries. In accordance with Section 28 of the Act, the full text of non-confidential version of the application and exporters' questionnaire were also forwarded on August 28, 2018 to the Embassies of Exporting Countries with the request to forward the documents to the exporters/producers in their respective countries as the names and addresses of all the exporters are not known to the Commission.

10.3 On August 29, 2018 a copy of the notice of initiation, non-confidential version of the application and the exporters' questionnaire were sent to known exporters/ producers of Tinplate from the Exporting Countries whose addresses were available with the Commission with a request to register themselves as interested party in the investigation. A copy of the notice of initiation was also sent to known importers and the Applicant on August 29, 2018.

11. Investigated Product, Domestic Like Product and Like Product

¹The official Gazette of Pakistan (Extraordinary) dated August 20, 2018.

²"Dawn" and "Nawa-e-waqt" of August 20, 2018.

³ PCT heading in is equivalent to Harmonized Commodity Description and Coding System up to six-digit level.

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11.1 Sub-sections (k), (e) and (m) of Section 2 of the Act defines investigated product, domestic like product and the 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”.

11.2 Given the definitions set out above the investigated product, domestic like product and like product are identified as follows.

11.3 Investigated Product:

11.3.1 The investigated product is Tinplate of a width of 600 mm or more and of a thickness of less than 0.5 mm, (“Tinplate”) imported into Pakistan from the Exporting Countries. It is classified under PCT Heading Nos. 7210.1210 and 7210.1290.

11.3.2 Investigated product is mainly used to manufacture cans for packaging of edible oils, food stuff, paints and petroleum products etc. The steel sheet used for tinning is commonly known as Black Plate (Tin Mill Black Plate)

11.3.3 The customs tariff structure applicable to the investigated product for the four years is given in the following table:

**Table-I
Tariff Structure**

Year	Custom Duty		FTA Rate	Regulatory Duty	Sales Tax
	7210.1210	7210.1290			
2015-16	20%	10%	China 20% Malaysia: 20%	5%	17%
2016-17	20+1%	10+1%		5%	17%
2017-18	20+1%	10+1%		5%	17%
2018-19	20+2%	11+2%		5%	17%

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Source: FBR

11.4. Domestic Like Product

11.4.2 The domestic like product is Tinplate of a width of 600 mm or more and of a thickness of less than 0.5 mm, (“Tinplate”), manufactured by the domestic industry. It is classified PCT Heading No. 7210.1210 and 7210.1290.

11.4.3 Domestic like product is mainly used to manufacture cans for packaging of edible oils, food stuff, paints and petroleum products etc. The steel sheet used for tinning is commonly known as Black Plate (Tin Mill Black Plate)

11.5. Like Products

11.5.1 In terms of Section 2(m) of the Act, like product means 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.

11.5.2 There is no difference between the investigated product and the domestic like product. Both products are produced with same/similar inputs and manufacturing process. Both the products have same color and appearance. Both products are substitutable in use and application. Therefore, the Commission is satisfied that both products (investigated product and domestic like product) are alike products in terms of Section 2(m) of the Act.

12. Period of Investigation

12.1 In terms of Section 36 of the Act, Period of Investigation (hereinafter referred to as “POI”) is:

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

ii. *“for the purposes of an investigation of injury, the investigation period shall normally cover thirty-six months:*

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

12.2 The POI fixed by the Commission for dumping and injury for the purposes of this investigation as follows:

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For determination of dumping: July 01, 2017 to June 30, 2018

For determination of injury: July 01, 2015 to June 30, 2018

13. Information/Data Gathering

13.1 The Commission issued questionnaire during August 29, 2018 to September 11, 2018 to all known exporters/foreign producers of the Exporting Countries whose addresses were available with the Commission for collection of data/ information necessary for the investigation. The exporters/foreign producers were asked to respond within 37 days of dispatch of the questionnaire. No response was received from any exporter/ foreign producer within stipulated time period. Therefore, reminders were issued to the exporters/foreign producers on October 23, 2018 explaining that the Commission will be constrained to make preliminary and/or final determination of dumping in this investigation on the basis of "Best Information Available" including those contained in the application submitted by the domestic industry, in terms of Section 32 of the Act, if no response of the questionnaire is submitted by the exporters/ foreign producers. However, no meaningful response was received from any exporter/ foreign producer.

Aciers UK Limited

13.2 Aciers UK Limited, United Kingdom submitted its response and explained that it is involved in trading business only and has exported the investigated product to Pakistan during the POI. The questionnaire response received from Aciers UK was substantially deficient as it did not contain the requisite information. A deficiency letter was issued to Aciers UK Limited on October 19, 2018 calling submission of requisite information till November 4, 2018. The response of the Aciers UK Limited was received on November 04, 2018, wherein the company explained that being a trading company it cannot force the producer to provide the required information. Therefore, the response was found deficient on examination as the vital information regarding domestic sales and cost of production was not provided.

13.3 The Commission, through a letter on November 09, 2018 conveyed to Aciers UK Limited that in case of failure to submit requisite information till November 18, 2018 individual dumping margin for Aciers UK Limited will not be determined. However, no further response was received from Aciers UK Limited.

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Gemcor International, USA

13.4 Gemcor International, United States of America submitted its response on November 05, 2018 explaining that the company is involved only in trading business and has exported the investigated product to Pakistan during the POI. The response received from Gemcor International was substantially deficient as it did not contain, the requisite information. Therefore, a deficiency letter was issued to Gemcor International on November 13, 2018 to convey that in case of failure to submit the vital information pertaining to domestic sales and cost of production till November 18, 2018, the Commission will not determine individual dumping margin for Gemcor International. However, no further response has been received from Gemcor International.

