

**TO BE PUBLISHED IN PART 1 SECTION-1 OF
THE GAZATTE OF INDIA- EXTRAORDINARY**

Government of India
Ministry of Commerce & Industry
Department of Commerce
Directorate General of Anti-Dumping & Allied Duties
4th Floor, Jeevan Tara Building, Parliament Street, New Delhi

Dated the 15th February, 2017

FINAL FINDINGS

(Anti-Circumvention Investigation)

Subject: Investigation regarding Circumvention of Anti-Dumping Duty existing on Diclofenac Sodium (DFS) by imports of “Indolinone”, an unfinished form of “DFS”, originating in or exported from China PR.

No. 14/22/2014-DGAD:- Having regard to the Customs Tariff Act 1975, as amended from time to time (hereinafter also referred to as the Act) and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules 1995, as amended from time to time (hereinafter also referred to as the Rules) thereof;

A. Background of the case

1. Whereas, Designated Authority, on the request of M/s Aarti Drugs Ltd., M/s Amoli Organics Ltd. & M/s Kairav Chemicals Ltd., conducted an anti-dumping investigations on the imports of Diclofenac Sodium, the Product Under Consideration (PUC), and recommended a provisional Anti-Dumping Duty (ADD) vide notification no 44/1/2001-DGAD, dated 31st October, 2001 which was levied by Ministry of Finance Vide Customs Notification No. 76/2002-Customs dated 8th August, 2002. The Designated Authority recommended a definitive ADD vide notification no. 44/1/2001-DGAD, dated 21st June, 2002. Based on the recommendations, the Ministry of Finance imposed ADD on PUC vide Notification no. 76/2002-Customs dated 8th August, 2002, which continued for the period of five years from the date of provisional duty. No sunset review of the ADD was undertaken.
2. Whereas, the applicants, M/s Aarti Drugs Ltd., M/s Amoli Organics Ltd. & M/s Kairav Chemicals Ltd., filed an application before the Authority to undertake fresh anti-dumping investigations. Pursuant to investigations, the Authority recommended imposition of provisional ADD vide notification no. 14/4/2007 dated

28th January, 2008 based on which Central Government imposed provisional ADD on the PUC vide notification no 46/2008 dated 10th April, 2008. Further, Designated Authority vide Notification No. 14/4/2007-DGAD dated 29th May, 2008, notified in final findings recommended definitive ADD on imports of Diclofenac Sodium or DFS originating in or exported from China PR pursuant to which the Central Government imposed definitive ADD on the PUC vide Customs Notification No. 91/2008-Customs dated 30th July, 2008.

3. Whereas, on an application filed by M/s Amoli organics and M/s Aarti Drugs a sunset review investigation on the imports of the PUC was initiated vide Notification No. 15/3/2013-DGAD dated 9th April, 2013 to review the need for continued imposition of the duties in force. After detailed investigations, the Authority notified final findings vide Notification No. 15/3/2013-DGAD dated 2nd October, 2014 recommending extension of ADD. ADD was extended vide Customs Notification No. 44/2014-Customs dated 21st November, 2014. The duties so imposed are in force at present.
4. Whereas in the ongoing Anti-Circumvention investigation, regarding imports of Indolinone, a penultimate stage of Diclofenac Sodium, M/s Amoli Organics Ltd (herein referred as "petitioner" or "Applicant") filed an application before the Designated Authority (hereinafter also referred to as the Authority) in accordance with the Section 9A of the Act read with Rule 26(1) Customs Tariff (Identification, Assessment & Collection of Anti-Dumping Duty on the Dumped Articles & for Determination of Injury) Rules, 1995 (AD Rules) for initiation of Anti-Circumvention Investigation concerning imports of Indolinone (1-(2,6-DICHLOROPHENYL)-2-INDOLINONE CRUDE) (hereinafter also referred to as the "Product under Investigation" or "PUI"), a penultimate stage of "Diclofenac Sodium" (hereinafter also referred to as the "DFS" or "Product under consideration" or "PUC") originating in or exported from China PR (herein referred as subject country). The petition was supported by M/s Aarti Drugs Ltd. (herein referred as "supporter"). Petitioner requested for extension of existing anti-dumping duties on the imports of the DFS to the PUI, the penultimate stage product of the PUC originating in or exported from the subject country.
5. Whereas, in view of the duly substantiated application filed by the petitioner under Rules 26 (1), the Authority initiated the investigation vide notification no 14/22/2014-DGAD sated 17th February, 2016 to determine the existence and effect of the alleged circumvention of the ADD levied and to consider recommendation of extension of ADD on imports of DFS to imports of Indolinone.

