(NON-CONFIDENTIAL)

Government of Pakistan
National Tariff Commission

REPORT

ON

Final Determination and Non-Imposition of Definitive Anti-Dumping Duties on Dumped Imports of Aluminium Beverage Cans into Pakistan Originating in and/or Exported from Jordan, Sri Lanka and UAE.

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

February 20, 2020

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 retardation of the establishment of 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 Aluminium Beverage Cans having capacity of 250 ml to 300 ml ("Aluminium Beverage Cans") into Pakistan originating in and/or exported from Jordan, Sri Lanka and UAE (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 September 04, 2018the Commission received a written application under Section 20 of the Act from Pakistan Aluminium Beverage Cans Limited, Faisalabad (the "Applicant"). The application was filed by the Applicant, who is the sole producer of Aluminium Beverage Cans in Pakistan.

4.2 The Applicant alleged that the Jordan, Sri Lanka, Turkey and UAE have been exporting Aluminium Beverage Cans to Pakistan at dumped prices, causing material retardation of the establishment of the Pakistan's domestic industry producing Aluminium Beverage Cans.

4.3 The Commission, in accordance with Section 21 of the Act, notified the receipt of application on September 12, 2018 to the Embassies/High Commission of Jordan, Sri

Lanka, Turkey and UAE through Ministry of Foreign Affairs, Government of Pakistan, Islamabad.

5. Evaluation and Examination of the Application

The examination of the application showed that it met requirements of Section 20 of the Act as it contained sufficient evidence of alleged dumping of Aluminium Beverage Cans into Pakistan from the Jordan, Sri Lanka, Turkey and UAE and material retardation of the establishment of the domestic industry caused there from. 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 Aluminium Beverage Cans comprises of only one unit i.e. the Applicant namely Pakistan Aluminum Beverage Cans.

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 is neither related to importers and exporters nor did it import itself Aluminium Beverage Cans from the Exporting Countries. Therefore, the Applicant is eligible to apply for anti-dumping investigation.

7. Standing of the Application

7.1 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.

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 was filed by the Applicant, who is the sole producer of the Aluminium Beverage Cans 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 fulfills the requirements of Section 24 of the Act.

8. Applicant's View

8.1 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:

i. Exports of Aluminium Beverage Cans by the exporters/producers from Jordan, Sri Lanka, Turkey and UAE to Pakistan at dumped prices

ii. Such exports originating from Jordan, Sri Lanka, Turkey and UAE to Pakistan at dumped prices have caused and is causing material retardation of the establishment of domestic industry producing Aluminium Beverage Cans mainly through:-

   a) volume of alleged dumped imports;
   b) price undercutting;
   c) price suppression;
   d) market share;

e) sales &inventories;
f) profits/profitability;
g) wages & Productivity
h) return on Investment
i) cash flow
j) ability to Raise capital and
k) magnitude of dumping margin.

8.2 The Applicant submitted to the Commission to;

i. Initiate an investigation against alleged dumping of Aluminium Beverage Cans from Jordan, Sri Lanka, Turkey and UAE under Section 23 of the Act;

ii. Impose appropriate antidumping duties on alleged dumped imports of Aluminium Beverage Cans 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 Aluminum Beverage Cans

The Applicant identified 05 exporters/foreign producers involved in alleged dumping of the investigated product from Jordan, Sri Lanka, Turkey and UAE. The Applicant has requested for imposition of anti-dumping duty on all imports of the investigated product originating in and/or exported from Jordan, Sri Lanka, Turkey and UAE.

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 Aluminium Beverage Cans into Pakistan from Jordan, Sri Lanka, Turkey and UAE and such imports are causing material retardation of the establishment of the domestic industry. Accordingly, in accordance with Section 27 of the Act, the Commission issued a notice of initiation, which was published in the Official Gazette1 of Pakistan and in two widely circulated national newspapers2 (one in English

[1] The official Gazette of Pakistan (Extraordinary) dated November 01, 2018.
[2] "Daily Express Tribune" and 'Daily Nawa -i-Waqt" of November 01, 2018.
[3] PCT heading in Pakistan is equivalent to Harmonized Commodity Description and Coding System up to six-digit level.

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[3].7612.9010 and 7612.9030 originating in and/or exported from Jordan, Sri Lanka, Turkey and UAE was thus initiated on November 01, 2018.

10.2 In pursuance of Section 27 of the Act, the Commission notified Embassies/High Commission of Jordan, Sri Lanka, Turkey and UAE 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 Jordan, Sri Lanka, Turkey and UAE whose addresses were available with the Commission with the request to be registered as an interested party in the investigation with-in 15 days of publication of the notice. A copy of the notice of initiation and importer's questionnaire was also sent to known Pakistani importers on November 07, 2018.

10.3 In accordance with Section 28 of the Act, on November 07, 2018, the Commission sent a copy of full text of the written application (non-confidential version) and Exporter's Questionnaire to the exporters of Jordan, Sri Lanka, Turkey and UAE. 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/High Commission of Jordan, Sri Lanka, Turkey and UAE in Pakistan with a request to forward it to all exporters/producers involved in production and/or sale/export of Aluminium Beverage Cans.

11. Investigated Product, Domestic Like Product and Like Product

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 ("IP") 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 up to300ml.During the course of investigation, interested parties informed the Commission that domestic industry was 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 was re-defined as Aluminium Beverage Cans having capacity of 250ml to 300ml.

11.3.2 Aluminium Beverage Cans are manufactured through DW&I process and used for packaging of beverage.

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

Table-I
Tariff Structure

Period	PCT #	Description	Customs Duty	Regulatory Duty	Duty under FTA
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
2019-20	7612.9030	Round cans of a capacity up to 300 ml	20%+7%	5%*	0% from Sri Lanka

*Regulatory Duty was 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,as amended vide S.R.O No.680(I)/2019 dated28th June,2019.
** Investigated product has been re-classified under PCT Heading 7612.9030 for Financial Year 2018-19.

11.4. **Domestic Like Product**

11.4.1 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.

11.5. **Like Products**

11.5.1 The like product is Aluminum Beverage Cans of capacity of 250 ml to 300 ml, produced and sold by the foreign producers/exporters of the Exporting Countries in their domestic markets, and export market 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 and 7612.9030. Major uses of the like product are identical to those of the investigated product and domestic like product.

11.5.2 In order to establish whether the investigated product, the domestic like product and the like product are alike products, as contended by the Applicant, the Commission reviewed all relevant information received/obtained from various sources including the Applicant and exporters/foreign producers in the following terms:

i. basic raw materials used in the production of the investigated product, the domestic like product, and the like product are the same/similar;

ii. all the three products (the investigated product, the domestic like product and the like product) are produced with a similar manufacturing process;

iii. all the three products have similar appearance;

iv. all the three products are substitutable in use. They are generally used as containers for packaging of beverages.

v. all the three products are classified under the same PCT/HS heading Nos. 7612.9010 and 7612.9030.

11.5.3 The Commission has determined that the investigated product, the domestic like product and the like product are alike products.

12. Period of Investigation

12.1 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*".

12.2 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. The Applicant started commercial production in September 2017. The data available for the purposes of this investigation is from the date of commencement of commercial operations of the Applicant. 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

13. Information/Data Gathering

13.1 The Commission sent exporter's questionnaire on November 09, 2018 to the Embassies of the Exporting Countries in Islamabad with a request to forward it to all exporters/ producers of the investigated product in their countries. Exporter's questionnaire was also sent directly to exporters/ producers based in the Exporting Countries whose addresses were available to the Commission on November 07, 2018 for collection of data and information necessary for this investigation. The exporters/ producers were asked to supply information within 37 days of the dispatch of questionnaire.

13.2 In response to the Commission's request for information, on December 07, 2018 following exporters/ producers requested for extension in the deadline to submit information on exporter's questionnaire:

i. Ceylon Beverage Can Ltd, Sri Lanka. (Ceylon Beverage Can)
ii. Crown Emirates Company Ltd, U.A.E and Crown Middle East Can Co. Ltd, Jordan (Crown Group)

13.3 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 a 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 the 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.

13.4 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.

13.5 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, M/s. Coca Cola Pakistan has provided the data on importer questionnaire.

13.6 On December 18, 2018, January 02, 2019 and January 08, 2019, the non-cooperating exporters/ producers and importers were informed through a letter that, as they have not provided necessary information, the Commission will be constrained to make preliminary and/or final determination of dumping of the investigated product and/or material retardation of the establishment of the domestic industry on the basis of "Best Information Available" in terms of Section 32 of the Act and Article 6.8 of Antidumping Agreement, including those contained in the application submitted by the domestic industry.

13.7 The Commission has an access to the 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 purposes of this final determination the Commission has used import data obtained from PRAL in addition to the information provided by the domestic producer and cooperating exporter.

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

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 to the accuracy and adequacy of information and evidence 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, officers of the Commission conducted on-the-spot investigation at the office and plant of the Applicant from 16 to 18 January, 2019. Report of on-the-spot investigation was provided to the Applicant in confidential version as well as non-confidential version. Non-confidential version of on-the-spot investigation report was provided to other interested parties by placing the same in the public file.

14.3 In order to verify information/data provided by the cooperating exporter/ producer, officers of the Commission conducted on-the-spot investigation at its plant and office at Sri Lanka from July 08 to 10, 2019.Report of on-the-spot investigation was provided to the cooperating exporter/producer in confidential version as well as non-confidential version. Non-confidential version of the on-the-spot investigation report was provided to other interested parties by placing the same in the public file.

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 for review and copying from Monday to Thursday between 11.00 hours to 13.00 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.

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 the interested parties upon good cause shown to be kept confidential.

16.2 The Applicant, importer and cooperating exporter have requested to keep confidential certain information 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, salaries & wages, number of employees etc.

16.3 On the basis of requests made by the 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 interested parties made a request to keep it confidential.

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

16.5 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

16.6 The Commission informed the Crown Group companies that copy of audited accounts have 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.

17. Preliminary Determination

17.1 The Commission made preliminary determination in this investigation on April 29, 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

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

17.2 In terms of Section 37 of the Act, the Commission issued a notice of preliminary determination, which was published on May 03, 2019 in official Gazette of Pakistan and in two widely circulated national newspapers (one English “Daily Business Recorder” and one Urdu Language “Jahan-e-Pakistan”) notifying preliminary determination.

17.3 On May 06 and May 07, 2019 the Commission also sent copy of the notice of preliminary determination to all the interested parties in accordance with the requirements of Section 37(4) of the Act.

17.4 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 500 ml capacity. The domestic industry is not manufacturing Aluminum Beverage Cans of 500 ml, 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, was terminated.

17.5 A detailed report (non-confidential version) of the preliminary determination was placed at the public file as well as posted on Commission’s website www.ntc.gov.pk.

18. Disclosure Meetings

18.1 The exporters/foreign producer from Sri Lanka, for whom individual dumping margin was determined in the preliminary determination, requested for disclosure of dumping calculations in accordance with Rule 11 of the Rules. On May 13, 2019 and June 03,2019, the Commission provided them with the disclosure documents explaining dumping calculation methodology applied for the exporter/foreign producer and dumping calculations.

18.2 The cooperating exporter/producer has submitted views/comments on its dumping calculations. The Commission has considered views/comments of the exporter/ producer for the purposes of dumping calculations while making this final determination.

19. Views, Comments and Hearing

19.1 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. The Commission received written submissions/comments from exporters, importers and domestic producers. The views/comments received from interested parties are duly considered by the Commission while making this final determination.

19.2 Upon request of domestic industry, exporters/ producers and importers, a public hearing in this investigation was held on June 13, 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.

19.3 Views/Comments of the interested parties germane to this investigation and response of the Commission are provided at Annexure-I of this report.

20. Disclosure of Statement of Essential Facts

20.1 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 August 23, 2019 to all interested parties including the known exporters/producers, the Applicant, known Pakistani importers, and to the Embassy of the Exporting Countries in Pakistan.

20.2 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 on SEF:

i. Coca Cola Beverage Pakistan Limited, Pakistan
ii. Ceylon Beverage Can, Sri Lanka
iii. Crown Group, United Arab Emirates
iv. Pakistan Aluminum Beverage Cans, Pakistan

20.3 The views/comments presented by the interested parties in response to the SEF are duly considered by the Commission while making this final determination. The 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

21. 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".*

22. Normal Value

22.1 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".*

22.2 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:".

22.3 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."

23. 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"*.

24. Dumping Determination

24.1 Only one exporter/foreign producer namely Ceylon Beverage Can, provided information in response to the questionnaire. Individual dumping margin in this investigation has been determined on the basis of the information provided by the cooperating exporter. Normal value, export price and individual dumping margin for the cooperating exporter/producer has been determined in accordance with Part III, IV and V of the Act on the basis of the information provided by it.

24.2 However, dumping margins have been determined for all other non-cooperating exporters/foreign producers of the Exporting Countries using best information available in terms of Section 32 of the Act and Schedule to the Act.

25. **Determination of Normal Value**

25.1 The Commission received information on domestic sales and cost of production etc. of the like product from exporter/producer from Sri Lanka. The information submitted by exporter will be used for determination of normal value. Normal value for other non-cooperating exporters/producers from Jordan and UAE will be determined on the basis of best information available in accordance with Section 32 and Schedule to the Act.

25.2 **Determination of Normal Value for Ceylon Beverage Can Limited, Sri Lanka:**

25.2.1 In accordance with Section 6(1)(b) of the Act, normal value for Ceylon Beverage Can has been determined on the basis of cost to make and sell as verified during on-the-spot verification.

25.2.2 According to the information, Ceylon Beverage manufactured Aluminium Beverage Cans of capacities 185 ml, 250 ml, 300 ml, 330 ml and 500 ml. The company is only selling Aluminium Beverage Cans having capacity of 330 ml and 500 ml in its domestic market. However, the company is exporting the aluminum cans having capacity of 250 ml and 300 ml 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.

25.3 **Determination of Normal Value for All Other Exporters/Producers from the Exporting Countries.**

25.3.1 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 investigation for the investigated product has been 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. 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.

25.3.2 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.

26. **Determination of Export Price**

26.1 The information submitted by the exporter/ foreign producer is used for determination of its 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.

26.2 **Determination of Export Price for Ceylon Beverage Can Limited, Sri Lanka:**

26.2.1 Export price for Ceylon Beverage Can has been determined on the basis of the information provided by it on its export sales to Pakistan during the POI.

26.2.2 According to the information provided by Ceylon Beverage Can, it exported 250 ml and 300 ml capacity cans to Pakistan during the POI. All export sales to Pakistan, during the POI, were made to un-related customers. The Commission has determined export price on the basis of Cans and Ends as exporter has invoiced cans and ends together for its sales to Pakistan.