13.5 On August 29, 2018, questionnaires were also sent to the importers of the investigated product known to the Commission and these importers were asked to respond within 37 days of dispatch of the questionnaires. Reminders were issued to the importers on October 24, 2018 stating that the Commission would make preliminary and final determination of dumping in this investigation on the basis of "Best Information Available" including those contained in the application submitted by the domestic industry, in terms of Section 32 of the Act. Only one importer i.e. Zamin Containers Industries (Pvt.) Ltd submitted its importer questionnaire response.

13.6 Upon the request of Pakistan Tinplate Merchants Association (PTMA), a meeting was held on November 29, 2018 wherein the PTMA requested to extend the deadline for the submission of the importer questionnaire for fifteen days till December 14, 2018. PTMA also committed to convince their exporters to provide information on the questionnaire. The Commission in principle agreed to extend the deadline for submission of importers questionnaire. Accordingly, On December 12, 2018 PTMA furnished some documents and views/ comments relating to the process of purchase of the investigated product. Despite PTMA's efforts, none of the exporter/ foreign producer of the investigated product provided the requisite information for determine the individual dumping margin.

13.7 The Commission used import statistics of Pakistan Revenue Automation Limited (PRAL), the data from publicly available sources and the information

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provided by the Applicant for the purposes of determination of dumping of the investigated product.

13.8 Thus, the Commission has sought relevant data and information deemed necessary for the purposes of final determination of dumping and injury therefrom in this investigation from all available sources the.

14. Verification of the Information

14.1 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 final determination.

14.2 In order to verify information/data provided by the Applicant and to obtain further information (if any), officers of the Commission, on October 11 to 13, 2018 conducted on the spot investigation at the Applicant office.

15. 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 review and copy during 1100 hours to 1300 hours from Monday to Thursday 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.

16. Confidentiality

16.1 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.

16.2 The Applicant and certain other interested parties have requested to keep confidential the information, which is by nature confidential in terms Sections

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31(2)(a) and 31(3) of the Act. This information includes data relating to sales, sale prices, cost to make and sell, inventories, profit/loss, return on investment, cash flow, growth, investment, salaries and wages, number of employees etc. In addition to this, the interested parties have also provided certain other information on confidential basis under Section 31(2)(c), as such information, like, export or import price and import volume of the investigated product, may lead to the disclosure of confidential information of the Applicants by way of reverse calculations.

16.3 On the basis of request made by the Applicant and other 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 Applicants made a request to keep it confidential.

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

17. Preliminary Determination

17.1 The Commission made preliminary determination in this investigation on January 30, 2019 in terms of Section 37 of the Act and imposed following provisional antidumping duties for a period of four months.

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

Name of the Exporting Countries	Duty rate
China	6.87%
European Union	10.88%
South Africa	14.75%
United States of America	12.27%

17.2 The Commission issued a notice of preliminary determination, published on January 30, 2019 in the Official Gazette of Pakistan and two widely circulated national newspapers (the "Dawn" and "Jang") notifying the preliminary determination.

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17.3 On January 30, 2019 the Commission also issued copy of the notice of preliminary determination to the Embassies/ High Commission of the Exporting Countries in Islamabad, the exporters, the importers, domestic producers and the Applicant in accordance with the requirements of Section 37(4) of the Act. A detailed report (non-confidential version) of the preliminary determination was placed at the public file and was also posted on Commission's website www.ntc.gov.pk.

18. Views/Comments and Hearing

18.1 All interested parties were invited to make their views/comments known to the Commission and to submit information and documents (if any) with regard to this investigation. Following parties submitted views/ Comments, which are duly considered by the Commission while reaching on this final determination:

Sr No.	Name of Interested Party
i.	Pakistan Tinplate Merchants Association
ii.	Pakistan Vanaspati Manufacturer's Association
iii.	Aciers UK Ltd, United Kingdom
iv.	Delegation of the European Commission, Pakistan
v.	Shamim Tin Merchant, Pakistan
vi.	O S Corporation, Pakistan
vii.	Metallurgy International, Pakistan
viii.	Royal Steel, Pakistan
ix.	Hassan Steel, Pakistan
x.	Four Brother Trading, Pakistan
xi.	Zubair Steel, Pakistan
xii.	Ali Containers, Pakistan
xiii.	Titan Steel, Pakistan
xiv.	Gemcor International, USA
xv.	Ameritin International Corporation

18.2 Upon request of Aciers UK Limited, a hearing in this investigation was held on March 12, 2019 under Rule 14 of the Rules. All interested parties were invited to attend the hearing. The views/comments and information submitted by the interested parties and presented by the participants during the hearing were made available to other interested parties by placing the same on the public file. Further, views/ comments presented by interested parties during the hearing are duly considered by the Commission while making this final determination.

18.3 Views comments by interested parties on Commission's preliminary determination and response of the comments are provided at Annexure-I of this report.

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19. Disclosure of Statement of Essential Facts

19.1 In terms of Rules 14(8) of the Rules, and Article 6.9 of Agreement on Antidumping, the Commission disclosed essential facts, and in this context dispatched a Statement of Essential Facts (the “SEF”) on April 15, 2019 to all interested parties including the known exporters/producers, the Applicant, other domestic producers, known Pakistani importers, and to the Embassies/ High Commission of the Exporting Countries in Pakistan.