B. Procedure

6. The procedure described below has been followed with regard to the investigation:

- i. The Authority issued notification vide notification no. 14/22/2014-DGAD dated 17/02/2016 initiating anti-circumvention investigation, which was published in the Gazette of India.
- ii. The Authority sent copy of the initiation notification to the Embassy of China in India, known exporters of PUI from China and known importers of PUI in India, as per information available in the petition.
- iii. The Authority wrote to the exporters/producers of the PUI and requested them to file their responses in the prescribed questionnaire and make their views known in writing within the time limit prescribed. Copies of the letter and questionnaires sent to the exporters were also sent to embassy of China along with a list of known exporters/producers, with a request to advise the exporters/producers from China to respond to the Authority within the prescribed time.
- iv. A copy of the non-confidential version of the application filed by the petitioner was sent to the Chinese producer/exporters, and Government of China. A copy of the non-confidential version of the application was also made available to the interested parties, on request, through public file.
- v. The Authority forwarded a copy of the public notice initiating the anti-circumvention investigations to the following known producers/exporters in China and gave them opportunity to make their views known in writing within forty days from the date of the letter in accordance with the AD Rules:
 - a) Shandong Yibao Biologics Co., Ltd
 - b) Shenzhen Zhijun Pharmaceutical Co., Ltd
 - c) Comfortcomms Group Co. Limited
 - d) Shanxi Haizheng Scientific Tech. and Trade Co., Ltd.
 - e) GBB Group Co., Ltd.
 - f) Skyrun International Group Sunshine Corporation
 - g) Hebei Jiheng(Group) Pharmaceutical Co., Ltd.
 - h) Shandong Reyoung Pharmaceutical Co., Ltd.
 - i) Hebei Veyong Animal Pharmaceutical Co., Ltd.
 - j) Wuhan Lihua International Trade Corporation
 - k) Medico (Shijiazhuang) Industries & Trade Co., Ltd.
 - l) The TNN Development Limited
- vi. None of the producers/exporters of the PUI from China responded to the Authority, nor any producer/exporter filed response to the questionnaire in the form and manner prescribed.

- vii. Questionnaires were sent to the following known importers/users of subject goods in India calling for necessary information in accordance with the Rules:
- a) Natco Pharma Limited
 - b) Unibios Labs Ltd.
 - c) Marksans Pharma Ltd.
 - d) Sunrise Chemicals
 - e) Alka Laboratories Pvt. Ltd.
 - f) Medi Pharma Drug House
 - g) Para Products Pvt. Ltd.
 - h) Sara Exports Ltd.
 - i) Stride Industries
 - j) Anju Drug Chem Pvt. Ltd.
 - k) Pan Drugs Limited
 - l) Dpb Antibiotics
 - m) Gpt Pharmaceutical Private Limited**
- viii. In response to the initiation of the subject investigation, none of the importers of the PUI have responded, nor filed response to the questionnaire.
- ix. In accordance with Rule 6(6) of the Anti-dumping Rules, the Authority provided opportunity to the interested parties to present their views orally in a public hearing held on 20th December, 2016. The oral hearing on 20th December, 2016 was attended by the domestic industry and one of the importer of PUI (namely Magma Industries Ltd.). However, Magma Industries Ltd. has not submitted any information in writing. The parties, who presented their views in oral hearing, were requested to file written submissions of the views expressed orally.
- x. Exporters, importers other domestic producers and other interested parties who have not responded to the Authority nor supplied information relevant to this investigation, have been treated as non-cooperating.
- xi. Details of imports of subject goods for 2007-08, 2008-09, 2009-2010, 2010-2011, 2011-12, 2012-13, 2013-14, 2014-15, including the period of investigation April, 2014 - September, 2015, were requested from DGCIS and DG Systems, for above mentioned period/year/years.
- xii. The submissions made by the interested parties during the course of this investigation have been considered by the Authority, wherever found relevant, in this finding.
- xiii. Verification to the extent deemed necessary was carried out in respect of the information & data submitted by the petitioner as well as the supporter company.