26.2.3 During the POI, Ceylon Beverage Can exported investigated product on payment against documents and LC at sight basis. To arrive at the ex-factory level, it has reported adjustments in its gross export price on account of commission, inland freight, ocean freight and bank charges. The Commission has calculated credit cost for export sales to Pakistan. The Commission used the interest rate for short term loans reported by the company for determination of credit cost. On average Ceylon Beverage Can received payment after *** days where payment terms are D/P or LC at sight. The company reported that it paid commission to its agent against only one transaction during the POI whereas commission is payable to agent against all other transactions. The amount of payable commission was lower than the commission paid against one transaction. The Commission deducted commission expense transactions at the rate exporter actually paid to its agent for all transactions.

26.2.4 The exporter reported that it incurred expenses on account of inland freight, ocean freight and bank charges. Amount of inland freight, ocean freight and bank charges were divided between Cans and Ends on the basis of number of pallets exported. The amount of adjustments claimed was in order. As the Commission will determine export price on the basis of Cans and Ends together, total amount of inland freight, ocean freight and bank charges has been used as adjustments. The Commission has accepted these adjustments and export price at ex-factory level for the investigated product is worked out by deducting value of adjustments from the gross price. Summary calculation of export price for Ceylon Beverage Can is placed at Annexure-III.

26.3 Determination of Export Price for All Other Non-Cooperating Exporters

26.3.1 The Commission has determined the export price for all others non-cooperating exporters/producers from the Exporting Countries on the basis of Best Information Available in accordance with Section 32 of the Act.

26.3.2 The export price for exporters/producers from Jordan and UAE has been based on information obtained from PRAL on imports of the investigated product from the referred countries during the POI. The information obtained from PRAL is at C&F level. To reach ex-factory level, C&F export price will be adjusted on account of credit cost, commission, inland freight, ocean freight, and bank charges. For this purpose, the adjustments of

Ceylon Beverage Can will be used. Adjustment of ocean freight reported by Ceylon Beverage Can has been adjusted on the basis of distance from Karachi port to shipping ports of respective exporting country. The Commission is of the view that it is appropriate to use this information as the Best Available Information for export price of non-cooperating exporters from Jordan and UAE. Summary calculation of export price for non-cooperating exporters is placed at Annexure-IV.

27. Dumping Margin

27.1 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 final determination, the Commission has determined individual dumping margin for one exporter who cooperated with the Commission and supplied necessary information. The definitive antidumping duty rate for the exporter is established on the basis of individual dumping margin. However, dumping margins have been determined for non-cooperating exporters/foreign producers of the Exporting Countries on the basis of best information available.

27.2 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.

27.3 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”.

27.4 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-III
Dumping Margin

Country	Exporter Name	Dumping margin as % of	
		Export price	C & F price
Sri Lanka	Ceylon Beverage Cans.	32.63	29.49
	All other exporters/producers	32.63	29.49
Jordan	All exporters/producers	37.78	32.60
UAE	All exporters/producers	30.59	28.43

28. *De minimis* Dumping Margins and Negligible Volume of Dumped Imports

28.1 In terms of 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, set out in paragraph 26.4 supra, are above the *de minimis* level.

28.2 In terms of Section 41(3) (b) of the Act, volume of dumped imports shall normally be regarded as negligible if it accounts for less than 3 percent of total imports of the like product. The data obtained from PRAL on volume of imports of Aluminium Beverage Cans from all sources during the POI (September 01, 2017 to June 30, 2018) is provided in the table below:

Table-IV
Volume of Imports of Aluminum Beverage Cans during POI

Country	Volume of Imports*
	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

28.3 It appears from the above table that the volume of dumped imports of the investigated product from Jordan, Sri Lanka and UAE during the POI was well above the negligible threshold set-out in Section 41(3)(b) of the Act.

C. MATERIAL RETARDATION OF THE ESTABLISHMENT OF THE DOMESTIC INDUSTRY

29. Material Retardation

29.1 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.

29.2 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.

29.3 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.

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

30.1 The domestic industry started producing Aluminium Beverage Cans on commercial basis in September 2017. Material injury or threat of material injury analysis which is based on trend analysis during the POI for injury is not possible here due to the short period since commencement of commercial operation. For applying the material retardation standard, 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 commencement of commercial production;
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.

30.2 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.

30.3 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.

30.4 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 was examined. Following table show quarterly quantity produced by the applicant during POI:-

Table-V

Comparison of actual and projected production (Kg.)

Period/Quarter	Actual Production	Projected Production
Sep 17 - Dec 17	1	82
Jan 18 - Mar 18	28	72
Apr 18 - Jun 18	71	144
Total	100	298

source: Applicant

Note: For the purpose of confidentiality actual figures have been indexed w.r.t total actual production.

30.5 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.

30.6 Referring to 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. The Applicant took, some time 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. Since the applicant increased its production from ***Kgs in January 18 - March 2018 to *** Kgs in April – June, 2018 an increase of 152% while as per projections, its production could increase by only 100% from 20% of total demand to 40% of total demand, it cannot be said that the production faced a start and stop condition of its production.

Table-VI

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	0.00	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 2018	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: Applicant

Note: For the purpose of confidentiality actual figures have been indexed w.r.t Total Domestic Market for the POI except the columns which are in percentages.

30.7 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.

30.8 Point to note is that the domestic industry could not get approval of the bottlers which it was expected to obtain before start of commercial production. Thus, the applicant failed to achieve its projections till end of year 2017. It follows logically that its production in April – June 2018 may be compared with the projection for quarter Jan - March 2018. This comparison reveals that the applicant achieved 98% of its projections.

30.9 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 final 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. The criteria of break-even point, however, is not relevant for two reasons:

(i) The domestic industry could not control its fixed costs as per projections and
(ii) the industry itself has projected to achieved break even in 2019 which is outside the scope of POI.

30.10 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 hasting 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.

30.11 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. 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.

30.12 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.

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

31.1 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.

31.2 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...."*

31.3 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.

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

32. Cumulation of Dumped Imports

32.1 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 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 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.

32.2 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.

32.3 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-VII
Weighted Average C&F Price of the Investigated Product

Country	Weighted Average C&F Price (US$/MT)
Jordan	93.63
Sri Lanka	96.39
UAE	100.00

Source: PRAL
Note: For the purpose of confidentiality actual figures have been indexed w.r.t. weighted average C&F price for UAE as base.

32.4 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.

32.5 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:

33. Domestic Industry

33.1 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.

33.2 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.

34. Volume of Dumped Imports

Facts

34.1 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.

34.2 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-VIII
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	56.23	72.87	66.01	202.08
Apr-Jun 18	99.47	-33.93	-25.44	100	99.48

Source: the Applicant and PRAL
Note: For the purpose of confidentiality actual figures have been indexed w.r.t Domestic Production for the quarter Apr-Jun 18 except the columns which are in percentages.

Analysis

34.3 It appears from the above table 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.

34.4 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 have been frequently used.

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

During POI	Projected total market	Actual market	Projected total market (%)	Actual market (%)	Deviation from Projection	Percentage of Deviation from Projection
Sales by domestic industry	77.99	27.77	67	28	50.22	2.74
Total imports	38.62	72.23	33	72	-33.61	-3.55
Total domestic market	116.60	100.00	100	100	16.60	0.61

Source: the Applicant and PRAL.
Note: For the purpose of confidentiality actual figures have been indexed w.r.t. Total actual domestic market except the columns in percentages.

34.5 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.

34.6 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 commencement of production by the domestic producer.

34.7 The basic question is that whether there was a significant increase in volume of dumped imports in absolute terms or relative to domestic production or consumption. The answer is negative as the volume of dumped imports decreased in last quarter in absolute terms. The dumped imports relative to domestic production and consumption both projected and actual also declined over time as shown below:

Table-X
Total Dumped Imports, Projected and Actual Production & Consumption (M. Tons)

	Total Dumped Imports	Domestic Production		Domestic Consumption	Dumped Imports as % of		
		Actual	Projected	Actual	Domestic Production		Domestic Consumption
					Actual	Projected	Actual
Sep-Dec 17	39.02	1.63	51.54	40.73	2,387	76	96
Jan-March 18	67.46	33.34	55.42	84.39	207	122	80
Apr-June 18	50.30	50.57	110.85	100.00	99	45	50

Source: PRAL
Note: For the purpose of confidentiality actual figures have been indexed w.r.t Total actual domestic consumption for the quarter Apr-Jun 18 except columns which are in percentage.

The above table shows that dumped imports declined overtime in absolute term as well as relative to domestic production as well as domestic consumption both actual and projected. This weakens the injury and reflects continuous improving status of domestic industry.

35. Price Effects

35.1 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:

35.2 **Price undercutting**

Facts

35.2.1 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-XI
Calculation of Price Undercutting

Period	Average Domestic Price (Rs/Kg)	Average Projected Domestic Price (Rs./Kg)	Average Landed Cost (Rs/Kg)	Deviation from Projection (%)	Actual Price Undercutting (Rs/Kg)	Price Undercutting w.r.t projection (Rs/Kg)
Sep-Dec 17	90.58	96.04	93.47	6.02	-------	-------
Jan-Mar 18	85.13	101.13	96.69	18.79	-------	-------
Apr-Jun 18	100.00	102.42	95.21	2.41	4.79	7.23

Source: the Applicant
Note: For the purpose of confidentiality all the figures have been indexed w.r.t Average Domestic Price per Kg for the quarter Apr-Jun 18 except the column having percentages.

Analysis

35.2.2 It is clear that projected and actual domestic prices were in the same range. In view of this it can be assumed that the price undercutting was projected. However, actual cost of cans reduced from Rs.***/kg to Rs.***/kg during quarter April – June 18. Therefore, the increase in price during this quarter from Rs.***/kg to Rs.***/kg was not reasonable hence price undercutting is not because of dumping but because of reduction in cost. It may also be noted that landed cost declined due to FTA with Sri Lanka. The proportionate share of Sri Lanka increased significantly in the last quarter.

35.3 **Price Depression**

Facts

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

Table-XII

Ex-factory Price (Rs./kg)

Year	Prices of domestic like product	Price Depression	Average Projected Domestic Price
Sep-Dec 17	90.58	---	96.04
Jan-Mar 18	85.13	(5.45)	101.13
Apr-Jun 18	100.00	---	102.42

Source: the Applicant
Note: For the purpose of confidentiality actual figures have been indexed w.r.t price of domestic like product for the quarter Apr-Jun 18.

Analysis

35.3.2 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 its peak, during the period, domestic industry faced price depression.

35.4 **Price Suppression**

Facts

35.4.1 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:-

Table-XIII
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	1,151	1,025	125	62	45	36	48	89
Jan-Mar 18	147	64	83	51	43	37	51	46
Apr-Jun 18	100	24	76	53	50	39	51	38

Source: the Applicant

*Change in per Kg variable cost is due to variation in conversion rate of US$ to PKR and increase in LME prices of aluminum coil.

Note: For the purpose of confidentiality all the figures have been indexed w.r.t. total average cost to make and sell of domestic like product per unit for the quarter Apr-Jun 18.

Analysis

35.4.2 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 low and not enough 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.

D. CONCLUSIONS

36.1 The main cause of delayed approval of samples by beverage industry (users) cannot be attributed to dumping. The approvals were finalized in first quarter of 2018.

36.2 Since the basic factors of Section 15 of the Act are absent. It is not likely to have consequential impacts. If there is any injury to the domestic industry in factors listed in Section 17 of the Act, these could not be attributed to the dumped imports. Therefore, there is no need to go into other injury factors of Section 17 of the Act.

E. NON-IMPOSITION OF DEFINITIVE ANTI-DUMPING DUTY

37. In view of the above, the investigation is concluded without imposition of anti-dumping duty in terms of Section 42 of the Act, as decided in the Commission meeting held on 27-11-2019.

(Tipu Sultan) Member February 20, 2020	(Abdul Khaliq) Chairman (As on 27-11-2019) February 20, 2020

Interested Parties' Comments	Commission's response
Comments filed by Coca Cola Pakistan Limited:	
1. TheCCBPL notes that the contents of the Statement of Essential Facts are for the most part identical to that of the Report. This is inconsistent with the scheme of the Anti-Dumping Duties Act, 2015 (the "2015 Act") and the 2001 Rules which provide for a multi-stage investigation and determination process, which apart from providing an opportunity to the interested parties to present their case, is also meant to enable the Commission to obtain further facts and information at each stage which it can then consider for purposes of its final determination.	In terms of Rule 14 of the Rules the Commission was required to inform all the interested parties of the essential facts under consideration which shall form the basis of decision whether to apply definitive measures under the act or not. The Commission has informed all the interested parties about the essential facts that will form the basis of a decision whether to apply definitive measures under the act.
2. In the instant case, the Statement of Essential Facts does not disclose any new facts (other than those mentioned in para 15, 29) in addition to those that the Commission had already mentioned in the Report. This is difficult to comprehend – given that the investigation and determination process is such that the Commission is bound to have received and in fact did receive further information from the interested parties subsequent to the issuance of the Report and the Preliminary Determination. Furthermore, it may be noted that in the comments filed by CCBPL (on 02 July 2019) as well as other comments filed at the preliminary determination stage, several factual issues were raised in respect of which it would have been reasonable to expect that the Commission would have made further inquiries / investigations to obtain relevant information.	The Commission has provided all the opportunities admissible under the Act, to the interested parties for the provision of additional information and submission of the comments at each step of the investigation. CCBPL participated in the hearing held on June 13, 2019 and submitted its first comments on July 02, 2019. CCBPL and other interested parties showed concerns regarding the projections made in the Business Plan submitted by the Applicant. Such comments were communicated to the Applicant and the Applicant responded to such queries. It may also be mentioned here that CCBPL and other parties raised observations regarding the projections made in the Business Plan but none of interested parties provided the projection which could have been termed reasonable according to them.
3. The Commission in the Report / Preliminary Determination had calculated the exfactory level export prices for exporters other than Ceylon Beverages Can (Pvt.) Ltd. ("Ceylon Beverages") by taking the C&F level values reported in the import statistics of the Pakistan Revenue Automation Limited (PRAL) and then made adjustments to these values by using the information submitted by Ceylon Beverages in respect of its own adjustments. CCBPL had in its comments of 02 July 2019 objected to such a calculation on the grounds that (a) the Commission was required to verify whether the prices stated in the PRAL	The Commission conducted on the spot verification at the premises of cooperating exporter and facts related to this on spot verification were disclosed in non-confidential version of on-the-spot verification report and SEF. Regarding the objection that the Commission did not make an attempt to obtain data for the aforesaid adjustments from the respective countries of other exporters, it is stated that the Commission sent questionnaire on November 07, 2018 to the exporters of the Exporting Countries including Crown group regarding provision of information. The exporters were supposed to reply