19.2 Under Rule 14(9) of the Rules, the interested parties were required to submit their comments (if any) on the facts disclosed in SEF, in writing, not later than fifteen days of such disclosure. Following parties have submitted comments of SEF:

- i. Pakistan Vanaspati Manufacturers Association (PVMA);
- ii. Hussain Can Co. (Pvt.) Ltd.; and
- iii. Aisers Limited UK.-Blackstone Legal

19.3 Views/comments presented by interested parties in response to the SEF are duly considered by the Commission while making this final determination. Views/ Comments of the interested parties germane to this investigation and response of the Commission are provided at Annexure-I of this report.

B. DETERMINATION OF DUMPING

20. Dumping

20.1 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”.

20. Normal Value

20.1 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”.

20.2 Further, Section 6 of the Act states:

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“(1) when there are no sales of like product in the ordinary course of trade in domestic market of an exporting country, or when such sales do not permit a proper comparison because of any particular market situation or low volume of the sales in the domestic market of the exporting country, the Commission shall establish normal value of an investigated product on the basis of either:

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

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

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

20.3 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

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cent or more of the volume sold in transactions under consideration for the determination of normal value.

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

20.4 In case there is no cooperation from the exporters/foreign producers, the Commission may rely on best information available to reach preliminary or final determinations as identified in Section 32 of the Act. Section 32 of the Act states:

“(1) Subject to Sub-section (2), if, at any time during an investigation, any interest party

- (a) refuses access to or otherwise does not provide, necessary information within the period of times as may be prescribed; or
(b) otherwise significantly impedes the investigation.*

The Commission may reach preliminary and final determinations, whether affirmative or negative, on the basis of the best information available.”

“(2) The provisions of the Schedule to this Act shall be followed in the application of sub-section (1).”

“(3) The Commission shall take due account of any difficulties experienced by interested parties, in particular, small companies, in supplying information requested by it and may, where it deems fit, provide such assistance as is practicable including, but not limited to, extension of any time period prescribed submission of information under this Act.”

21. Determination of Dumping of the Investigated Product

As stated earlier (paragraphs 13 supra) the Commission issued questionnaires to the exporters/ foreign producers of the investigated product for collection of data/information. Copy of the questionnaire was also provided to the Embassies of the Exporting Countries in Islamabad with a request to forward it to all exporters/foreign producers of the investigated product based in their countries to submit information to the Commission. However, the Commission did not receive information in response to the questionnaire from any of the exporter/ foreign producer of the investigated product in this investigation. Therefore, dumping of the investigated product in this final determination is determined on the basis of best available information in accordance with Section 32 of the Act. Details of determination of normal value, export price and dumping margin are provided in the following paragraphs.

22. Determination of Normal Value

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22.1 Since none of the exporters/ producers from the Exporting Countries provided requisite information to the Commission in response to the questionnaire, the Commission is constrained to determine normal values of the investigated product from the Exporting Countries on the basis of the best information available to the Commission. For this purpose, the Commission used monthly prices of Tinplate during the year 2017-18, published in various issues of the UK-based Metal Bulletin Research (“MBR”).

22.2 In MBR domestic prices of United States of America (“USA”) and China are available. To make these prices at ex-works level the same are adjusted on account of inland freight and value added tax (“VAT”). Inland freight is assumed as 2 percent of the price, whereas VAT for USA is 7 percent and for China is 17 percent. Domestic prices of all European countries are not available in the MBR, however, European export prices are available in it. The Commission has taken European export prices as normal value in accordance with Section 6(1)(a) of the Act. To reach at ex-works price, the same are adjusted on account of inland freight at the rate of 2 percent of the price. Prices for South Africa are not available in the MBR, the Commission has used the domestic prices of China as a normal value for South Africa.

22.3 Imports of the investigated product from Exporting Countries during the POI were made under PCT Nos. 7210.1210 and 7210.1290. Under harmonized system (“HS”) Nomenclature 2017 edition, Tin Plate is defined as follows:

“..... Flat-rolled products of a shape other than rectangular or square, of any size, are to be classified as products of a width of 600 mm or more, provided that they do not assume the character of articles or products of other headings.

“72.10 Flat-rolled products of iron or non-alloy steel, of a width of 600 mm or more, clad, plated or coated.

- Plated or coated with tin:

7210.12 -- Of a thickness of less than 0.5 mm”

22.4 It may be noted from the above definition that there is no further difference and grading of the product in the harmonized system. However, in Pakistan the Tinplate is further divided into two grades i.e. secondary quality and others. Under Pakistan Customs Tariff (“PCT”) the investigated product is defined as follows:

72.10 Flat- rolled products of iron or non- alloy steel, of a width of 600 mm or more, clad, plated or coated.

- Plated or coated with tin:

- - Of a thickness of less than 0.5 mm:

7210.1210 - - - Of secondary quality

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7210.1290 - - - Other

22.5 It is obvious from the above classification that such grades fall under Pakistan specific definition. The Applicant was asked to clarify difference between Secondary quality Tinplate and Other (Prime) quality Tinplate. The Applicant has stated as follows:

“Other ETP product basically covers material manufactured according to the given thickness, width, length, temper, thickness, surface coating, standard, quality and quantity by purchaser. supported by Mill Test Certificate (MTC). Commercially it is mainly used for packaging of paints, petroleum, edible oils and foodstuff”

“Secondary quality ETP generally shipped in varying quality, thickness, width, length, temper, surface coating as Stock Lot/Ex-Stock. It, therefore, follows that the main criteria for identifying these goods has been that the consignments presented in mixed variety, size and thickness, that too, in small quantities not supported by manufacturers Invoice or Mill Test Certificate (MTC). Commercially it is mainly used for packaging of paints, petroleum, edible oils and foodstuff”