- xiv. Information provided by the interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has accepted the confidentiality claims wherever warranted and such information has been considered as confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non-confidential version of the information filed on confidential basis.
- xv. Wherever an interested party has refused access to, or has otherwise not provided necessary information during the course of the present investigation, or has significantly impeded the investigation, the Authority has considered such parties as non-cooperative and recorded the findings on the basis of the facts available.
- xvi. In accordance with Rule 16 of the Rules Supra, the essential facts were disclosed by the Authority on 2nd February, 2017 to the concerned interested parties. Comments were requested by 10th February, 2017. Comments received on the disclosure statement to the extent considered relevant by the Authority have been considered in this final finding.
- xvii. *** represents information furnished by an interested party/any other party on a confidential basis and so considered by the Authority under the Rules.
- xviii. The average exchange rate of 1US\$ = Rs 62.65 prevailing during the POI has been adopted by the Authority in this finding.

C. Product under Investigation and Like Article

- 7. The product under consideration in the present investigation is “Indolinone (1-(2,6-DICHLOROPHENYL)-2-INDOLINONE CRUDE)”, (referred to as the “Product under investigation” or “PUI” or “subject goods”) which is a penultimate stage product of Diclofenac Sodium (also referred to as the subject product or the “Product under Consideration” or “PUC”). Indolinone already contains the molecular structure of Diclofenac Sodium.

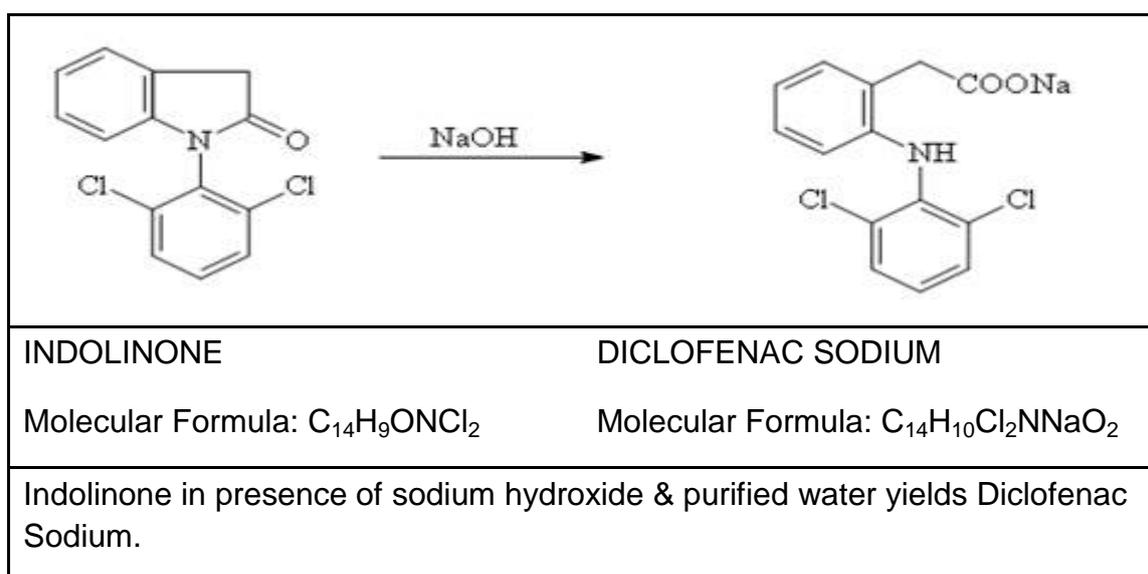
C.1. Views of Exporters, Importers, Consumers and other Interested Parties