system accurately reflected the transaction values, which are the time of the Report / Preliminary Determination it had failed to do so and (b) since the rates of commission, inland freight, ocean freight and bank charges – i.e. the adjustments – would vary significantly between exports from different countries, the information relied upon by the Commission i.e. that of an exporter from Sir Lanka only, is not accurate and it was thus required to carry out an independent verification of the same.It appears that the Commission did not make an attempt to obtain data for the aforesaid adjustments from the respective countries of the other exporters. This is clear from the fact that the Commission simply repeated in the Statement of Essential Facts the position it took in the Report.	by December 07,2018. Crown Group requested for extension of one month for submission of data. The Commission granted extension till December 30, 2018. On Dec.27, 2018, Crown Group again requested for extension till January 10, 2019. Crown Group requested for another extension and the Commission granted extension till January 15, 2019. Despite of three extensions, Crown Group did not provide any data to the Commission. Had the Crown Group provided its data to the Commission it would have used Crown Group data on adjustments in export price. In the absence of such data, the Commission had two sets of information at its disposal regarding adjustments to reach at ex-factory level. One that was provided by the Applicant in the Application and other one were provided by the cooperating exporter. The information provided by the Applicant regarding adjustments in export price was based on secondary sources whereas the information provided by the cooperating exporter regarding adjustments in export price was based on primary sources. The information provided by the cooperating exporter was duly verified by conducting on-the-spot verification at its premises and therefore carries more accuracy. It is therefore, the Commission has relied upon the adjustments provided by the cooperating exporter. However, for the adjustment of ocean freight, the Commission has made necessary adjustments for non-cooperating exporters of UAE and Jordan on the basis of sea distance.
4. The Commission has failed to include in the list of issues, mentioned in the Statement of Essential Facts, the incorrect determination of the export price for exporters other than Ceylon Beverages. The Commission had disclosed the source of data in the Preliminary Determination and once an interested party (such as CCBPL) had challenged the accuracy of this data, the Commission ought to have at least considered alternative sources and informed the interested parties as to why it had decided on a particular source. In the instant case, no such exercise appears to have been undertaken and the Commission has conveniently continued to use the same data as it did in the Report / Preliminary Determination, despite the	For determination of export price of non-cooperating exporters such as Crown Group, the Commission has relied on data obtained from Pakistan Customs. CCBPL has stated that data used by the Commission is inaccurate. However, CCBPL has not stated the reasons due to which data of Pakistan Customs is unreliable. Pakistan Customs data contain export price which is declared by the importers. Haven't the importers of aluminium beverage cans including CCBPL present accurate data to Pakistan Customs at import stage. In case the importers are presenting fair data at clearing stage, how use of such data can be inaccurate.

challenges raised thereto.	
5. CCBPL'S main objection was that the Commission in its injury analysis has primarily relied upon the projections made by PABC in its Business Plan without carrying out any independent verification of the accuracy of these projections. Thus, in the absence of such a verification any reliance upon the Business Plan could not have led to an objective injury analysis.12 CCBPL would like to reiterate that as per section 15 of the 2015 Act requires inter alia that a determination of injury shall be based on an "objective examination of all relevant factors by the Commission." In order to properly address this objection, the Commission ought to have verified the projections made in the Business Plan. However, nothing in the Statement of Essential Facts seems to suggest that the Commission undertook such an exercise or even attempted to do so. There is no reference whatsoever to the source of the data on basis of which the projections in the Business Plan were purportedly made. The Commission's failure to independently verify the accuracy of the projections made in the Business Plan has resulted in the Commission relying upon the same sets of facts that formed the basis of the Report / Preliminary Determination in order to undertake an injury analysis.	The Applicant company has been established on the debt:equity structure of 52:48. For the establishment of the company, the Applicant has obtained loans to the tune of *** millions PKR. Business plan/feasibility study of the company is an essential document which is critically evaluated by the lending institutions before granting credit lines to any newly established business concern. Business plan of the company was prepared by independent chartered accountants firm. It was evaluated by the lending institutions which issued hefty loans on the basis of appropriateness of the projections made therein. Furthermore, the concerns raised by interested parties regarding the projections made in the Business Plan were addressed by the Applicant in its post hearing comments.
6.The Commission in the Report had conducted an analysis of price undercutting on the basis of inter alia Average Domestic Price, Average Projected Domestic Price, and Average Landed Cost. The Commission had for this purpose kept the actual figures for the domestic prices confidential and indexed the actual figures with respect to the average domestic price during April – June 2018 quarter. Whereas, for the purposes of analyzing whether there was any price suppression the Commission used inter alia the Average Cost to Make and Sell the domestic like product by indexing the actual figures with respect to total projected cost per unit during the September to December 2017.The Commission had stated that the Average Cost to Make and Sell the domestic like product registered a decrease	In preliminary determination, actual figures of price undercutting were indexed w.r.t average domestic price for the quarter Apr-Jun 2018. Actual figures of price depression table were indexed w.r.t average domestic price for the quarter Apr-Jun 2018. Actual figures of price suppression table were indexed w.r.t total projected cost per unit for the quarter Sep-Dec 2017. It is a statutory requirement that while making Preliminary Determination, the Commission shall analyse above mentioned price effects. The Commission did so by analyzing the price undercutting, price depression and price suppression separately. Non-confidential version of the preliminary determination report was made by taking the most appropriate base in the respective table so that it can provide a reasonable

over the POI due to sharp decrease in per unit fixed cost hence the domestic industry did not experience price suppression during the POI. However, in the Statement of Essential Facts the Commission for the determination of price effects, has calculated the Average Domestic Price, Average Projected Domestic Price, and Average Landed Cost by indexing the actual figures with respect to the average domestic price during September to December 2017 as the base.Whereas, it calculated the Average Cost to Make and Sell to the domestic-like product by indexing the actual figures with respect to the average domestic price during September to December 2017. Firstly, the Commission has provided no reason as to why it has changed the base period in the Statement of Essential Facts for the Average Domestic Price, Average Projected Domestic Price, and Average Landed Cost from April-June 2018 to September to December 2017. Secondly, the Commission continues to use the Average Projected Domestic Price on the basis of the projections made in the Business Plan without it having undertaken any independent verification of the said plan. Thirdly, the Commission has also provided no reason as to why for the Average Cost to Make and Sell the domestic-like product it has indexed the actual figures with respect to the average domestic price during September to December 2017, whereas previously it had indexed the actual figures with respect to total projected cost per unit during September to December 2017. Fourthly, the Commission has not given any explanation as to why it continues to use the Average Cost to Make and Sell the domestic-like product when it has determined that the domestic industry has not experienced any price suppression. These omissions on part of the Commission adversely impact CCBPL's ability to properly defend its interests as it is unaware of why the Commission	understanding to the reader. Contrary to the above, the purpose of SEF is to convey the facts, subject to confidentiality, on the basis of which Commission will decide whether to apply definitive measures or not. Such facts regarding price effects were conveyed in a single table in SEF. Again the Commission, indexed this table by taking the appropriate base to give a reasonable understanding to the reader of the SEF.

considers these facts as material or the process through which it has arrived at these figures since the Commission has kept the actual figures confidential.	
7. The Commission under the 2015 Act was required to assess whether there was a significant increase in the volume of dumped imports for determination injury. However, despite recognizing that the volume of the allegedly dumped imports had decreased in this case, the Commission without considering whether the projections made in the Business Plan were realistic assumed that the reason that the domestic industry could not achieve the projected level of sales was because of the volume of the alleged dumped imports during the POI.	Injury analysis in case of material retardation of the establishment of the domestic industry is different from the material injury analysis in Anti-Dumping investigation. In case of material retardation injury analysis, actual performance of the domestic industry is measured against the projections made before its inception. However, final analysis of the Commission results that there is no increase relative to projected domestic production also.
8. The Commission only relied on the fact that in the last quarter of the POI the weighted average landed cost of the imported Investigated Product was lower than the average domestic price of the domestic like product. However, it failed to examine the pricing trend during the duration of the POI (overall the domestic like product registered an increase in price during the POI) – which is what the law required it to do. Further, there was only a minor deviation from the projected price for the domestic like product for most part of the POI.	The domestic industry sales improved in the last two quarters due to the approvals from the domestic beverages industry. Thus it is critical that during the last quarter when the sales of domestic industry improved the weighted average landed cost of the investigated product reduced. Last quarter of the POI is also significant due to the fact that demand of aluminum beverage cans is at its peak during this period.
9. The Commission failed to not only assess the accuracy of the sales projections of PABC in its Business Plan but also failed to consider that there could have been other factors impacting sales of PABC. These could range from poor marketing strategies to unavailability of the approvals required to start selling to its customers.The Commission also failed to consider the reasonableness of PABC’s capacity utilization projections in its Business Plan.	There was no increase in volume of dumped imports either in absolute terms relative to domestic production or domestic consumption.
10. The Commission’s reliance upon the information supplied by Ceylon Beverages for determining the normal value for other exporters was not the “best information” available. The Commission was under an obligation under	The Commission has determined normal value for non-cooperating exporters on the basis of information provided by the cooperating exporter i.e. Ceylon Beverage Cans. Information submitted by the cooperating exporter was verified by

paragraph 7 of the Schedule to the 2015 Act to verify this information from other sources.However, the Commission failed to do so.	conducting on-the-spot verification at its premises.
11. There is nothing on record to demonstrate that the Commission has compared the 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 for delivery at the same place which shall normally be at ex-factory level.	The Commission has compared normal value and export price at ex-factory level. For this purpose, necessary adjustments have been made to export price.
12.The Commission failed to undertaken a causation analysis that required a determination of whether the allegedly dumped imports have had a material impact on the domestic industry and focuses on what would have happened but for the existence of the alleged dumped imports.	In this final determination the Commission has concluded that in absence of volume and price effects, injury could not be caused due to dumped imports.
Comments by Crown Group:	
13. Till date NTC has refused to provide the crown Companies with relevant information necessary for them to defend themselves or to make their pleading in the matter. The Crown Companies have consistently taken the position before the NTC, and the Islamabad High Court, the Crown Companies, including but not limited to, the material and documents claimed to be confidential by Pakistan Aluminum Beverage Cans Limited (the "Complainant")	The Commission has placed the non-confidential version of the information obtained from various interested parties during the course of the investigation in the public file in line with requirement of confidentiality under the Act.
14. Since NTC has still not provided the Crown Companies with the relevant information, and since this information is critical to enable the Crown Companies to put forth their case, the Crown Companies are greatly prejudiced in their ability to submit any substantive comments on the SEF. The crown Companies maintain that the SEF (and all prior and subsequent proceedings) are illegal and against the Crown Companies' legal rights, including their right to due process.	Need no reply.
Additional Comments:	
15. Without prejudice to the foregoing, it may	Need no reply.

be noted that the SEF is completely illegal and without any lawful basis. The Crown Companies reserve the right to challenge every assumption made in the SEF. By way of illustration, the following discrepancies in the SEF are being highlighted:	
a. The 'Best Information Available' has not been obtained in compliance with the Schedule to the Anti-Dumping Duties Act, 2015 (the "ADDA"). NTC has relied only on information available in the Complaint, Pakistan Revenue Automation Limited (the "PRAL") database and that (allegedly) provided by Ceylon Beverage Can Limited, Sri Lanka (the "Sri Lankan Exporter"). Such information has not been verified from other independent sources at NTC's disposal as mandated by the ADDA.	The Commission has verified the information submitted by the Applicant and the cooperating exporter by conducting on-the-spot verifications at their premises. Such verified information has been taken into account while making this final determination.
b. The export price for the Crown Companies has been (allegedly) determined by relying on the database of PRAL, which provides C&F prices. In order to reach ex-factory prices, adjustments to such C&F prices have been made on the same basis as used for the Sri Lankan Exporter. It is illogical to use the Sri Lankan Exporter's values for making a determination regarding the Crown Companies. For instance, the rate of interest for the Sri Lankan Exporter has been determined on basis of the date from Sri Lanka's Central Bank. It is obvious that the same rate of interest cannot be used for the Crown Companies. Further, Factors like freight and commission paid to agents cannot be uniform for the Sri Lankan Exporter and the Crown Companies.	Adjustments are usually provided by the cooperating exporter as per its accounting records. Crown Group choose not to cooperate with the Commission. In such circumstances, the Commission had two sets of information at its disposal regarding adjustments to reach at ex-factory level. One that was provided by the Applicant in the Application and other one were provided by the cooperating exporter. The information provided by the Applicant regarding adjustments in export price was based on secondary sources whereas the information provided by the cooperating exporter regarding adjustments in export price was based on primary source. The information provided by the cooperating exporter was duly verified by conducting on-the-spot verification at its premises and therefore carries more accuracy. It is therefore, the Commission has relied upon the adjustments provided by the cooperating exporter. Had the Crown Group cooperated with the Commission and provided necessary data, the Commission would have used its data. However, for the adjustment of ocean freight, the Commission has made necessary adjustments for non-cooperating exporters of UAE and Jordan on the basis of sea distance.
c. The SEF does not provide material information establishing 'dumping', 'material retardation' or 'injury' to the domestic industry. Towards the end of the Period of Investigation (the "POI"), imports	In the SEF at Paragraphs No. 19-21, the Commission provides the information on normal value, export price and dumping margin. Information on the material retardation of the

of the product have drastically decreased. This fact alone proves that the Complainant has gotten its foothold in the domestic market and there is no threat of material injury. If there had been material retardation, imports should have significantly increased rather than decreasing. There is a lack of objective examination of facts by NTC.	establishment of the domestic industry has been shared with the interested parties vide Paragraphs23-39 of the SEF.
d. The production and sales projections provided by the Complainant are imaginary and baseless. Further, the Complainant has not even been able to meet its projected production during the POI. The Complainant has not produced any basis for saying that its inability to meet the production target was connected to lack of sales or dumping by the Exporters. It may further be noted that the Complainant did not produce its projections for examination by the Crown Companies and as such, the validity of its projections was never subjected to independent scrutiny. Any determination of harm by the NTC based on such speculative projections will therefore always remain unsustainable.	The Applicant company has been established on the debt:equity structure of 52:48. For the establishment of the plant, the Applicant has obtained loans to the tune of *** million PKR. Business plan/feasibility study of the company is an essential document which is critically evaluated by the lending institutions before granting credit lines to any newly established business concern. Business plan of the company was prepared by independent chartered accountants firm. It was evaluated by the lending institutions which issued hefty loans on the basis of appropriateness of the projections made therein. Furthermore, the concerns raised by interested parties regarding the projections made in the Business Plan were addressed by the Applicant in its post hearing comments. Non-confidential version of the business plan was provided to the other interested parties by the placing the same in public file.
e. The figures provided in the SEF are self-contradictory. Table VII lists that the domestic industry made sales of 23.82 M. Tons during POI whereas Table IX lists down a figure of 27.77 M. Tons during POI. This shows that figures have been conflated. Similarly, Table VIII states that the Average Cost to make and sell during the period Sep-Dec was Rs. 2,536. This cannot be right given that the same table calculates the Average Projected cost to make and sell at Rs. 132.	Reference Table VII and Table IX of SEF which have quantity of domestic sales of the Applicant. The difference pointed out by the Crown Group is due to change of base in the above tables. Figures of average cost to make and sell amounting to Rs. 2,536 and figures of average projected cost to make and sell amounting to Rs. 132 are correct. Figures of average cost to make and sell amounting to Rs. 2,536 are due to abnormally high per unit fixed cost resulting from lower volume of production.
f. The finding regarding 'material retardation' of the domestic industry is baseless. The domestic industry is well-established and there is a rapid increase in its production and sales. The facts and material on basis of which the cost to make and sell for the domestic industry has been calculated have not been disclosed.	In the light of practices of traditional users of antidumping and the Commission's earlier practice, the Commission has determined that domestic industry is a nascent industry and has faced materially retardation in its establishment. The Commission issued non-confidential version of the on-the-spot verification report which contains detailed information regarding cost to make and