22.6 In view of the above classification and the explanation, both types of Tinplate are of similar kind and are used for the same/ similar purposes. The main difference between both types is that the Tinplate imported under PCT code No. 7210.1290 comes in standard lots confirming all requirements of the buyer (thickness, width, length, temper, surface coating, standard, quality and quantity by purchaser) and fetch relatively higher price. Tinplate imported under PCT code No. 7210.1210 comes under non-standard lots and fetch a relatively lower price. However, both types of Tin Plate are used for same/ similar purposes. This fact is also confirmed from the import data obtained from PRAL as the major quantity under PCT code No. 7210.1210 (secondary quality) is imported by the edible oil/ghee manufacturers.

22.7 As imports of iron and steel products categorized as “secondary” in Pakistan Customs Tariff fetch lower prices, therefore, the Federal Board of Revenue (“FBR”) has devised a mechanism to determine fair value of such imports. As per FBR’s valuation ruling No. 717/2015 dated 11 February 2015 the prices of the different products of iron and steel published in MBR are discounted by 15 percent to determine minimum export price of imports under the category of “secondary”, therefore, to determine normal value of the investigated product for the imports under PCT No. 7210.1210, the respective prices obtained from MBR are lowered by 15 percent.

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22.8 Normal values of the investigated product for the Exporting Countries, determined on the fore-going basis, are provided below:

**Table-III
Normal Values**

S.No	Country Name	Normal values for imports under:	
		PCT 7210.1210	PCT 7210.1290
i.	China	100.00	115.01
ii.	European Union, including UK	117.20	134.72
iii.	South Africa	100.00	115.01
iv.	United States of America	117.52	135.16

Note: To maintain confidentiality actual figures have been indexed with reference to the normal value of China for PCT No. 7210.1210 by taking equal to 100.

23. Determination of Export Price

23.1 In terms of Section 10 of the Act, export price is a price actually paid or payable for the investigated product when sold for export from an exporting country to Pakistan.

23.2 As stated earlier (paragraph 13 supra) none of the exporter/ producers from the Exporting Countries provided information in response to the questionnaire, therefore, export price has been worked out on the basis of information/data obtained from Pakistan Revenue Automation Limited (“PRAL”).

23.3 The data obtained from PRAL shows prices at C & F level. These prices have been adjusted to reach at ex-factory level by deducting domestic freight, ocean freight and insurance. Information on these adjustments is provided by the Applicant. On the basis of information obtained from PRAL and the Applicant, the export prices of the investigated product for the Exporting Countries during the POI are given in the following table.

**Table-IV
Export Prices**

Country	CIF Prices of PCT No:		Adjustments	Adjusted Price of PCT no:	
	7210.1210	7210.1290		7210.1210	7210.1290
China	84.23	92.44	7.56	76.67	84.88
EU (including UK)	83.35	--	9.09	74.26	--
South Africa	80.72	80.39	8.11	72.62	72.29
United States of America	82.26	80.28	11.61	70.65	68.67

Source: PRAL and the Applicant

Note: To maintain confidentiality actual figures have been indexed with reference to the normal value of China for PCT No. 7210.1210 by taking equal to 100.

24. Dumping Margin

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

24.2 The Commission complied with the requirements of Section 11 of the Act in comparison of normal value and export price. 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 calculated dumping margin by comparing weighted average normal value with weighted average export price at ex-factory level. Dumping margins for the Exporting Countries work out as follows.

**Table-V
Dumping Margins**

Country	Dumping Margins at:	
	Ex-works	At C&F
China	35.48%	32.60%
EU (including UK)	57.82%	51.52%
South Africa	37.77%	33.97%
United States of America	66.47%	57.04%

25. Negligible Dumping Margin and Volume of Dumped Imports

25.1 In terms Section 41(3)(a) of the Act, dumping margin shall be considered to be negligible if it is less than two percent, expressed as a percentage of the export price. Dumping margins determined for the dumped imports of the investigated product from the Exporting Countries, set out in paragraph 24.2 supra, are above negligible level.

25.2 Section 41(3)(b) of the Act provides that the volume of dumped imports shall normally be regarded as negligible if such imports are 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 imports of the investigated product from the dumped sources and import of Tinplate from other sources was obtained from PRAL. Volume of the dumped imports of the investigated product and the Tinplate imported from other sources during the POI (July 01, 2017 to June 30, 2018) is given in a table below:

Table-VI

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Volume of Imports of Tinplate during POI

Country	Volume of Imports in:	
	Quantity (MT)	Percentage
China	13,006	25.41
European Union	13,558	26.49
South Africa	8,423	16.46
United States of America	13,832	27.03
Other Sources	2,361	4.61
Total	51,180	100.00

It is evident from the above table that the volume of the dumped imports of the investigated product from the Exporting Countries is above the negligible threshold set out in Section 41(3)(b) of the Act.

C. INJURY TO DOMESTIC INDUSTRY

26. Determination of Injury

26.1 Section 15 of the Act sets out the principles for determination of material injury to the domestic industry in the following words:

“A determination of injury shall be based on an objective examination of all relevant factors by the Commission which may include but shall not be limited to:

- a. volume of dumped imports;*
- b. effect of dumped imports on prices in domestic market for like products; and*
- c. consequent impact of dumped imports on domestic producers of such products...”*

26.2 Section 15 of the Act further provides that:

“No one or several of the factors identified shall be deemed to necessarily give decisive guidance and the Commission may take into account such other factors as it considers relevant for the determination of injury”.