- 8. None of the interested parties have made any submission in this regard.

C.2. Views of Domestic Industry

- 9. The domestic industry has made the following submissions with regard to the PUI-
 - i. The product forming the object of circumvention is Diclofenac Sodium originating from China PR in its intermediate or upstream form, Indolinone (1-(2, 6-DICHLOROPHENYL)-2-INDOLINONE CRUDE).

- ii. The subject goods are classified under Chapter 29 of the Customs Tariff Act, 1975 under the Sub-heading 29420090. The customs classification is indicative only and in no way binding on the scope of investigation.
- iii. ADD imposed earlier on imports of PUC originating in China PR is being circumvented and imported into India in its intermediate form, PUI, from China PR.
- iv. Circumvention of ADD on PUC started after the imposition of ADD; however, the same has now intensified. The exporters from China PR are exporting PUI into India which is then simply being converted into PUC without much value addition. The process involved in converting Indolinone to Diclofenac Sodium is the process of hydrolysis. Indolinone to Diclofenac Sodium that the value addition from the stage of Indolinone to Diclofenac Sodium in India is much below the limits prescribed under the relevant circumvention provisions.
- v. Production of Indolinone is a step before in the manufacturing process of Diclofenac Sodium. Because of the imposition of ADD, the producers from China have found it advantageous to stop at Indolinone, the unfinished DFS and dump the same into India. The process involved in converting Indolinone to Diclofenac Sodium is the process of hydrolysis.



- vi. The production process of producing DFS from Indolinone involves the process of hydrolysis and the cost of converting Indolinone to Diclofenac Sodium, i.e., the value addition from the stage of Indolinone to Diclofenac Sodium in India is much below the limits prescribed under the relevant circumvention provisions.

C.3. Examination of the Authority

10. The Authority noting the submissions made by the interested parties proposes to hold that the product under investigation i.e. Indolinone (1-(2, 6-

DICHLOROPHENYL)-2-INDOLINONE CRUDE), is a penultimate product of the product under consideration i.e. Diclofenac Sodium (DFS). Indolinone is an unfinished form of Diclofenac Sodium which is further finished into DFS in India, and is marketed in India in the name of Indolinone (1-(2, 6-DICHLOROPHENYL)-2-INDOLINONE CRUDE). The subject goods or the PUI does not have a dedicated customs classification. Indolinone is classified under Chapter 29 of the Customs Tariff Act, 1975 and is being imported under various Sub-heading viz. 29142990, 29214490, 29224990, 29337900, 29339900, 29081900, 29147090, 29420090, 29333990. The customs classification is however indicative only and in no way binding on the scope of investigation.