	sell of the domestic industry.
g. The SEF makes no mention of the margin by which the imported products are (allegedly) undercutting the price of the domestic product. This shows that there has been no independent and reasoned application of mind in this regard.	As required under the Rules, the SEF contains only the facts which will form the basis of forthcoming final determination.
h. The SEF does not disclose as to how the Anti-Dumping Duty has been calculated with regard to the Crown Companies. Furthermore, actual figures have not been disclosed even in the SEF. It has been repeatedly stated in the SEF with respect to different statistics given therein that for the purpose of confidentiality, all figures have been indexed. No lawful determination can be made pursuant to the SEF given the level of secrecy adopted by NTC in stating facts in the SEF.	Please refer to preliminary determination regarding the calculation of antidumping duties for Crown Group. Basis of calculation of definitive antidumping duties have been provided in the SEF at Para 19-21. Furthermore, as required by the Rules, the SEF has been issued subject to confidentiality.
i. The Claimant seems to imply that it was forced to reduce prices in a particular transaction due to the availability of imported product. However, no evidence has been provided to establish this.	The Applicant has provided agreement with the client which mentions higher agreed value. The Applicant has also provided the sales invoices which carry lower sales prices than the agreed prices.
j. The SEF has given no basis for proposing a different Anti-Dumping Duty for the Sri Lankan Exporter and the Crown Companies.	The basis for calculating the antidumping duties for Sri Lankan exporter and Crown Group has been mentioned in preliminary determination as well as SEF.
Comments by Ceylon Beverage Can :	
16.The Commission has provided the basis for cost allocation amongst product categories based on the figures in the Sales Analysis Report, however, the value of both Cans and Ends is shown against the particular Can quantity whereas the particular End quantity is separately shown with a *** value. As the ratio has been computed on this, more cost has been allocated to Cans causing Can cost to be overstated and End cost to be understated.	When the company sells Cans and Ends together, it invoices Cans and Ends collectively. There is no evidence to support segregation of cans and ends value. Due to this shortcoming, revenue cannot be used as a base to allocate expenses. Alternatively, the Commission has revised allocation basis as follows:- Administration and selling expenses: - between cans and ends on the basis of standard aluminum consumption. Further, allocation amongst variants of Cans and Ends on the basis of numbers. Financial expenses: - allocation on the basis of standard aluminum consumption.
17. The Commission has included Cost of Sales of Aluminum Cans and Ends sold and the Cost of	Section 8 of the Act states that "For the purposes of Sections 6 and 7, the Commission shall normally

Scrap sold during the POI period into the Cost of Sales Account (511010), whereas Cost of Scrap should not be a part of Cost of Sales of Cans and Ends and should have a separate realizable value for Scrap; Gas Expenses are only related to production of Cans, therefore should only be allocated with Cans; From the Cost of Aluminum Gross Consumption, it is required to deduct Scrap realizable value generated from the Aluminum consumed. If the same is not adjusted, “Cost of Sales – others” would be overstated; The Cost of Ink and Cost of Depreciation also need to be separated from other costs and allocated separately on respective basis amongst the different capacities of Cans and Ends. Based on the method which has been followed by the Commission, Total Other Costs have been allocated amongst Cans and Ends on the same basis. Further, Selling Expense includes the Bad Debt Expense which needs to be eliminated; Segment Wise Revenue has been presented through Annex I and II by the Commission, whereas it was explained to the Commission the result CBC receives through the Sales Analysis Report. For Can with End Sales, the Total Sales Value (Can with End Sales Value) is shown against the particular Can quantity, whereas the related End quantity is separately shown with *** value.	calculate costs on the basis of records kept by an exporter or a producer under investigation provided that such records are in accordance with the generally accepted accounting principles of an exporting country and reasonably reflect the costs associated with the production and sale of a like product. As per financial statement of the company, the company has recorded income generated from sale of scrap as revenue. This revenue item has not been recorded to offset the cost to make and sell of the product. The Commission is of the view that the deduction from the cost to make and sell is not warranted. As stated by the exporter, that GL Account 511040 - Cost of Ink and 512030 - Gas Expenses are only related to the production of Cans, the aforementioned expenses have only been allocated to Cans. The exporter has not provided cost of ink and depreciation which is part of cost of sales account (511010). It is therefore, the Commission cannot allocate such amount separately between cans and ends. Bad debt is a normal characteristic of any business that's why every business creates provision for bad debts to offset the cost of actual bad debts. Provision for bad debts is also allowed under the International Financial Reporting Standards. Ceylon Beverage Can itself created provision for bad debts in financial year 2017-18 which is evident from its audited financial statement also. Thus bad debts cost cannot be ignored/left while calculating the cost to make and sell.
Determination of Normal Value: 18. The calculation of Normal Value in the prescribed manner holds a high level of importance because the calculation of an incorrect Normal Value, led to initiation of an “illegal” investigation and involvement of interested parties conducting normal business with Pakistan.	 Need no reply.
19. As explained earlier in the written comments on On-the-spot verification Report, for Pakistani customers CBC has invoiced both Cans and Ends price together as it is the usual way pricing is done	During on-the-spot verification, the invoices produced by the exporter contained aggregate value for Cans and Ends. The exporter bifurcated the total value into Cans and Ends, which it

for most of its customers. As was requested through the Exporter Questionnaire, CBC split the Ends value from the total value and provided only the values relating to IP. In splitting the gross value in to Cans and Ends, CBC adjusted a reasonable price for Ends considering the customer, period and price range etc. The Commission has stated that CBC has allocated a price to Ends which is lower than the cost to make and sell. However, the costing method followed by CBC internally for the determination of selling price of an End is not the method followed by the Commission in determining the cost of Ends. More specifically, the expense allocation basis is not the same. Further, it needs to be highlighted that there are actual sales of only Ends (only End sales without the Can) CBC has made during the POI at prices which are lower than the price it has allocated for Pakistan sales. Taking into consideration that CBC has on record the End prices at which it has made sales for other customers, it is evident that it has allocated a reasonable price for Ends in C-3 of the Exporter's Questionnaire.	deemed as reasonable but there is no evidence to substantiate the bifurcation. The argument that the exporter sold ends to customers in other countries at a price which is even lower than the price it allocated to ends sold in Pakistani market does not mean that price allocated to ends was reasonable.
20. Furthermore, the Commission has stated the values allocated against various head of accounts do not correspond to the balances extracted from SAP software. However, it should be stated that the difference is less than 2% (Cost of sales in the schedule is in excess than the balance as per SAP) from the total cost of sales and the same does not materially impact the calculations. Notably, in the SAP system there is no direct method to extract a detailed report on the Cost of Production for a particular period under each product type. As per the data requested through the given format in Appendix 2 of the Exporter's Questionnaire, CBC had to provide detailed Cost of Production for each product type which it could not directly extract from the SAP system. Therefore, the same was prepared from manual computations. There was an unreconciled difference between the Cost of Sales in the SAP system and Cost Allocation Schedule provided to the Commission which is less than 2% and this could be due to duplication of expenses in the manual computation. The	It is misstatement of facts that head wise variance between cost allocation by the exporter and balances extracted from SAP is only 2%. The variance ranges from -2,528% to 100%. The magnitude of variation suggests that the difference will have significant impact on the computation.

particular schedule was provided to the Commission with unreconciled excess cost hence the difference is not significant and will not materially impact the computation.	
21. As was already explained to the Commission on several occasions and during the on-the-spot verification visit, Sri Lankan exporters are allowed to import raw materials under TIEP Scheme. This is a concession given by the government of Sri Lanka to encourage exporters. Under the TIEP Scheme, exporters are allowed to import raw materials without paying duty on the same. If materials are imported for production of Cans and Ends which are to be sold in the export market, PAL is not payable. However, if materials are imported for the purpose of manufacturing of Cans and Ends which are to be sold in the domestic market, PAL is payable @ 7.5% at the point of clearance of goods. Due to this government concession, CBC is able to sell its products in the export market at competitive prices as PAL is not a part of its cost for export sales. However, for CBC's domestic sales, the price is considerably high as PAL is a part of the production cost under landed costing. Notably, in its domestic market, CBC only sells Cans of 330 ml, 500 ml and 202 Dia Lid. Domestic selling prices of these products are high when compared with the export selling prices. The Commission has added PAL payable for the total production cost @ 7.5% for 250 ml and 300 ml cans and 200 and 202 Dia Ends. However, this adjustment for PAL is not reasonable. The IP for the purposes of the subject investigation are Cans up to 300 ml. However, CBC does not sell Cans 300 ml or below in its domestic market, rather it exports 185 ml, 250 ml and 300 ml Cans. The cost of these products is low due to the tax benefit received under TIEP Scheme. In view of this, it is not reasonable to add PAL payable to the production cost of 250 ml, 300 ml Cans and 200 Dia Ends in the Normal Value computation. As per Section 11 of the Anti-Dumping Duties Act, 2015 (the "Act"), in order to ensure a fair comparison between Export Price and Normal Value, the Commission shall where possible, compare the Export Price and Normal Value with	Section 11 of the Act states that:- "To ensure a fair comparison between export price and normal value, the Commission shall, **<u>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 for delivery at the same place which shall normally be at ex-factory level</u>**. Where an interested party demonstrates to the Commission that any of the factors set out in this subsection or any other factors identified by such interested party affect price comparability, the Commission shall make due allowance for differences in such factors to the extent that the same affect price comparability." The text of Section 11 states about fair comparison between export price and normal value of finished goods. In case the tariff structure is different for finished goods sold in domestic market and export market, the same will be adjusted. The taxes paid or payable by the company on import/local procurement of raw materials destined for domestic consumption is part of the cost therefore, should be included. The Commission compared normal value and export price at ex-factory level. The company has stated that the Commission has applied 7.5% for the total cost of sales to arrive at PAL payable which is incorrect. In the cost of sales account (511010), the cost of both locally purchased and imported items plus related landed costing of these purchases are there. Apart from that, production OH such as Depreciation and Production Staff Salary is also included in this particular GL. In view of the above, it is most respectfully submitted that applying 7.5% for the total cost of sales is disproportionate and unjustified. The company purchases raw materials under TIEP scheme and otherwise. However, it does not maintain separate inventory of raw materials

the same characteristics in terms of level of trade, time of sales, quantities, taxes, physical characteristics, conditions and terms of sales, and delivery at the same place shall normally be at ex-factory level. Adhering to the specifications given in the Act for fair comparison, Export price and Normal Value should have the same characteristics in terms of taxes. However, if PAL payable is considered for the Normal Value computation of 250 ml, 300 ml and 200 Dia Ends, it will affect the price comparison for the reasons set forth below: During the POI, CBC sold 250 ml, 300 ml cans and 200 Dia Ends to Pakistan. As it benefited from taxes under TIEP Scheme in production, the selling prices of these products were decided and dependent on that benefit. Hence, CBC was able to sell these products at a competitive price to Pakistan. Having considered this, the Normal Value of these products also need to be calculated considering the same characteristics, meaning that the tax benefit should also be considered in computation of Normal Value. Otherwise, it will not be a fair comparison; Comparing Export Price which was based on the tax benefit gained through TIEP Scheme with the Normal Value which has been computed eliminating the tax benefit of TIEP Scheme would not be a fair comparison; and Further, the Commission has applied 7.5% for the total cost of sales to arrive at PAL payable which is incorrect. In the cost of sales account (511010), the cost of both locally purchased and imported items plus related landed costing of these purchases are there. Apart from that, production OH such as Depreciation and Production Staff Salary is also included in this particular GL. In view of the above, it is most respectfully submitted that applying 7.5% for the total cost of sales is disproportionate and unjustified.	purchased under TIEP and otherwise. TIEP scheme clearly mentions that tax benefit is only on the import of raw materials used for export purposes. The company uses tax free raw materials in goods destined for domestic consumption. It is impossible to segregate consumption of duty free raw material and duty paid raw material from the material consumption ledger provided by the company. It is therefore the Commission has used raw material consumption cost which includes landed cost. Furthermore, for cost of sales – others, the company did not identify the cost associated with locally purchased and imported items. In addition, the company has not provided the details of some portion of depreciation and production staff salary which was included in cost of sales. Due to non-provision of these details, the Commission has applied PAL on the total amount of cost of sales – others.
22. In addition thereto, the Commission has provided the basis for cost allocation amongst product categories. The Commission has allocated Admin, Selling and Financial expenses between Cans and Ends on the basis of revenue (based of the sales value).	When the company sells Cans and Ends together, it invoices Cans and Ends collectively. There is no evidence to support segregation of cans and ends value. Due to this shortcoming, revenue cannot be used as a base to allocate expenses. Alternatively, the Commission has revised allocation basis as