26.3 The Commission took into account all factors in order to determine whether the domestic industry suffered material injury during the POI. Material injury to the domestic industry has been analyzed in the following paragraphs in accordance with part VI of the Act.

26.4 Analysis of injury factors carried out in this final determination in the following paragraphs is based on the verified information of the Applicant.

27. Cumulation of Dumped Imports

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27.1 Section 16 of the Act states that: “*where imports of a like product from more than one country are the subject of simultaneous investigation under this Act, the Commission may cumulatively assess the effects of such imports on the domestic industry only if it determines that*

- “(a) *dumping margin in relation to an investigated product from each country is more than the negligible amount as specified....., and volume of dumped imports from each investigated country is not less than the negligible quantity as specified.....; and*
- “(b) *a cumulative assessment of the effects of the imports is appropriate in the light of*
 - (i) *the conditions of competition between the imports; and*
 - (ii) *the conditions of competition between the imports and a domestic like product”.*

27.2 Investigation of the Commission revealed that the dumping margin for each Exporting Country is more than the negligible amount (i.e. less than 2 percent of export price) (paragraph 24.2 supra). Further, the volume of dumped imports during the POI from each Exporting Country individually was also well above the negligible quantity (i.e. less than 3 percent of total imports of Tinplate) (paragraph 25.2 supra).

27.3 It is evident that the weighted average C&F export prices of the investigated product imported from the Exporting Countries during the POI were in the same range, therefore, there was a price competition between the imports of the investigated product during the POI. Weighted average landed cost of the investigated product during the POI for dumping from the Exporting Countries is given in the table below:

**Table-VII
Weighted Average Landed Cost**

Country	Per MT
China	100
European Union	98
South Africa	95

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United States of America	96
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Source: PRAL

Landed cost = CD+Add.duty@1%+RD@5%+ST@17%+incidental@2%

Note: To maintain confidentiality actual figures have been indexed with respect to the landed cost of imports from China by taking it equal to 100.

27.4 The investigation also revealed that there was a competition between investigated product and the domestic like product. Conditions of competition between imports of the investigated product and the domestic like product are discussed in detail in the following paragraphs.

27.5 For the reasons given above, the Commission cumulatively assessed the effects of dumped imports from the Exporting Countries on the domestic industry in following paragraphs.

28 Volume of Dumped Imports

28.1 With regard to the volume of dumped imports, in terms of Section 15(2) of the Act, the Commission considered whether there was a significant increase in dumped imports, either in absolute terms or relative to domestic production during the POI.

28.2 In order to assess the impact of volume of dumped imports of the investigated product, the information obtained from PRAL was used. Following table shows the change in imports of the investigated product in absolute terms during POI:

**Table-VIII
Volume of Dumped Imports**

Year	Volume (MT)	Increase in imports:		Domestic Production (MT)	Imports as % of domestic production
		Absolute	Percentage		
2015-16	28,681	---	--	24,491	117.11%
2016-17	36,758	8,077	28.16%	19,600	187.54%
2017-18	48,919	12,161	33.08%	18,618	262.75%

Source: The PRAL and the Applicant Year is from July to June

28.3 It appears from the above table that the dumped imports witnessed significant increase in absolute terms as it increased by 28 percent and 33 percent in the years 2016-17 and 2017-18 respectively.

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28.4 Dumped imports of the investigated product also increased significantly relative to domestic production during the POI, as it increased from 117 percent of the domestic production in the year 2015-16 to 188 percent and 263 percent in the years 2016-17 and 2017-18 respectively.

29. Price Effects

29.1 Effect of dumped imports on sales price of domestic like product in the domestic market was examined to establish if there was significant price undercutting¹, price depression² or price suppression³. Effects of dumped imports on price of the domestic like product are analyzed in following paragraphs:

29.2 Price undercutting

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

**Table-IX
Price Undercutting**

Year	Domestic like product's price	Landed cost of dumped imports	Price Undercutting (%)
2015-16	100.00	93.01	6.99
2016-17	108.19	107.07	1.04
2017-18	124.30	122.54	1.42

Source: the Applicant and PRAL Year is from July to June.

Note: To maintain confidentiality actual figures have been indexed with reference to price of domestic like product in 2015-16 by taking equal to 100.

29.2.2 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 throughout the POI for injury. Resultantly, the investigated product undercut prices of the domestic like product at the rate of 6.99 percent and 1.04 percent and 1.42 percent in 2015-16, 2016-17 and 2017-18 respectively.

¹ the extent to which the price of the investigated product was lower than the price of the domestic like product.

² the extent to which the domestic industry experienced a decrease in its selling prices of domestic like product over time.

³ the extent to which increased cost of production could not be recovered by way of increase in selling price of the domestic like product.

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29.3 Price Depression

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

**Table-X
Price of Domestic Like Product**

Year	domestic like product's price	Price Depression (%)
2015-16	100.00	-
2016-17	108.19	-
2017-18	124.30	-

Source: the Applicant Year is from July to June

Note: To maintain confidentiality actual figures have been indexed with reference to price of domestic like product in 2015-16 by taking equal to 100.

29.3.2 The above table shows that ex-factory sales price of the domestic like product witnessed increase throughout the POI. Thus, there is no price depression during this period.