D. SCOPE OF DOMESTIC INDUSTRY AND STANDING

D.1. Views of Exporters, Importers, Consumers and other Interested Parties

11. None of the parties raised any submissions with regard to domestic industry.

D.2. Views of domestic industry

12. Following submissions have been made by the domestic industry

- i. The petition has been filed by Amoli Organics Ltd. The petition has been supported by M/s Aarti Drugs Ltd.
- ii. The Petitioner Company has neither imported nor is related to any exporter/ producers of subject goods in subject countries or importers in India.
- iii. The petitioner is a major producer of the subject goods in India. Further, the petitioner company constitutes “domestic industry” within the meaning of the Anti-Dumping Rules.
- iv. The application has subsequently been supported by Indian Drug Manufacturer Association.
- v. Whereas earlier only M/s. Sara Exports / Meditech was producing Diclofenac Sodium by importing Indolinone, now M/s. Alka Drugs, Pan Drugs, NutraPlus, Pragna Dye Chem, DPB Antibiotics, Disha Enterprises, MediPharma Drug House are also importing Indolinone and selling Diclofenac Sodium. In fact, so significant is the dilution of the ADD imposed that the domestic industry is hardly having any protection because of ADD imposed.

D.3. Examination of the Authority

The Authority notes that the petition for anti-circumvention investigation and extension of existing ADD on imports of DFS to the imports of Indolinone is filed by M/s Amoli Organics Ltd as per Rule 26(1) which reads as under;

“(1) Except as provided herein below, the designated authority may

initiate an investigation to determine the existence and effect of any alleged circumvention of the anti-dumping duty levied under section 9A of the Act , upon receipt of a written application by or on behalf of the domestic industry.”

The petition is supported by M/s Aarti drugs and Indian Drugs manufacturers association.

M/s Amoli organics and M/s Aarti Drugs collectively were considered as the Domestic Industry as per Rule 2(b) in the SSR investigation on the basis of which ADD on PUC has been notified on 21st November 2014 .

Rule 2(b) of the Anti-Dumping Rules defines domestic industry as under:-

“domestic industry” means the domestic producers as a whole engaged in the manufacture of the like article and any activity connected therewith or those whose collective output of the said article constitutes a major proportion of the total domestic production of that article except when such producers are related to the exporters or importers of the alleged dumped article or are themselves importers thereof in such case the term ‘domestic industry’ may be construed as referring to the rest of the producers”.

13. The petitioner is not related (either directly nor indirectly) to any exporter of Indolinone or DFS in China or an importer in India. The Authority notes that the petitioner or the supporter have not imported DFS from China during period of investigation. However the petitioner has imported **** MT of Indolinone i.e. PUI during POI.
14. The Authority notes that Rule 26 (1) requires an Anti-Circumvention petition to be filed by the Domestic Industry of the ADD already levied. In this investigation, the Domestic Industry of the existing ADD considered in SSR comprised of M/s Aarti Drugs Ltd. and M/s Amoli Organics Pvt. Ltd as stated above. The Applicant M/s Amoli Organics is a major producer of the PUC and further the petition is supported by M/s Aarti Drugs. As the imports made by M/s Amoli Organics are of PUI and not PUC in POI, the standing of petitioner and its eligibility as DI of PUC as required under Rule 26(1) is not compromised.
15. However in view of the imports of PUI by the applicant in POI the Authority in order to ensure objective and undistorted evaluation of key parameters like quantity and value of imports of PUI , shift in trade pattern, undermining of remedial effects due to PUI imports, , and value addition of PUC from PUI has excluded imports of PUI by applicant and thereafter undertakes injury assessment for M/s Aarti Drugs separately as well who was a part of Domestic Industry in earlier SSR investigation and is a supporter in the present Anti-Circumvention investigation..

E. Evidence of Circumvention

E.1 Submissions made by exporters, importers and other interested parties/other parties

16. None of the parties raised any submissions in this regard.

E.2. Submissions made by Domestic Industry- PI include submissions on circumvention practice

17. Following submissions have been made by the domestic industry with regard to circumvention are as follows-

- i. Exports of the intermediate product, Indolinone increased after the imposition of anti-dumping duties on DFS and the same has intensified.
- ii. Because of the imposition of ADD, the producers from China have found it advantageous to export Indolinone, a penultimate intermediary product and dump the same into India.
- iii. There is a change in the pattern of trade. The volume of imports from subject country has shifted from DFS from Indolinone. Whereas imports of Indolinone have increased significantly imports of DFS have declined.
- iv. The significant increase in imports of Indolinone post imposition of duties supports the contention that Indolinone is being exported from China to circumvent the ADD earlier imposed on DFS.