However, the Commission has computed this allocation basis based on the figures in the Sales Analysis Report. As was already explained to the Commission during on-the-spot verification visit, for Can with End Sales in the particular report, the value of both Cans and Ends is shown against the particular Can quantity whereas the particular End quantity is separately shown with a zero value. As the ratio has been computed on this, more cost has been allocated to Cans causing Can cost to be overstated and End cost to be understated. Therefore, it is most respectfully submitted that the ratio followed by the Commission is not accurate.	follows:- Administration and selling expenses: - between cans and ends on the basis of standard aluminum consumption. Further, allocation amongst variants of Cans and Ends on the basis of numbers. Financial expenses: - allocation on the basis of standard aluminum consumption.
23. Segment Wise Revenue has been presented through Annex I and II by the Commission. These tables have been prepared based on the Sales Analysis Report which CBC extracted from its system and shared with the Commission. During on-the-spot verification visit, it was explained to the Commission the result CBC receives through the Sales Analysis Report. For Can with End Sales, the Total Sales Value (Can with End Sales Value) is shown against the particular Can quantity, whereas the related End quantity is separately shown with zero value. However, the Commission has presented segment wise sales based on this particular report, hence for Can with End sales the Total Value is presented under the particular Can size where the End quantity of the same has been separately presented. The fair picture of Segment Wise Sales has not been presented through the Annex I and II.	The company has presented sales ledger and sales analysis report as evidences of sales revenue. Sales ledger does not contain item wise description of the Cans and Ends sold. It means that from sales ledger, variants wise sales revenue of Cans and Ends could not be determined. This was shared with the company during on spot verification. Alternatively, the company presented sales analysis report. Sales analysis report contains the items wise description which provides variants wise sales revenue of Cans and Ends. However, for sales transactions where, the company sold Cans and Ends together, one sales price appears for both Cans and Ends. Another entry appears for Ends showing related quantity of Ends sold but corresponding value is zero. Both documents presented by the company in support of sales revenue have shortcomings.
Determination of Export Price:	
24. The Commission under Section 20(2.2) of the SEF has stated that they will compute credit cost using the short term interest rate published by Central Bank of Sri Lanka. However, as already highlighted in the written comments in on-the-spot verification Report, the points below need to be highlighted once again:	
i. CBC does not price its products to cover credit cost from the customer as it is benefited with the 60 to 120 credit period from its raw material and	It is a general practice that product sold at credit is priced higher as compared to product sold at cash. To account for such difference, adjustment for

packing material suppliers, hence cost of credit terms is not reflected in its selling prices. ii. If the Commission is adjusting credit cost to export price and disregarding the above, then the Finance cost should be eliminated from the Normal value computation. Otherwise, it will result in double deduction of credit cost.	credit cost has been made.
iii. Section 6(b) of Act, 2015 is silent on whether to take the Finance Cost into account while computing Normal Value. Hence, the Commission is requested to eliminate the Finance Cost from the Normal Value computation.	As per Section 6(b) of Anti-Dumping Duties Act, 2015 (the "Act"), Normal Value should be calculated on the basis of "the cost of production in the exporting country plus a reasonable amount of administrative, selling and general costs and for profits".The term general costs include finance cost.
25. The Commission has stated that they will deduct the agent commission expense on the rate CBC paid its agent against all transactions @ USD 3.2. However, as already communicated to the Commission on several occasions that CBC changed its agent company, resulting in a reduction of the commission rate, it is not appropriate to consider the same commission rate for all the transactions which were based on the new agent. Disregarding the above fact, if the Commission is considering applying a fixed commission rate of USD 3.2 (the rate actually paid against one transaction during POI) for all other transactions as well, it would be incorrect. As initially communicated to the Commission in the Exporter's questionnaire, the commission was paid to the previous agent based in Dubai at a variable rate and the minimum commission rate is USD 1.2 for 1000 Cans and Ends. The Agent Commission Computation along with other supporting documents have already been provided to the Commission officials during on-the-spot verification, the documents may kindly be referred to, to understand how the variable commission rate has been computed against each sales invoice. During POI, CBC paid 3.2 USD for 1000 Cans and Ends when the price of Can with End was at USD 88. As the price fluctuates, the commission rate will also fluctuate accordingly. Therefore, applying a flat rate of USD 3.2 in not appropriate.	It is stated that commission is paid to agent in lieu of services that it performs for the company. The commission is not paid to the company in relation to expense that it incurs. The argument put forward by the exporter that first the agent was having office in Dubai so he was incurring more cost and now the agent has shifted its office in Pakistan so he is incurring less expenses and hence charging less commission does not make any sense. There was no evidence produced before the investigating team that agent agreed to reduce the commission charged by it. Infact the company informed that there is no agreement between the company and its agent.
26. Further to the above, the Commission in	There is no evidence to support segregation of

Section 20(2.3) of the SEF has stated that they will determine the export price on the basis of Cans and Ends together. However, in this investigation, the IP is defined as "Aluminium Beverage Cans up to 300 ml". Ends/Lids do not come under the definition of IP hence, it is not appropriate to consider both Cans and Ends together in determining the export price. Additionally, during POI, CBC carried out certain sales transactions to Pakistan without Ends (Only Can Sale) and calculating the weighted average of all the transactions without considering the above fact would be incorrect. **DETERMINATION OF INJURY** 27. 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. **Total Domestic Market**	export price between cans and ends and therefore, the Commission is constrained to determine export price on the basis of cans and ends collectively in the light of evidence produced by the company.
28. Before the Applicant entered the domestic market in September 2017, the entire demand was met through imports. The increase in production for domestic sales was slow from 1.64% in September 2017 to 8.97% in January 2018. One reason for slow production was low demand of soft drinks during the winter season, as mentioned in the Report as well. Another reason is that the Applicant had just started production and to expect to be able to reach the level of 100 % projections seems very unrealistic. **Projected and Actual Sales & Actual Dumped Imports**	With the final determination, the question become irrelevant.
29. It may be noted that the projected values have been incorrectly calculated in the business plan. Due to this, it is not possible to ascertain that the domestic industry is suffering from material retardation caused by volume of dumped imports.	Need no reply.
30. In addition to the above, the Applicant further	Actual variable cost per unit was higher than the

claims to have faced a higher variable cost to make and sell the domestic product than the projected values i.e. the actualvariable cost was 127.56Rs/Kg from April to June 2018 whereas the projected cost was 58.50 Rs/Kg. As stated earlier, one reason for this could be a possible fault while calculating the projected cost, or because in its earlier phases, a company does not generate adequate amount of revenue to cover its production costs.	projected variable cost per unit. However, the increase has no nexus with dumping.
31. Therefore, it is evident from the information provided by the Applicant that the Applicant suffered due to wrong projections and not due to imports of the Investigated Product.	Exporter has pointed out to the market size which was estimated at 100 in the business plan whereas the actual market remained at the level of 85.
Sales	
32. The total share of dumped imports in the domestic market remained higher than domestic sales at 69.65% during this period, but only because they have already been in the market for years and it would take time for the Applicant to leave its mark on the market.	The question is irrelevant because injury has not been found, due to dumped imports.
33. Having said the above, it must also be noted that even though the total share of dumped imports was 69.65%, it has drastically decreased from 100% in September 2017 to 32.29% in June 2018. This clearly shows that dumped imports do not have any effect on the domestic market, rather the imports have had an effect on its shares due to the rising domestic production.	
34. Nonetheless, February 2018 onwards, domestic sales increased rapidly from 33.95% to 56.05% in June 2018.	
Volume of Dumped Imports	

35. 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.	Sri Lanka's share in total imports of aluminum beverage cans was 9.70 percent. The Commission has cumulatively assessed the effects of dumped imports from the Exporting Countries and determined that domestic industry has not been materially retarded due to dumped imports from the Exporting Countries.
36. Moreover, according to the Report, the percentage of dumped imports to domestic production decreased from 202.08% in January-March 2018 to 99.48% in April-June 2018, whereas domestic production greatly increased from 66.02 MT to 100 MT during this period (Table VII), showing a drastic decrease in dumped imports and increase in domestic production. Therefore, it can be seen that the dumped imports did not have an impact on the Domestic Industry.	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, the domestic industry projected domestic production of *** M.T, i.e. 64.41% of the installed Capacity during the POI.
37. In case of material retardation, the inference from the trend is not appropriate as the Domestic Industry is likely to increase production and the imports are likely to decrease.	Agreed.
Effects on Production and Capacity Utilization	
38. 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%. 39. According to the Report, the domestic industry had projected a domestic production of 64.41% of the Projected Capacity Utilization, whereas it was only able to achieve 25.31% from	As per information obtained during the investigation, the size of Pakistani market of aluminum beverage cans is 250-300 million cans per annum. However, size of Afghanistan market is estimated around 400 million cans approximately. The reason for greater than anticipated market size is that alternative modes of packaging for beverages e.g. PET or glass bottles are not available for products of capacity less than 500 ml. In the light of above facts, the projections made in the business plan seem reasonable. Furthermore, the importers or exporters of the investigated product have not come up with alternate figures which could be termed reasonable according to them.

September 2017 to June 2018. The Applicant is placing the blame upon CBC for not being able to achieve the projected capacity as the dumped imports had a major share in the domestic market, but not taking into consideration the fact that the values in the business plan were not calculated correctly. 40. Having stated the above, it should be noted that the Applicant's projected capacity utilization of 64.41% is clearly unrealistic. The achieved capacity utilization of 25.31% is actually a very good achievement keeping in mind the capacities of the markets the Applicant was set up to sell to and that only a year had passed since it has started production. **Market Share**	
41. The Report states that domestic sales have rapidly increased from 0.76% in September 2017 to 27.77% in June 2018. However, this increase was not adequate according to the Applicant as they had aimed to reach 78% of the total domestic market and was far below what had been projected in their business plan. One reason for the huge deviation is that the projected values were faulty.	No comments.
42. The share of dumped imports was high at 69.95% during this period, however, decreased gradually and the reason for this gradual decrease was natural as there was no domestic industry initially.	No comments.
LIKE PRODUCT 43. According to Section 2 (m) of the Act, a "like product means a product which is alike in all respects to an investigated product…". Therefore, it is imperative that the investigated product be compared to a product which is identical to it in all areas and not just be similar in nature. 44. In the present case, the Commission has considered the 250 ML and 300 ML cans as like products, which has inevitably resulted in a disproportionate dumping margin. However, both are separate products as they have different	According to 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;.* It is pertinent to mention that in this section like product is defined w.r.t investigated product, not the investigated product's variant with each other. In the light of above stated definition we have to consider whether the domestically produced 250

physical properties, nature and qualities, hence, cannot be accommodated together. It is clearly evident that both the products have different capacity levels as a 250 ml can cannot accommodate 300 ml of liquid product and vice versa. Similarly, the buyers of the Investigated Product have a preference due to their demand vis manufacturing facilities. As may be noted from the Chile Alcoholic Beverages case, butter and margarine are two distinct products although it can be argued that most consumers consider them the same (consumer perception). Also, different lids are used for each i.e., the 250 ML uses a 200 Dia End Lid whereas the 300 ML uses a 202 Dia End. The surface is also different for both cans such as different ink, insider spray lacquer etc. During the manufacturing process, different machine parts and different speed is used to produce the different types of cans, resulting in distinct manufacturing process, end usage and consumer demand. Therefore, keeping in mind the above illustrations, a 250 ML can cannot be associated with a 300 ML can as they have different physical properties, quality and nature. Hence, both should have separate dumping margins. **USE OF CEYLON BEVERAGE CANS' CONFIDENTIAL DATA** 45. The Commission has used CBC's Normal Value, which is based on CBC's cost of production, to calculate the dumping margin for non-cooperating exporters, even though CBC was the only exporter that cooperated with the Commission by providing all the necessary data for the dumping margin calculation. As a result, CBC's competitors have more or less the same dumping margin as itself and all will be exporting their products into Pakistan at the same anti-dumping duties.	ml and 300 ml can is alike in all respects to the 250ml and 300 ml can produced by the exporter or not. It is clear that 250ml and 300ml can exported by CBC and 250ml can and 300ml can produced by the Applicant are like products. Thus investigating product and domestic like product are same.
According to Article 6.5 of the Anti-dumping Agreement (the "Agreement"), any information confidential in nature is not to be shared with any party to the investigation without receiving consent of the party submitting it.	The Commission has not disclosed the confidential information of Ceylon Beverage Can to other interested parties.

46. The Commission has used CBC's cost data to calculate the dumping margin for non-cooperating exporters clearly goes against the Agreement and Section 31 of the Act. As a result, the non-cooperating exporters can easily reverse engineer the indexed values and calculate the actual values of CBC's cost of production, value of sales etc., posing great threat to CBC. Such potential threat to CBC highlights the 'good cause' upon which the Commission should treat all information as confidential and not use the same for calculation of normal value for other exports.	The Commission has not provided calculation of normal value to non-cooperating exporters so question of reverse engineering of indexed figures does not arise.
47. In addition thereto, the Appellate Body in EC – Fasteners (China) has stated, "in practice, a party seeking confidential treatment for information must make its 'good cause' showing to the investigating authority upon submission of the information". CBC has informed the Commission repeatedly on several occasions not to use its confidential information to calculate the dumping margin for the other parties involved as they can easily decipher the actual values, giving them an undue advantage in the market, satisfying the requirement of 'good cause'.	As above.
48. Keeping in mind the above, it can be ascertained that the Commission cannot calculate the Normal Value of the non-cooperating exporters using the confidential information provided by CBC (i.e., cost data), instead should base its findings on information which is provided by the applicant for imposition of anti-dumping duties.	In absence of data from the non-cooperating exporters regarding determination of dumping, the Commission had two sets of data. One that was provided by the Applicant and other one were provided by the cooperating exporter. The data provided by the Applicant is based on secondary sources. The data provided by the exporter is based on primary source this data was verified by conducting on-the-spot verification at the premises of cooperating exporter. The Commission is of the view that it is appropriate to use verified data of cooperating exporter for non-cooperating exporters.
Comments of Applicant, Pakistan Aluminium Beverage Cans Limited:	
49. Hearing in this investigation was held on June 13, 2019 which was also attended by the representatives of CCBPL who despite being present during the hearing have neither made any oral submission nor submitted their comments	CCBPL requested the Commission for extension of 10 days for submission of post hearing comments. The Commission acceded to the request made by CCBPL and granted extension by July 03, 2019.

within 10 days of the date of hearing. CCBPL made its first submission on June 02, 2019 i.e. 19 days after the date of haring. PABC has serious reservations on consideration of comments of CCBPL on the Commission's preliminary determination since they were submitted beyond the time line provided by the Antidumping Duties Act 2015 (the "Act") as well as Antidumping Duties Rules 2001 (the "Rules"). 50. At para 28 of the SEF, facts relevant to determine price effects on the domestic industry have been provided. PABC believes that the Commission has very rightly compared actual domestic prices of the domestic industry with projected price to determine injury to the domestic industry. In its preliminary determination report, the Commission calculated deviation from projection by using projected price of the business plan calculated in Pak Rupee on per KG basis. Deviations from projections calculated with this methodology appear to be less than actual deviation. In order to allow actual picture of deviations from the projections, PABC requests the Commission to consider the following while comparing the prices of business plan with actual prices during the POI.	
i) Prices provided in the business plan are exclusive of increase in LME since any increase, subsequent to contract, in aluminium prices is passed on to the customer. At the time of preparation of business plan, prices of aluminium as per LME were USD ***/ ton which, during the POI increased to USD *** - *** / ton. As per pricing mechanism for Cans, an adjustment of around *** USD/ thousand Cans is applicable for every 100 USD increase in price of aluminium. LME price during the POI were higher by a value of around *** – *** USD/ ton than the LME price at the time of preparation of business plan. Actual prices of PABC are already carrying effect of increased LME	The Commission has incorporated the effect of the increase in Aluminium coil prices while calculating the projected price and cost of domestic like product.