29.4 Price Suppression

29.4.1 Information 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:

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

Year	cost to make & sell	Domestic like product's price	Increase in:		Price Suppression
			Cost to make and sell	Price	
2015-16	100.00	103.87	--	--	--
2016-17	104.09	112.38	4.09	8.51	--
2017-18	131.56	129.11	27.46	16.73	8.31%

Source: the Applicant Year is from July to June.

Note: To maintain confidentiality actual figures have been indexed with reference to cost to make & sell of domestic like product in 2015-16 by taking it equal to 100.

28.4.2 The above table shows that in the year 2016-17 the domestic industry was able to raise its prices more than the increase in the weighted average cost to make and sell. However, during 2017-18 the domestic industry's cost to make and sell increased more than the increase in the prices hence the domestic industry suffered price suppression in the year 2017-18.

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30. Effects on Market Share

30.1 The total domestic demand of the Tinplate in Pakistan is met through local production and imports. The sales made by the domestic industry and the market share of domestic industry in the domestic market during POI for injury are given in the table below.

**Table-XII
Market Share (volume & %)**

Year	Domestic like product's sale	Dumped Imports	Other Imports	Total Market
2015-16	44 (44.01%)	52 (52.40%)	4 (3.59%)	100
2016-17	35 (30.47%)	67 (57.75%)	14 (11.78%)	116
2017-18	31(24.68%)	89 (71.85%)	4 (3.47%)	124

Source: the Applicant and PRAL

Year is from July to June

Note: To maintain confidentiality actual figures have been indexed with reference to total market in 2015-16 by taking it equal to 100.

30.2 The above table shows that the domestic market of Tinplate expanded by 16.28 percent and 6.97 percent in the years 2016-17 and 2017-18 respectively. Hence experiencing an overall 24.39 percent increase throughout the POI. It is evident from the table above that despite the market expansion, share of the domestic industry decreased. In the year 2015-16, share of the domestic industry was 44.01 percent which decreased to 30.47 percent in the year 2016-17 that further decreased to 24.68 percent. On the other hand, the share of dumped sources increased substantially from 52.40 percent to 71.85 percent during the POI. Share of imports from other sources increased in the year 2016-17, however, it decreased in the year 2017-18.

31. Effects on Sales

31.1 Sales of the domestic like product in the domestic market during the POI are given in the following table:

**Table-XIII
Domestic Sales of the Applicant**

Year	Domestic like product's sale	Increase/ (Decrease)
2015-16	100.00	-
2016-17	80.49	(19.51)
2017-18	69.76	(10.73)

Source: the Applicant Year is from July to June

Note: To maintain confidentiality actual figures have been indexed with reference to sale of domestic like product in 2015-16 by taking it equal to 100.

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31.2 The above table shows that the sales by the domestic like product decreased by 19.51 percent in the year 2016-17 and 13.33 percent in the 2017-18. Therefore, the domestic industry faced significant decline in sales during the POI for injury.

32. Effects on Production and Capacity Utilization

32.1 The installed capacity, quantity produced and the capacity utilization of the domestic industry during the POI are provided in following table:

**Table-XIV
Installed Capacity and Capacity Utilization**

Year	Installed Capacity (MT)	Production (MT)	Capacity Utilization
2015-16	120,000	24,491	20.41%
2016-17	120,000	19,600	16.33%
2017-18	120,000	18,618	15.52%

Source: the Applicant Year is from July to June

32.2 The capacity of Applicant remained the same over the POI, i.e. 120,000 MT. The above table shows that the production by the domestic like product decreased by 19.95 percent during 2016-17 and 5.01 percent during the year 2017-18 as compared to 2016-17. Resultantly, the capacity utilization fell from 20.41 percent in the year 2015-16 to 15.52 percent in the year 2017-18.

33. Effects on Inventories

33.1 Data for opening and closing inventories, production and sales of the domestic like product during the POI is given in the following table: -

**Table-XV
Inventories**

Year	Opening inventory	Production	Sales		Closing Inventory
			Domestic	Export	
2015-16	100.00	697.75	686.24	6.81	104.70
2016-17	104.70	558.40	552.36	19.74	91.00
2017-18	91.00	530.43	478.72	30.60	112.11

Source: the Applicant Year is from July to June

Note: To maintain confidentiality actual figures have been indexed with reference to opening inventory in 2015-16 by taking it equal to 100.

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33.2 The above table shows that closing inventory of the domestic like product declined by 13.09 percent in the year 2016-17. However, closing inventory of the domestic like product increased by 23.20 percent in the year 2017-18 despite decline in production..

33.3 However, since the production of domestic like product declined during the POI, the closing inventories relative to the production in the respective years were 15 percent, 16 percent and 21 percent in the years 2015-16, 2016-17 and 2017-18 respectively.

34. Effects on Profit/Loss

34.1 The profit/(Loss) position of the domestic industry pertaining to the business of domestic like product during the POI is stated below:

Table-XVI
Profit/(Loss) Position of Tinplate

Year	Profit/(Loss)
2015-16	100.00
2016-17	176.76
2017-18	(46.51)

Source: the Applicant Year is from July to June

Note: To maintain confidentiality actual figures have been indexed with reference to profits in 2015-16 by taking it equal to 100.

34.2 It appears from the above table that the Applicant was making profits from its Tinplate business during the years 2015-16 and 2016-17. However, it experiences losses during the year 2017-18.

35. Effects on Cash Flow

35.1 The applicant is a multi-product firm. and the cash flows operations cannot be determined separately for different products, as number of factors are combined for all products. However, the major operation of the company (95% in terms of revenues) is based on Tinplate.