E.3. Examination of the Authority

18. The Authority has examined the aforesaid submissions and alleged circumvention phenomena under relevant Act/Rules i.e. section 9 A (1) of the Customs Tariff Act, 1975 and Rule 25 of the AD Rules which state as follows–

Section 9A(1A) of the Customs Tariff Act Where the Central Government, on such inquiry as it may consider necessary, is of the opinion that circumvention of anti-dumping duty imposed under sub-section (1) has taken place, either by altering the description or name or composition of the article subject to such anti-dumping duty or by import of such article in an unassembled or disassembled form or by changing the country of its origin or export or in any other manner, whereby the anti-dumping duty so imposed is rendered ineffective, it may extend the anti-dumping duty to such article or an article originating in or exported from such country, as the case may be.”

Rule 25 of AD Rules.” Circumvention of anti-dumping duty. - (1) Where an article subject to anti-dumping duty is imported into India from any country including the country of origin or country of export notified for the purposes of levy of anti-dumping duty, in an unassembled, unfinished or incomplete form and is assembled, finished

or completed in India or in such country, such assembly, finishing or completion shall be considered to circumvent the anti-dumping duty in force if,-

(a) the operation started or increased after, or just prior to, the anti dumping investigations and the parts and components are imported from the country of origin or country of export notified for purposes of levy of anti-dumping duty; and

(b) the value consequent to assembly, finishing or completion operation is less than thirty-five percent of the cost of assembled, finished or complete article.

Explanation I. – ‘Value’ means the cost of assembled, complete or finished article less value of imported parts or components

Explanation II. - For the purposes of calculating the ‘value’, expenses on account of payments relating to intellectual property rights, royalty, technical know-how fees and consultancy charges, shall not be taken into account.

(2)....

(3)

Explanation.- For the purposes of this sub-rule, it shall be established that there has been a change in trade practice, pattern of trade or channels of sales if the following conditions are satisfied, namely:-

(a) absence of a justification, economic or otherwise, other than imposition of anti-dumping duty;

(b) evidence that the remedial effects of the anti-dumping duties are undermined in terms of the price and or the quality of like products.

The Authority notes that Rule 25 (1) (a) requires to establish the onset and increase in phenomena of circumvention and further the Rule 25 (1) (b) requires to establish that ‘value addition’ associated with the said phenomena is in accordance with the stipulated threshold in this sub Rule.

The Authority’s notes ADD was earlier imposed on imports of the PUC from the subject country vide notification no. 46/2008 dated 10th April, 2008. Sunset review investigations were initiated on the imports of the PUC and after determination, ADD was extended on by the Central Government vide Customs Notification No. 44/2014-Customs dated 21st November, 2014. The duties so imposed are in force. The Authority has to examined the onset and enhancement of phenomena of circumvention of existing ADD just after the imposition of ADD i.e. from 2008-09 till POI. The Authority also has examined whether there is change in pattern of trade and whether this change has stemmed from a practice, process or work for which there was insufficient due cause or economic justification other than the imposition of duty. As stated above the imports by of PUI by the applicant have been excluded. The table 1 below depicts the trade pattern.

Table 1 – Trade Pattern of PUI/PUC since levy of ADD on PUC

Year	Imports Indolinone (PUI) (MT) (1)	Imports DFS (PUC) (MT) (2)	Price (Rs./kg) PUI	Price (Rs./kg) PUC	Relative Proportion PUI/PUC	Relative Proportion Derived PUC/PUC
2008-09	68.20	67.15	349.10	350.85	1.02	0.99
2009-10	104.50	110.51	327.96	337.81	0.95	0.92
2010-11	157.00	46.38	342.20	351.94	3.39	3.28
2011-12	215.08	91.40	392.53	446.32	2.35	2.28
2012-13	132.00	27.40	446.46	538.30	4.82	4.67
2013-14	271.80	4.00	362.06	537.48	67.95	65.91
2014-15	702.02	54.40	350.01	443.24	12.90	12.52
April 15-Sep 15	280.00	8.50	320.93	483.94	32.94	31.95
POI	982.02	62.90	341.69	448.74	15.61	15.14