prices whereas prices of business plan are exclusive of LME increase due to which such comparison does not appear to be like for like comparison. For fair comparison, in order to assess actual deviation, projected prices needs to be adjusted by increase in LME prices.	
ii) Actual pricing and invoicing of Cans is done with unit of measurement (UOM) of “thousands of Cans” instead of KGs. Prices of business plan are also provided for “thousands of Cans” as UOM. Therefore, in order to assess actual deviation, actual UOM is to be used which is “thousands of Cans”.	No material change will occur with the change in measurement unit by changing the unit of measurement from "thousands of Cans" to Kgs. However, as the import prices of the investigated product were in Kgs thus it is appropriate to keep the measuring unit Kgs for comparisons instead of "thousands of Cans".
iii) Prices of Aluminium Beverage Cans are settled in USD instead of PKR, invoicing in domestic market is also done in USD that is why PABC provided prices in USD for thousands of Cans. Therefore, prices of business plan in USD need to be compared with actual USD prices of PABC in order to calculate deviation.	The audited accounts of PABC and other records are maintained in functional currency i.e. Pak Rupee. Thus, the Commission made calculations in functional currency rather than USD.
51. In its preliminary determination report, the Commission has determined injury (in the form of material retardation to the establishment of the domestic industry) on account of price depression but has not concluded injury on account of price suppression. Domestic industry believes that the Commission has very rightly determined price depression to the domestic industry during second quarter during which volume of dumped imports was at its peak. However, the fact that information of the domestic industry was very limited keeping in view limited period of operations of the domestic industry, analysis of price suppression was also relevant and, like other analysis of the material retardation investigations, should also be	The Commission concluded that there is no price suppression in the light of projections made on the basis of PABC's Business Plan and actual data of prices of imported product.In the light of business plan the increase in LME prices subsequent to contract, is passed to the customer and same practice is adopted by PABC. The effect of increase in LME prices has been discussed in detail under the heading Forced Reduction in Prices.

unique as compared with price suppression analysis in “material injury” investigations. Unique analysis of price suppression is also necessary since the domestic industry has not yet achieved stable production level due to dumped imports due to which there is abrupt variation in cost of production of the domestic industry. In this regard, the comparison of the trends of imports prices for finished Cans with prices of aluminium coils (LME Prices) is very much relevant for assessing price suppression to the domestic industry. From the comparison of LME prices with C&F prices of the dumped imports, it is very clear that the exporters started suppressing their prices since raw material which was 52% of the price of imports during July 2017 started increasing and became 64% of the price of imports during June 2018. This means the exporters squeezed their margins to suppress the prices of the domestic industry and domestic industry could neither achieve its projected priceor a price at which it could earn some profits. PABC requests the Commission to revisit its price suppression analysis based on the above comments while finally concluding material retardation to the establishment of the domestic industry on account of price suppression, for the purpose of final determination.	

Subject: Dissent Note on Final Determination and Non-Imposition of Definitive Antidumping Duties on Dumped Import of Aluminum Beverage Cans into Pakistan Originated/Exported from Jordan, SriLanka and UAE

I am of a strong view that report of Final Determination and Non-Imposition of Definitive Antidumping Duties on Dumped Import of Aluminum Beverage Cans into Pakistan Originated/Exported from Jordan, SriLanka and UAE prepared and signed by two members of the Commission is based on misinterpretation of facts and a deliberate overlook of some important information. Hence, conclusions drawn about non establishment of domestic industry and injury to the domestic industry due to presence of dumped imports are not correct. Moreover, the report/decisiondoes not meet all requirements of the antidumping law.

2. Firstly, the facts and statistics related to the non-establishment of industry have been misinterpreted in thereport.

a. While examining the five preconditions for non-establishment of the domestic industry, the report concludes that since the Applicant increased its production from ***Kgs in January 18 - March 2018 to ***Kgs in April – June, 2018, it cannot be said that the production faced a start and stop condition of its production. However, the start and stop condition for non-establishment of the industry refers to physical start and stop of the production process. It is fully evident from the information available with the investigating team that industry operated for only *** hours, *** hours, *** hours, *** hours and *** hours against *** available production hoursper month. This fact has been completely ignored in the report. The industry failed to get approvals from consumers not because of any other reasons but because of availability of dumped imports in the market.

b. The production throughout the POI remained below the projected production. All the major buyers including Coca Cola Beverages, King Beverages, Mehran Beverages and Pakistan Beverages had given approvals by December 2018, however they continued import from dumped sources.

Table 1: Approvals by the Importers

Importer Name	Date of Approvals	Percentage of imports after granting Approvals
Coca Cola Beverages	1-Dec-17	84.38%
Haidri Beverages	3-Feb-18	0.00%
King Beverages	22-Nov-17	78.87%
Mehran Beverages	15-Jul-17	100.00%
Pakistan Beverages	1-Dec-17	77.19%
Quice Food		0.00%
Total		75.92%
Major imports (76%) were made after getting approvals to the domestic industry		

c. During the POI 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. At this production level, the Applicant would have accounted for 83.38 percent of the total domestic market. However, the Applicant's actual production share was only 38.02 percent, which was much lower than the projections made in business plan.

d. 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. 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 but the industry could 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 the POI. The main reason for low contribution margin was the forced reduction in prices demanded by the buyers despite having firm contracts with the applicant (Annex-1). For a non-established industry, the breakeven point has to be distant from the POI. Thus, main thing to be seen is the trend and not whether it is within the POI or not.

3. Secondly, when condition of material retardation is established, principles for determination of injury to the domestic industry as provided in Section 15 of the Act

"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...."

have to be interpreted in the context of material retardation and not strictly material injury.This has been done in initiation of the case, preliminary determination and SEF (Annex-2).

a. Thus, with regard to the volume of dumped imports, the relevant consideration is whether there has been a significant decrease in dumped imports, either in absolute terms or relative to the production of the domestic like product by the domestic industry. The analysis shows that in absolute terms,actual imports have increased from*** kg in September, 2017 to *** kg in June, 2018 while remaining as high as *** in February, 2018. The actual imports; *** kgare much higher than the projected imports; *** kg. Imports relative to production, sales and market share also remained much higher than projected throughout the POI.

Table 2: Imports Actual & Projected (M. Tons)

	Projected	**Actual**
Total imports	100.00	187.04
Sales	201.95	71.91
Market	301.95	258.73
Production	250.55	98.39
Imports relative to sales %	49.52	259.80
Imports relative to market%	33.12	72.21
Imports relative to production%	39.91	189.87

Note: For the purpose of confidentiality, the actual figures have been indexed w.r.t total projected imports.

It would therefore, be not correct to say that thedumped imports relative to domestic production and consumption both projected and actual also declined over time (para 34.7 7 table XX)

b. For price effects, there is significant price undercutting and price depression throughout the POI.

Period	Average Domestic Price (Rs/Kg)	Average Projected Domestic Price (Rs./Kg)	Average Landed Cost (Rs/Kg)	Deviation from Projection (%)	Actual Price Undercutting (Rs/Kg)	Price Undercutting w.r.t projection (Rs/Kg)
Sep-Dec 17	90.58	96.04	93.47	6.02	-------	-------
Jan-Mar 18	85.13	101.13	96.69	18.79	-------	-------
Apr-Jun 18	100.00	102.42	95.21	2.41	4.79	7.23

Note: For the purpose of confidentiality all the figures have been indexed w.r.t Average Domestic Price per Kg for the quarter Apr-Jun 18 except the column having percentages.

The prices of dumped imports were lower than the projected and actual (last quarter) 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. Reference to SriLanka FTA is not relevant here as the imports from all dumped sources have already been accumulated.

c. Similarly, the analysis shows that there is price depression due to continued dumped imports.

Period	Prices of domestic like product	Price Depression	Average Projected Domestic Price
Sep-Dec 17	90.58	---	96.04
Jan-Mar 18	85.13	(5.45)	101.13
Apr-Jun 18	100.00	---	102.42

Note: For the purpose of confidentiality actual figures have been indexed w.r.t price of domestic like product for the quarter Apr-Jun 18.

It was projected in the business plan that prices of domestic like product will increase during every quarter. However, due to continued import of the investigated product the domestic industry had to decrease its prices during the quarter. This is the same period when imports of the investigated product were at its peak. This is the same period when applicant was forced to reduce prices and this is the same period when the major buyers of beverage cans despite giving approvals did not buy from the applicant and continued to import from dumped sources. Thus, domestic industry faced price depression.

As all the basic factors of the injury are present, it is wrongly concluded that there is no injury.

4. Thirdly, a large number of consequential injury factors including decrease in market share, sales, production/capacity utilization, profit/loss, negative effects on inventories/cash flows/ ability to raise capital, forced reduction in prices and continued import from dumped sources by the customers despite giving approvals to the industry have been deliberately ignored (Annex-3).

5. Fourthly requirements of section 42 of the Act are not met. The notice of conclusion of an investigation without imposition of measure "……….*shall set forth in sufficient detail the findings and conclusions reached on all issues of fact and law considered material by the Commission including the matters of fact and law which have led to arguments being accepted or rejected".* Throughout the investigation; initiation, preliminary determination, SEF the Commission determined that there is material retardation and industry has suffered injury. However, in the final determination all of a sudden without any new fact or information, two members of the Commission decides that there is no injury on a false assumption that there is no volume or price effect and without considering the above arguments.

6. Fifthly, it is a serious concern that two members by maneuvering the circumstances and the procedures have given the impression that due process of law has been followed whereas, the case has not been discussed properly in the full Commission and the final notice is not approved by the Commission. This has set a very dangerous precedent that any member/members can maneuver the circumstances and do anything, any member/members have no responsibility in the decision-making process if he/she was not present in any one of the meetings and there is no legal remedy available to the dissenting voice.

(Robina Ather)
Member NTC

Annex-1

The Applicant provided a copy of agreement dated September ***** with one of its customer where 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

The price was agreed to fluctuate for every increase/decrease 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

LME prices of major raw material increased by *** percent after the agreed price. 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. This persistent demand of reduction in prices is due to presence of low-priced dumped imports.

Annex-2

Initiation Memo

Preliminary determination

Statement of Essential facts

16. *De minimis* Dumping Margins and Negligible Volume of Alleged Dumped Imports

16.1 In terms Section 41(3) of the Act, 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. *Prima facie* dumping margins for the alleged dumped imports of the investigated product are above negligible level.

16.2 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 imports of the investigated product from alleged dumped sources and import of Aluminium Beverage Cans from other sources has been obtained from PRAL. Volume of alleged dumped imports of the investigated product from dumped sources and other sources during the POI (September 01, 2017 to June 30, 2018) is given in a table below

Table-VI
Volume of Imports of Aluminium Beverage Cans during POI

Country	Volume of Imports in: Percentage
Jordan	30.23
Sri Lanka	6.25
Turkey	15.17
UAE	46.10
Other Sources	2.25
Total	100.00

Source: the Applicant
For the purpose of confidentiality, the actual figures have been indexed w.r.t total volume of imports.

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

17. Material Retardation of the establishment of Domestic Industry

17.1 As the Applicant has been in commercial production for even less than a year during the POI, a traditional injury analysis is not possible. The two injury factors described in Section 15(1) regarding volume of dumped imports and impact of the imports on domestic products are not well suited for this situation. Data on these factors is reliable only in cases where the injured domestic industry has been involved in production for a significant period of time and has succeeded in stabilizing its production operations. Stabilization of operations occurs when the industry reaches break-even point, i.e. when the firm's short run total revenue equals its short-

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run total cost, taken in conjunction with other factors such as market share, capacity utilization, and establishment of product distribution channels. The economic indicators mentioned in Section 15 of the Act measure the injury caused to a domestic industry that has already reached a significant level of stabilization in its operations and has been operating for a significant period.

17.2 Since this is a case of a nascent industry for which it is very natural and usual to get some market share by using price as a mean of entry in a market dominated by less than fair value (**LTFV**) imports, traditional injury determination standard is not appropriate to assess injury to the domestic industry. The type of injury appropriate in current circumstances of the domestic industry is material retardation of the establishment of domestic industry which is a sort of injury as defined in Section 2(i) of the Act, since the continued dumped imports are not letting the domestic industry to stabilize its operations.

17.3 In material retardation investigations involving a nascent industry, the traditional economic indicators cannot provide the actual injury being suffered by the domestic industry. Reason being, the dumping of imports has begun prior to the commencement of production by the domestic industry and remains continued even after the production began. In this case, the injury factors given in Section 15 of the Act would only provide an inaccurate description of the status of the domestic industry, as the dumped imports have adversely affected the industry's performance in terms of lower prices, capacity utilization, production, and so on, before the economic indicators could be measured on the basis of which a traditional trend analysis may be made. The actual data is compared with the projected figures in feasibility study prepared by the domestic industry promoters prior to actual commencement of production. A comparison of the actual production and sales for which data is available only for a short period of time with the performance projections would demonstrate how much production and sales have been affected in the period when the industry is nascent.

17.4 Alleged material retardation of the establishment of domestic industry is summarized in the following paragraphs.

17.5 As per the information provided by the Applicant, the domestic industry started commercial production of Aluminium Beverage Cans on September 12, 2017. The Applicant has stated that alleged dumped imports of Aluminium Beverage Cans have materially retarded the establishment of domestic industry. The type of injury - Material retardation of the establishment of the domestic industry is assessed in those cases in which commercial production has already begun but the domestic industry has yet to attain a stable presence in the market. For determining stabilization/ establishment of operations by the domestic industry, following criteria is usually adopted by various Antidumping Authorities:

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

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v. whether the activities involve the establishment of a new industry or are merely a new product line of an established firm.

17.6 Usually it is considered that if the domestic industry has not been operating its facility long enough to allow for a traditional injury analysis, say less than two years, and no historical level of success has been achieved, such facts are likely to trigger a material retardation analysis. In this case, the Applicant started commercial production of the product concerned in September 2017 and till the end of POI, only completed nine months and 18 days production till June 30, 2018. Hence, traditional injury analysis covering three years period is not possible in this case.

17.7 Domestic industry had a steady production during the POI but such steady production was the result of efforts of the domestic industry to compete with the imports by setting its prices lower than the dumped imports. This resulted in huge losses to the domestic industry as it was continuously selling its product lower than its cost to make & sell just to take up the market share and to remain in the business but having borne such heavy losses domestic industry would not be in a position to survive for long and will have to shut down its operations. If the domestic industry tried to sell its product at a pricing level to earn a reasonable profit, it would have not been able to achieve steady production. Reason being, such production could not have been sold at reasonable prices to fully cover its cost to make & sell because of availability of low priced dumped imports in the domestic market. Such a situation would have resulted in either start-and-stop production or shut down of plant.