35.2 As per Section 17(2) of the Act,

“the Commission shall assess effect of dumped imports in relation to production of a domestic like product in Pakistan when available data permit separate identification of that production on the basis of criteria of production process, producer’s sales and profits:

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Provided that if such separate identification of that production is not possible, the Commission shall assess effects of dumped imports by examination of the production of the narrowest group or range of products, which includes a domestic like product, for which necessary information can be provided.”

35.3 Keeping in view the above the cash flows are assessed for entire operations of the Applicant. Further, as its major operation relates to the domestic like product, therefore, overall cash situation of the company is a representative of the cash flow situation of Tinplate business. Cash flows of the Applicant are provided in the following table:

**Table-XVII
Operating Cash Flows**

Year	Rs. In 000
2015-16	257,340
2016-17	(92,245)
2017-18	(447,403)

Source: The Applicant Year is from July to June

34.2 The cash flow of the Applicant decreased during the year 2016-17 over 2015-16 and became negative, which further decreased in the year 2017-18.

36. Effects on Employment, Productivity and Salaries & Wages

36.1 The Applicant’s employment, production and the salaries and wages for production of the domestic like product during the POI are given in following table:

**Table-XVIII
Employment, productivity and wages**

Year	Number of Employees	Salaries & Wages	Production	Productivity Per Worker	Salaries and Wages Per MT
2015-16	100	100.00	100.00	100.00	100.00
2016-17	104	105.09	80.03	76.58	131.31
2017-18	106	115.72	76.02	71.47	152.21

Source: The Applicant Year is from July to June

Note: To maintain confidentiality actual figures have been indexed with reference to the figures in the year 2015-16 by taking them equal to 100.

36.2 The above table shows that the employment in the domestic industry increased during the POI. However, productivity per worker decreased by 23.42 percent and 6.68 percent in the years 2016-17 and 2017-18 respectively.

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36.3 Salaries and wages per MT, on the other hand, increased significantly during the year 2016-17 and 2017-18 which coupled with low production lead to higher cost of salaries and wages per MT. Cost of Salaries and Wages per MT increased by 31.31 percent and 15.92 percent in the Years 2016-17 and 2017-18 respectively.

37. Effects on Return on Investment

37.1 The Applicant is a multi-product company. Therefore, the investment and returns on investments cannot be determined separately for different products owing to combine factors of different products. Keeping in view the provisions of Section 17(2) of the Act, the return on investment of the domestic industry for its entire operations during the POI is given in following table:

**Table-XIX
Return on Investment**

Year	Return on investment (%)
2015-16	9.72
2016-17	17.29
2017-18	(4.77)

Source: The Applicant Year is from July to June

37.2 The above table shows that the return on investment increased in the year 2016-17. The return on investment was 9.72 percent and 17.29 percent in 2015-16 and 2016-17 respectively. However, the return on investment became negative 4.77 percent the year 2017-18.

38. Ability to Raise Capital

In application, the Applicant has stated, “In the presence of continued losses by the domestic industry, its ability to raise investment has definitely been eroded. It is also a known fact that the losses are mainly due to continued dumping from various sources. In order to provide protection to the domestic industry against unfair trade practices of foreign producers/exporters, the Commission is requested to impose anti-dumping duty on dumped imports from the Exporting Countries, to avoid further losses to the domestic industry.” As the Applicant has not provided evidence in this regard, the Commission is inconclusive about the effects of dumped imports on ability to raise capital.

39. Effects on Growth and Investment

The domestic industry manufacturing Tinplate was not able to utilize its optimum installed production capacity during the POI despite the fact that

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domestic demand was more than the quantity produced by the domestic industry. During POI the domestic industry was able to attain 25 percent market share (paragraph 28 supra). The installed production capacity of the domestic industry is more than the total demand of Tinplate, therefore, there was no chance of further growth and new investment in the domestic industry manufacturing Tinplate in this situation.

40. Summing up of Material Injury

40.1 It appears from above that volume of dumped imports increased significantly during the POI for injury. Dumped imports caused undercutting the prices of domestic like product throughout the POI for injury. The domestic industry also suffered price suppression during the year 2017-18. Market share of the dumped imports is continuously increased and the domestic industry could not maintain market share despite the suppressed prices to compete dumped imports. Profits and returns on investment declined during the POI for injury.

40.2 This clearly reveals that domestic industry suffered material injury during the POI. The effect of dumped imports on various injury factors is summarized in the table below;

**Table-XX
Effects of Dumped Imports**

Description	2015-16	2016-17	2017-18
Volume of Dumped Imports (MT)	28,681	36,758	48,919
Price Undercutting (%)	7.52%	1.04%	1.43%
Price Suppression (%)	--	--	8.31%
Market Share (%)	44.01%	30.47%	24.68%
Inventory (Indexed)	100.00	86.91	107.07
Profit & Loss (Tinplate) (Indexed)	100.00	160.29	(85.18)
Return on investment (%)	9.72%	17.29%	(4.77%)
Capacity Utilization	20.41%	16.33%	15.52%
Net Cash flows (Rs.000)	257,340	(92,245)	(447,403)

40.3 The above effects are significant enough on the basis of which it is determined that domestic industry has suffered material injury due to dumped imports of the investigated product.

D. CAUSATION

41. Effect of Dumped Imports

The Commission is of the view that there was a causal link between dumped imports of the investigated product and material injury suffered by the domestic industry. The investigation has revealed that the following happened simultaneously during the POI:

- i. Volume of dumped imports of the investigated product increased significantly in absolute terms;
- ii. Domestic industry experienced price undercutting due to dumped imports of the investigated product;
- iii. Domestic industry experienced price suppression in 2017-18 due to dumped imports of the investigated product;
- iv. Market share of dumped imports of the investigated product increased significantly whereas market share of the domestic like product declined simultaneously;
- v. Domestic industry faced negative effect on inventories, and return on investment; and
- vi. Domestic industry faced decline in capacity utilization and profits.

42. Other Factors

42.1 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 cause injury to the domestic industry, in order to ensure that possible injury caused by other factors is not attributed to the dumped imports.

42.2 The Commission's investigation showed that the domestic industry did not suffer injury due to imports of the like product from sources other than the Exporting Countries during the POI for dumping. Following table shows volume and landed cost of Tinplate imported from other sources during the POI:

Table-XXI

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Imports from Other Sources

Year	Volume of Dumped Imports	Imports from Other Sources	Landed Cost from dumped source	Landed cost from other sources
2015-16	100.00	6.85	100.00	99.76
2016-17	128.16	26.14	115.12	88.35
2017-18	170.56	8.23	131.75	124.41

Source: PRAL

Note: To maintain confidentiality actual figures have been indexed with reference to the volume and landed cost in the year 2015-16 by taking them equal to 100

42.3 The above table shows that the imports from sources other than the Exporting Countries were in lesser quantities despite the fact that the landed cost of such imports was significantly lower than the ex-factory price of the domestic like product and landed cost of investigated product throughout the POI for injury. The Commission is of the view that the imports from other sources are too small in quantities to have any significant effects on Applicant's injury factors.

42.4 The factors mentioned in Section 18(3) of the Act were also examined and it was determined that:

- i. There was no contraction in demand; rather there is increase in demand of Tinplate in Pakistan paragraph 28 supra.
- ii. There was no change in technology to produce Tinplate and
- iii. The export performance of the domestic industry did not change during the POI. On the contrary it exported small quantities of Tinplate during the POI for injury.
- iv. During the POI there was no change in trade restrictive practices.

42.5 The Commission is of the view that the dumped imports were the only factor which caused injury to the domestic industry.

E. CONCLUSIONS

43. On the basis of the information and analysis in foregoing paragraphs, the Commission has concluded as follows:

- i. the application was filed on behalf of the domestic industry as the Applicants represent 100% of the domestic production.

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- 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 suffered material injury during the POI on account of increase in volume of dumped imports, price undercutting, price suppression, decline in market share, capacity utilization, profits and negative effect on inventories, return on investment and growth 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 injury suffered by the domestic industry.

F. IMPOSITION OF DEFINITIVE ANTI-DUMPING DUTIES

44. Keeping in view the dumping of the investigated product, material injury to the domestic industry and causal link between dumping and injury, the Commission is required to impose antidumping duties on dumped imports of the investigated product under Section 50(1) of the Act.

45. As there was no cooperation from exporters/foreign producers, therefore, individual dumping margins could not be determined. Dumping margins and anti-dumping duty rates for the Exporting Countries is determined on the basis of best available information in terms of Section 32 of the Act.

46. For the purpose of imposition of lesser duty in accordance with Section 50(2) of the Act, the Commission has calculated injury margin to ascertain whether a lower duty would be adequate to remove injury being suffered by the domestic industry due to dumped imports of investigated product. Following table shows a comparison of the injury margin and dumping margin of the Exporting Countries:

**Table-XXII
Injury Margin**

Exporting Country	Injury Margin	C&F dumping margin
China	6.87%	32.60%

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European Union	10.88%	51.52%
South Africa	14.75%	33.97%
United States of America	12.27%	57.04%

47. It may be observed from the above table that injury margin calculated for the exporters/ foreign producers of the investigated product from the Exporting Countries is less than the respective dumping margin at C&F level. Therefore, the definitive antidumping duty will be equal to the injury margin of the respective country. The definitive anti-dumping duty is imposed retroactively at the rates mentioned in the following table on imports of the investigated product (Tinplate) for a period of three years effective from the date of publication of notice of preliminary determination in the Official Gazette and in the press on January 30, 2019. The investigated product is classified under PCT heading No. 7210.1210 and 7210.1290.

**Table-XXIII
Definitive Antidumping Duty Rates**

Exporting Countries	Definitive Antidumping Duty Rate (%)
China	6.87%
European Union including UK	10.88%
South Africa	14.75%
United States of America	12.27%

48. Tinplate imported from other sources (other than the Exporting Countries) shall not be subject to the definitive antidumping duties. Further, in accordance with Section 51(1)(e) of the Act, antidumping duty will not be levied on imports of the investigated product that are used as input in products destined solely for exports and are covered under any scheme exempting customs duty for exports under the Customs Act, 1969

49. In accordance with Section 51 of the Act, the definitive antidumping duty shall take the form of *ad valorem* duty to be held in a non-lapsable personal ledger account established and maintained by the Commission for the purposes of antidumping duties. Release of the investigated product for free circulation in Pakistan shall be subject to the imposition of such antidumping duty.

50. The definitive antidumping duty would be collected in the same manner as customs duty is collected under the Customs Act, 1969 (IV of 1969) and would be

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deposited in Commission's Non-lapsable PLD account No. 187 with Federal Treasury Office, Islamabad.

(Anjum Assad Amin)
Member
May 29, 2019

(Tipu Sultan)
Member
May 29, 2019

(Rubina Athar)
Member
May 29, 2019

(Abdul Khaliq)
Chairman
May 29, 2019