17.8 Modest production levels and small size of domestic operations compared with the domestic market as a whole may be element of consideration for finding that an operation of the industry is not yet stabilized. During the period of investigation, the share of the domestic industry in the domestic market remained very low which cannot be regarded as sizable. Also, information regarding market share covers such a short period of time (9 months only) and therefore, these numbers are not indicative of any stable market trends. Current domestic share of the domestic industry is only due to its prices, competing with the LTFV imports which are considerably lower than the prices needed for breakeven. The LTFV imports maintain pressure of the prices as purchasers may quickly change suppliers if domestic industry attempts to increase its prices. Therefore, the domestic industry cannot be regarded as an established industry on the basis of these criteria.

17.9 There is a great importance of break-even analysis in determining establishment of a domestic industry. Where an industry began production recently and has yet to absorb many start-up costs, the industry is rarely financially sound. If a new industry becomes profitable notwithstanding the start-up problems frequently associated with a new business, such success indicates the industry's stability. Otherwise, the industry has not achieved stability. In this case, the domestic industry has neither achieved breakeven level of sales nor it was able to sell its product at reasonable prices under pressure from the LTFV imports. Therefore, the domestic industry is not yet established.

17.10 An established industry introducing a new product line might hasten the establishment of the new product in the market place by promoting sales of the new product line through its established distribution and marketing networks and industry contacts. In such an instance, it is recognized that operation of production is stabilized. However, if the production of a newly introduced product is not significantly aided by the other existing and established product operation sector, it may be found that operation of the domestic industry with regard to the new product is not stabilized.

17.11 Product produced by the domestic industry has never been produced earlier locally in Pakistan. Aluminium Beverage Cans Industry is totally a new industry for which the whole domestic demand was being met by imports. It is developing its own sales and marketing channels to sell its product to the customers. Therefore, the question of any aid from existing sales and marketing networks does not arise in case of Aluminium Beverage Cans Industry. Hence the domestic industry cannot be regarded as an established industry on the basis of this criteria.

18. Volume of Alleged Dumped Imports

18.1 Under the international best practices in the context of material retardation, some of the factors relevant in a material injury investigation can be misleading in a material retardation case. Increase in volume of dumped imports is one of them, as in case of domestic market which was previously completely dominated by LTFV imports, and a new domestic producer acquires a portion of the market share through import substitution, a decline of the import volume and import market share would be natural. In addition, information on market penetration is of limited relevance to material retardation investigations because allegation of dumping is not being investigated to establish share of trade but to forestall the development of the domestic competition in an import dominated market. Information on volume of dumped imports is given in the following table.

Table-VII

Volume of Alleged Dumped Imports

Year/Period	Total Imports from Dumped Sources	Total Imports	Total Consumption
	Qty (kg)	Qty (kg)	Qty (kg)
Jul 15-Jun 16	100.00	105.44	105.44
Jul 16-Jun 17	122.44	122.84	122.84
Jul 17-Jun 18	96.43	98.65	122.69

Source: the Applicant

For the purpose of confidentiality, the actual figures have been indexed w.r.t volume of alleged dumped imports for the period July 2015-June 2016.

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18.2 In this case, the domestic industry used price as a mean to enter the domestic market and was able to get some share in the domestic market, although lesser than what was envisaged. Therefore, evaluation of the volume of imports in isolation will be misleading. Since in material retardation cases, actual performance needs to be compared with the projected performance of the domestic industry, imports are also required to be analyzed with the domestic industry's achievement of desired level of performance.

18.3 Since the domestic industry only operated for nine months and eighteen days during the POI, actual volume of import for 09 months i.e. Oct 17 – Jun 18 is compared with the volume of imports in the absence of dumped prices as given in the following table:

Table-VIII

Volume of Alleged Dumped Imports (Actual vs Projected)

Oct 17 – Jun 18	Imports from Alleged Dumped Sources			Total Imports	Total Consumption
	Qty (kg)	As a percentage of			
		Total Import	Total Consumption	Qty (kg)	Qty (kg)
Actual	216.13	96.95%	72.89%	222.93	100.00
Projected	100.00	93.63%	33.73%	106.79	100.00

Source: the Applicant

For the purpose of confidentiality, the actual figures have been indexed w.r.t projected figures of imports from alleged dumped sources for the period Oct 17-Jun 18.

18.4 As per the above table, had the domestic industry been able to achieve its projected sales level, volume of dumped imports would have reduced significantly than the present level. Dumped imports which are currently **** KGs and 72.89% of the total domestic consumption would have been at a level of **** KGs and 33.73% of the total domestic consumption.

19. Price Effects

The effect of alleged dumped imports on the prices of domestic like product (undercutting, depression and suppression) has been examined in the following paragraphs.

19.1 Price Undercutting

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

Table-IX
Price Undercutting

Period	W. average ex-factory price of domestic like product	W. average landed cost of dumped imports	Price undercutting	
			Absolute	Percentage
Oct-Dec 17	100.00	104.87	-	-
Jan-Mar 18	103.59	108.23	-	-
Apr-Jun 18	109.62	106.14	3.48	3.14%
Oct17-Jun18	107.87	105.56	2.31	2.15%

Source: the Applicant and PRAL

For the purpose of confidentiality, the actual figures have been indexed w.r.t ex-factory price of domestic like product during period Oct-Dec.17

19.1.2 The above table shows that 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 period October 17- June 18.

19.2 Price Depression

19.2.1 Price depression is calculated in the following table on the basis of the information provided in application on ex-factory price of the domestic like product:

Table-X
Calculation of Price Depression

Period	**Ex-factory price of domestic like product**	**Price depression**
Oct-Dec 17	100.00	---
Jan-Mar18	103.59	---
Apr-Jun18	109.62	---
Oct17-Jun18	107.87	---

Source: the Applicant

For the purpose of confidentiality, the actual figures have been indexed w.r.t ex-factory price of domestic like product during period Oct-Dec.17

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19.2.2 Apparently, the domestic industry did not face price depression due to dumped imports.

19.3 Price Suppression

19.3.1 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 from which it's clear that the domestic production was very minimal throughout the POI, due to which fixed cost was allocated to very few units and resultantly the cost of production per unit has increased extra-ordinarily. Obviously, this abnormal increase in cost due to lesser capacity utilization cannot be shifted to end-user. The domestic industry has to bear this cost burden as long as there are dumped imports in the domestic market at very lesser prices affecting the ability of domestic industry to utilize the capacity as anticipated in its business plan.

Table-XI
Calculation of Price Suppression

Year/ Period	Average cost of production of domestic like product	Average ex-factory price of domestic like product (without sales tax)	Increase/ (decrease) in cost of production	Increase/ (decrease) in price	Price Suppression
Oct17-Dec 17	100.00	4.12			
Jan18-Mar 18	10.46	4.27	(89.54)	0.15	0
Apr 18 -Jun 18	5.69	4.52	(4.77)	0.25	0
Oct 17 - Jun 18	9.24	4.45			

Source: the Applicant
For the purpose of confidentiality the actual figures have been indexed w.r.t Average cost of production of domestic like product for the period Oct 17-Dec.17

19.3.2 The Applicant has just stepped-in the domestic market when a huge volume of dumped imports was pouring in. The Applicant, therefore could not attain normal capacity utilization level at which it could have achieved a reasonable average cost to make & sell and market price (after adding reasonable markup on cost to make and sell). Moreover, the prices offered by the Applicant are determined under the pressure of highly dumped imports and do not reflect the prices that represent average cost to make and sell and a reasonable margin on the same.

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19.3.3 As per Section 15(3)(b) price suppression occurs where dumped imports prevent price increases, which otherwise would have occurred, to a significant degree. This section expressly links this market phenomena (price suppression) with dumped imports. It contemplates an inquiry into the relationship between dumped imports and domestic prices. More specifically, it is required to consider whether dumped imports have explanatory force for the occurrence of significant suppression of domestic prices. Hence, it is not sufficient to confine the consideration of what is happening to domestic prices in relation to average cost to make and sell for the purposes of considering significant price suppression. Rather, domestic prices are required to be examined in conjunction with dumped imports in order to understand whether dumped imports have explanatory force for the occurrence of significant suppression of domestic prices. Accordingly, price suppression cannot be properly examined without a consideration of whether in the absence of dumped imports, prices otherwise would have increased. The answer in this case is yes, because the domestic prices of the Applicant in POI are well below its average cost to make and sell. Obviously, the Applicant would not have sold on such decreased prices, had there been no dumped imports to exert pressure on domestic prices. Hence, it can safely be determined that the heavy volume of imports at dumped prices during POI has explanatory force for the occurrence of significant suppression of domestic prices, which in the absence of dumped imports would have increased to the level above the average cost to make and sell.

20. Production and Capacity Utilization

20.1 The installed capacity, quantity produced and the capacity utilization of the Applicant during the POI are provided in following table:

Table-XII
Production Capacity installed and Utilized

Period	Installed Capacity (Kg)	Capacity Utilization (%)
Oct-Dec 17	33.33	0.72%
Jan-Mar 18	33.33	18.77%
Apr-Jun 18	33.34	46.47%
Oct 17 - Jun 18	100	21.98%

Source: the Applicant

For the purpose of confidentiality, the actual figures have been indexed w.r.t total capacity installed for the period Oct-June 2018.

20.2 The deviations of actual capacity utilization from the projected capacity utilization figures which was due to dumped imports can be ascertained from the following table.

Table-XIII

Deviation of Actual Capacity Utilized from Projected Utilization

Period	Installed Capacity (Kg)	Capacity Utilization %		
		Actual	Projected	Deviations
Oct-Dec 17	33.33	0.72	25.60	25
Jan-Mar 18	33.33	18.77	41.49	23
Apr-Jun 18	33.34	46.47	82.99	37
Oct 17 - Jun 18	100	21.98	50.03	28

Source: the Applicant

For the purpose of confidentiality, the actual figures have been indexed w.r.t total Capacity installed for the period Oct 17-June2018.

20.3 It can be observed from the above table that the actual capacity utilization was very low as compared to what was projected in the business plan i.e. deviations ranged from 23% to 37%.

21. Market Share

21.1 The sales made by the domestic industry and the market share of domestic industry in the domestic market during POI are given in the table below:

Table-XIV

Market Share

Year	Share of Domestic Industry in the Domestic Market		Share of Dumped Imports in Domestic Market		Share of Other Imports in Domestic Market		Total Domestic Market	
	Kg	%	Kg	%	kg	%	Kg	%
Jul 15-Jun 16	-	-	94.84	94.84	5.16	5.16	100.00	100
Jul 16-Jun 17	-	-	116.13	99.67	0.38	0.33	116.51	100
Jul 17-Jun 18	22.8	19.60	91.46	78.59	2.11	1.81	116.37	100

Source: the Applicant

For the purpose of confidentiality, the actual figures have been indexed w.r.t total domestic market for the year Jul15 -Jun.2016.

21.2 In material retardation cases, it would be distortive to see the market share of the domestic industry in isolation. It needs to be seen in comparison with the projected performance as other investigating authorities did in retardation cases. Analysis of the market share keeping in view the projected sales of the domestic industry and assuming the same level of domestic market (Dumped Imports + Domestic Sales by the Applicant) is provided in the following table:

Table-XV

Share of Domestic Industry and Dumped Imports in Domestic Market

Oct 17 – Jun 18	Share of Domestic Industry in the Domestic Market	Share of Dumped imports in Domestic Market
	%	%
Actual	25.40	74.60
As per projection	65.48	34.52

Source: the Applicant

21.3 It can be observed from the above table that the actual sales were very low as compared to what was projected in the business plan.

22. Sales& Inventories

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

Table-XVI

Sales of the Applicant

Quarter/Period	Opening Inventory (Qty Kg)	Production (Qty Kg)	Sales (Qty Kg)		Closing Inventory (Kg)
			Domestic	Export	
Oct 17- Dec 17	50.31	104.11	100	-	54.41
Jan 18 - Mar 18	54.42	2,396.82	916.86	380.07	1,154.30
Apr 18 - Jun 18	1,154.30	5,934.72	2,678.46	2,954.52	1,456.03
Oct 17 - Jun 18	50.32	8,435.64	3,695.32	3,334.60	1,456.03

Source: the Applicant

For the purpose of confidentiality, the actual figures have been indexed w.r.t Domestic Sales for the period Oct-Dec.2017.

22.2 During the first quarter of Oct 17 – Dec 17, the domestic industry could only produce **** kgs against available capacity (around 1% capacity utilization). In the subsequent quarter, domestic industry had been able to increase its production but such increase in production was still very low against the available capacity. During the quarter Apr 18 – Jun 18, exports of the domestic industry increased substantially due to which the domestic industry was able to increase its production but sill the domestic sales were significantly lower than what was anticipated in the business plan. Resultantly, the closing inventory increased to the extent of **** kg against last quarter opening inventory of **** kg. Hence, the domestic industry also suffered injury on account of increased inventory primarily due to continued voluminous dumped imports.

23. Profit and Loss

23.1 As the Applicant started commercial production of the product concerned in September 2017, therefore profit and loss position of nine months ending June 30, 2018 is given below:

Table-XVII
Profit/Loss of the Applicant

Year/Period	Gross Profit/(Loss)	Net Profit/(Loss)
Oct-Dec 17	(48.47)	(100.00)
Jan-Mar 18	(40.68)	(75.38)
Apr-Jun 18	(5.39)	(25.23)
Oct 17 - Jun 18	(94.53)	(200.61)

Source: the Applicant

For the purpose of confidentiality, the actual figures have been indexed w.r.t Net Profit/(Loss) for the period Oct-Dec.2017.

23.2 Due to the least capacity utilization and suppressed prices which even did not fully recover variable costs incurred by the domestic industry, it suffered huge losses at gross as well as net profit level. Such an extent of loss is due to high volume and less than fair value of imports from dumped sources.

24. Productivity and Wages

24.1 Employment, salaries & wages and productivity for the POI are given below:-

Table-XVIII

Wages and Productivity

Year	Number of employees	Salaries & wages (Rs.)	Domestic Production (kg)	Productivity per worker in (kg)	Salaries and wagesRs. per kg)
Oct-Dec 17	100.00	100.00	100.00	100.00	100.00
Jan-Mar 18	125.37	118.80	2302.26	1817.27	5.18
Apr-Jun 18	155.22	142.58	5700.60	3660.43	2.50
Oct 17 - Jun 18	126.87	361.37	8102.86	6353.96	4.48

Source: the Applicant

For the purpose of confidentiality, the actual figures have been indexed w.r.t Number of employees ,Salaries & Wages, Domestic Production, Productivity Per Worker and Salaries and Wages per Kg for the period Oct-Dec.2017.

24.2 As can be seen from the table above, productivity per worker is increasing resulting in decrease in salaries and wages Rs. Per kg. However, as stated earlier, the domestic industry could not achieve the production level as envisaged in its business plan, productivity per worker remained lower and salaries & wages per kg on higher side.

25. Return on Investment

25.1 According to the applicant due to onslaught of dumping faced by the domestic industry from the very inception of its production, it could not achieve any significant level of sales. Even the meager sales made were at the prices lower than the variable cost of the product concerned. This resulted in heavy net as well as cash losses. Not to speak of any return on investment in such a situation, which is evident from the following table showing negative return on investment during the POI. Therefore, it can be safely concluded that dumped imports have severely caused material retardation to the establishment of domestic industry.

Table-XIX

Return on Investment

Year	Return on investment%
July 17 - June 18	(19)

Source: the Applicant

For the purpose of confidentiality, the actual figures have been indexed w.r.t Total Investment for the period Jul 17-Jun.2018.

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25.2 According to the applicant that if the domestic industry been able to sell the projected quantity at non injurious price(NIP), its profitability position would not have been so adverse that could have resulted in huge negative return on investment. It only happened due to lower level of sales at reduced prices which resulted in huge amount of losses that are owing to the dumped imports.

26. Cash Flow

26.1 According to the Applicant, its cash generation was also affected due to alleged dumped imports of the investigated product. Information submitted by the Applicant on its net cash flow is given below:

Table-XX

Operating Cash Flow

Year	Cash Flows
Oct 17 – Dec 17	(100)
Jan 18 – Jun 18	(80.91)

Source: the Applicant

For the purpose of confidentiality, the actual figures have been indexed w.r.t Operating Cash Flow for the period Oct-Dec.2017.

26.2 Such an adverse position of cash flows of the domestic industry resulted in its inability to pay off interest expense of the project. As per its business plan, the domestic industry anticipated positive cash flows in first year of its operations, the cash flows anticipated were enough to pay off finance cost.

27. Ability to Raise Capital

27.1 As the domestic industry is facing deterioration in its operations from the very beginning of its production, the continued dumping is adversely affecting the confidence of investors and financial institutions. Resultantly, the ability of domestic industry to raise further investment has already been adversely affected. The equity of the applicant is continuously depleting due to heavy losses. Almost half of the equity has already been lost.

28. Magnitude of dumping margin

28.1 Following table depicts the magnitude of dumping margins from dumped sources.

Table-XXI
Magnitude of Dumping Margin

Country Name	As percentage of ex-factory price	As percentage of C&F export price
Jordan	43.06	38.51
Sri Lanka	30.48	28.72
Turkey	33.91	31.42
UAE	15.06	13.95

Source: the Applicant

28.2 The above figures reveal that from all the dumping sources, magnitude of dumping margins is well above the de-minims level of less than 2%. These huge dumping margins clearly demonstrate the level of injury being suffered by the domestic industry. The magnitude of dumping margin ranging from 15.06% to 43.06% indicates that the exporters from the dumped sources have exported the investigated product at such a low level of prices due to which the domestic industry could not eventfully recover its variable cost of the domestic like product.

29. Threat of Material injury

As per Applicant, in addition to the material retardation of the establishment of domestic industry, there is also an imminent threat of material injury due to dumped imports which would have serious adverse effect on the operations of the domestic industry.

30. Other Known Factors

As required under Section 18(2) of the Act, the Applicant has examined the other factors, other than dumped imports, which could at the same time cause injury to the domestic industry in order to ensure that any injury caused by such other factors is not attributed to the injury caused by dumped imports.

30.2 According to the Applicant there are no other factors injuring domestic industry other than dumped imports from the Exporting Countries.

31. Summing up of Material Retardation

The information/data and analysis in the foregoing paragraphs and the documents submitted in application *prima facie* show that the domestic industry has suffered material retardation of the establishment of the domestic industry injury during the POI on account of: -

i. volume of alleged dumped imports;
ii. price undercutting;

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iii. price suppression;
iv. market share;
v. production and capacity utilization
vi. Sales &inventories;
vii. profits/profitability;
viii. Wages & Productivity
ix. Return on Investment
x. Cash flow
xi. Ability to Raise capital
xii. And magnitude of dumping margin.

32. Causal link

Prima facie, alleged dumped imports of the investigated product have caused and are causing material retardation of the establishment of the domestic industry.

33. Conclusion and Recommendation

33.1 The Investigation Unit-I has examined the accuracy and adequacy of the evidence and information provided in the application and is satisfied that, *prima facie,* there is sufficient evidence to justify initiation of an antidumping investigation.

33.2 The Investigation Unit-I recommends to the Commission to initiate an anti-dumping investigation on Aluminium Beverage Cans imported from the Exporting Countries.

33.3 The investigation unit-I further recommends that the request of the Applicant may be acceded to and the requested information may be kept confidential under Section 31(1) of the Act as this information is either by nature confidential or its disclosure would give a significant competitive advantage to Applicant competitors in accordance with Section 31(3) of the Act.

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
Total	121	363

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.

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

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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 hasting 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*

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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.

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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)

During POI	Projected total market	Actual market	Projected total market (%)	Actual market (%)	Deviation from Projection	Percentage of Deviation from Projection
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

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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

Period	Average Domestic Price (Rs/Kg)	Average Projected Domestic Price (Rs./Kg)	Average Landed Cost (Rs/Kg)	Deviation from Projection (%)	Actual Price Undercutting (Rs/Kg)	Price Undercutting w.r.t projection (Rs/Kg)
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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(2) Section 12 of the Act provides following three methods for fair comparison of normal value and export price in order to establish dumping margin:

i. comparison of a weighted average normal value with a weighted average of prices of all comparable export transactions ;or

ii. comparison of normal value and export prices on a transaction-to- transaction basis; or

iii. comparison of a weighted average normal value with export price of a transaction.

(3) Dumping margins in this investigation will be determined by comparing the weighted average normal value with weighted average export price at ex-works level.

22. **De minimis Dumping Margin and Negligible Volume of Dumped Imports.**-(1) 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 margins for the investigated product determined in the preliminary determination were well above the negligible (*deminimis*) level.

(2) Section 41(3) of the Act provides that the volume of dumped imports shall normally be regarded as negligible if the volume of dumped imports of an investigated product is found to account for less than three percent of total imports of a like product. The information/data on dumped imports of the investigated product and other imports of Aluminium Beverage Cans has been obtained from PRAL. Volume of dumped imports of the investigated product from dumped sources and the Aluminium Beverage Cans imported from other sources during the POI (Sep.2017-Jun. 2018) is given in the table below:

Table-III
Volume of total Imports of Aluminium Beverage Cans during POI*

Country	Volume of total 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 total imports includes imports from dumped and non-dumped sources.
Volume of Aluminum Beverage Cans having capacity of 250 ml and 300 ml.

MATERIAL RETARDATION OF THE ESTABLISHMENT OF THE DOMESTIC INDUSTRY

23. **Material Retardation.**-(1) The Applicant has claimed that they are facing material retardation of its establishment. The questions before the Commission were:-

i. Whether the domestic industry producing Aluminum Beverage Cans is already established or not.

ii. 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.

iii. In case it is determined that the domestic industry is not established, the material retardation standard is applicable.

iv. In case material retardation standard is applicable, whether the material retardation appears to have been caused by the dumped imports.

(2) 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.

24. **The Domestic Industry producing Aluminium Beverage Cans is not yet established.**-(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 its 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 commence of production;
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.

(2) The facts related to above mentioned points are as under:

i. The Applicant started its commercial operations in September 2017.

ii. 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
Total	121	363

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.

iii. The Commission has also examined the size of domestic production compared to size of the domestic market of Aluminium Beverage Cans during the POI. Following table shows size of production for domestic sales as percentage of total domestic market.

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.

iv. 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 investigation, 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. 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.

v. 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. 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.

25. **Whether the domestic industry was materially retarded.-**The Commission will use 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.

26. **Determination of injury to the domestic industry.-** The Commission has taken into account all factors in order to determine whether domestic industry suffered material injury during POI. Material injury to the domestic industry has been analyzed in accordance with Part VI of the Act. As stated earlier that the domestic Aluminium Beverage Cans manufacturing industry comprises of only one unit. The application is filed by the sole unit who accounted for 100 percent of the total domestic production of Aluminium Beverage Cans during the period POI. Thus the Applicant is considered as domestic industry and material retardation analysis is based on the information/data of the Applicant. Any inference drawn in this regard from the data of the Applicant would apply to the entire domestic industry.

27. **Volume of Dumped Imports.-**(1) With regard to the volume of dumped imports, in terms of Section 15(2) of the Act, the Commission will consider 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.

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(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 will be use. 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-VI

Volume of dumped imports

Period	Volume of Dumped Imports (MT)	Domestic production (MT)
Sep-Dec 17	77.17	3.23
Jan-Mar 18	133.41	66.02
Apr-Jun 18	99.48	100.00

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.

(3) 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 will be used.

Table-VII

Projected and Actual Sales & Actual Dumped Imports (M. Tons)

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

28. **Determination of Price Effects.-** The Commission will determine price effects in accordance with Section 15(3) of the Act on the basis of the information provided by the Applicant on prices and cost to make and sell of the domestic like product. The landed cost of the investigated product will be calculated on the information obtained from PRAL. Following table shows the weighted average ex-factory price of the domestic like product, average projected domestic price, average cost to make and sell and average projected cost to make and sell of the domestic like product and average landed cost of the investigated product during the POI:

Table-VIII

Average actual and projected price and Cost make & sell, and Landed Cost

Period	Average Domestic Price (Rs/Kg)	Average Projected Domestic Price (Rs./Kg)	Average cost to make and sell (Rs./Kg)	Average Projected cost to make and sell (Rs/Kg)	Average Landed Cost (Rs/Kg)
Sep-Dec	100	102	2,536	132	103
Jan-Mar	94	106	324	104	107
Apr-Jun	110	112	220	110	105

Source: the Applicant

Note: For the purpose of confidentiality, the actual figures have been indexed w.r.t total average domestic price during Sep-Dec 17 as base.

29. **Market Share.-** 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 will use 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:

Table-IX

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.

30. **Production and Capacity Utilization.-**The installed capacity, quantity produced and the capacity utilization of the Applicant during the POI, were as follows:

Table-X

Installed Capacity and Capacity Utilization (Qty = MT, Domestic = D, Export = E)

Quarter/Period	Installed Capacity		Actual Production		Actual Capacity Utilization (%)		Projected Production		Projected Capacity Utilization (%)	
	D	E	D	E	D	E	D	E	D	E
Sep 17- Dec 17	54.65	73.10	0.75	0.04	1.37	0.05	23.66	31.65	43.30	43.30
Jan 18 - Mar 18	50.30	45.04	15.33	3.20	30.47	7.11	25.45	22.78	50.59	50.59
Apr 18 - Jun 18	50.30	45.04	23.22	24.28	46.15	53.91	50.89	45.56	101.17	101.17
For POI Sep 17 - Jun 18	155.25	163.18	39.29	27.52	25.31	16.86	100	100	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.

31. **Effects on Sales.-** Sales of the domestic like product are given in the following table:

Table-XI

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.

32. **Effects on Inventories.-** 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:-

Table-XII

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.

33. **Effects on Profit/Loss.-** The verified figures of the Applicant on its profits and loss of the domestic like product is given in the following table:

Table-XIII

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.

34. **Effects on Employment, Productivity and Salaries & Wages.-** The Applicant's employment, productivity and the salaries and wages for production of the domestic like product during the POI are given in following table: -

Table-XIV

Employment and Productivity

Quarter/Period	Average Number of Employees	Salaries & Wages (Rs.)	Domestic Production (Kg.)	Productivity Per Worker in Kg	Salaries and Wages Rs. Per Kg.
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 wager Per Kg. for the POI as base for respective columns.

35. **Effects on Cash Flow.-** The cash flow from operating activities for the POI is as under:-

Table-XV

Operating Cash Flow

Quarter/Period	Cash flow (Rs.)
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.

36. **Effects on Return on Investment.** -The figures for profit after tax and equity were obtained from annual audited and quarterly unaudited accounts of the Applicant and return on investment will be calculated as follows:-

Table-XVI

Return on Investment

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

Source: the Applicant

37. **Growth and Investment.**- Figures for total assets were obtained from the annual audited accounts and un-audited quarterly accounts for calculation growth as under:-

Table-XVII

Growth

Period/Quarter ending as on	Total Assets (Rs.)	Growth in (Rs.)
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.

38. **Forced reduction in prices.**-The Applicant has provided a copy of agreement with one of its customer. The name of the customer has not been disclosed to keep confidentiality of the commercial entities. The price was agreed to be increased/decreased for every change in price of raw material.LME prices of major raw material increased 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.

39. **Ability to Raise Capital.-** According to the Applicant, 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.

40. **Other Factors.-**(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 is also affecting the domestic industry negatively.

(2) Imports of Aluminium Beverage Cans from sources other than dumped imports during the POI were negligible.

(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;

****

Annex-3

Market Share

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:

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
Sep 17 - Jun 18 (POI)	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.

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.

Production and Capacity Utilization

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

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	43.3	43.3
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 except for columns in percentage.

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. 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 *** MT, i.e. 64.41% of the installed Capacity during the POI, whereas, it could 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.

Effects on Sales

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

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

Note: 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 except for columns in percentage.

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 was 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.

Effects on Inventories

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:

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	4.64	---	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.

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 the fact that dumped imports from the Exporting Countries had major share 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.

Effects on Profit/Loss

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

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.

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.

Effects on Employment, Productivity and Salaries & Wages

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:

Employment and Productivity

Quarter/Period	Average Number of Employees	Salaries & Wages (Rs.)	Domestic Production (Kg.)	Productivity Per Worker in Kg	Salaries and Wages Rs. Per Kg.
Sep 17- Dec 17	75.90	20.29	1.20	4.77	1687.17
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 Wager Per Kg. for POI as base for respective columns.

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.

Effects on Cash Flow

The cash flow from operating activities is as under:-

Operating Cash Flow

Quarter/Period	Cash flow (Rs.)
Sep 17- Dec 17*	100.00
Jan 18 - Mar 18	37.03
Apr 18 - Jun 18	68.20

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.

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.

Effects on Return on Investment

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:-

Return on Investment

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

Source: the Applicant

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.

Growth and Investment

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

Growth

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

Source: The Applicant

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.

Forced reduction in prices

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

The price was agreed to fluctuate for every increase/decrease 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

LME prices of major raw material increased by *** percent after the agreed price. 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.

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.