*Source – DGCIS/ Secondary sources

19. It is noted that the volume of imports of DFS from China declined post imposition of the ADD. Further, volume of imports of Indolinone from China increased significantly. It is thus seen that whereas imports of DFS declined, imports of Indolinone increased since the imposition of ADD.

Significant increase in imports of Indolinone post imposition of duties and decline in imports of DFS shows that there is a change in the pattern of trade.

On a quantitative comparative basis, the relative proportion of imports of circumventing product i.e. Indolinone (PUI) to the circumvented product i.e. DFS (PUC) shows a rising trend from 1.02 to 15.61. If proportion of DFS obtained from conversion of imported Indolinone is compared with Diclofenac Sodium imports, it has risen from 0.99 to 15.14.

The Rule 25 (1) (b) of AD Rules requires that “value consequent to assembly, finishing or completion operation is less than thirty-five percent of the cost of assembled, finished or complete article”. As none of the producers/exporters from China have responded, the Authority in accordance with provisions of para 6(8) has considered the cost of production data of both M/s Amoli Organics Ltd. (Applicant) and M/s Aarti Drugs Ltd. (Supporter) for the purpose of evaluating value addition from Indolinone to DFS during the POI. The Authority in the earlier foregoing para 15 has observed that imports by M/s Amoli organics need to be excluded so that analysis of key parameters like shift in trade pattern, undermining of remedial effects due to PUI imports, quantity and value of imports of PUI, and value addition of PUC from PUI is not distorted and injury assessment is undertaken for M/s Aarti drugs. Accordingly data of M/s Aarti Drugs Ltd. has only been referenced on account of the

facts as stated in the foregoing para 15. The value addition from Indolinone (PUI) to DFS (PUC) evaluated as per Rule 25 (1) (b) is depicted in Table 2 below and comes to (20%-30%)

Table 2: Value Addition of converting Indolinone (PUI) to Diclofenac Sodium (PUC) during POI

	M/s Amoli Organics Ltd.		M/s Aarti Drugs Ltd.	
	2014-15 (Rs/Kg)	2015 – 16 (6 months) (Rs/Kg)	2014 – 15 (Rs/Kg)	2015 – 16 (6 months) (Rs/Kg)
Cost of Indolinone	****	****	****	****
Cost of DFS	****	****	****	****
Value Addition	****	****	****	****
Value Addition (%)	20-30	20-30	20-30	20-30

*Average for Amoli Organics – **** Rs/Kg (20%-30%)
Average for Aarti Drugs – **** Rs/Kg (20%-30%)

20. The Landed value of PUC derived from the imported PUI i.e. after adjusting the landed value of PUI with (20% -30%) value addition is lower than the landed value of PUC including existing ADD when imported directly in finished form from china.

21. Authority has examined coincidence between the change in pattern of trade and imposition of the measures by considering cost benefit analysis and other economic benefits/cost savings from the production and exports of Indolinone instead of DFS.

The Authority has considered the value addition involved in the process of producing DFS from Indolinone. The value addition involved in producing DFS from Indolinone is determined much below the limits prescribed under the law. Production of Indolinone is only a step before in the manufacturing process of Diclofenac Sodium after which its hydrolysis yields Diclofenac sodium. Because of the imposition of ADD, the producers from China have found it advantageous to stop at Indolinone, the unfinished DFS and export the same into India. The investigation has thus shown that there exists no economic justification other than an incentive to export PUI rather than PUC by the producers in china for the fact of imposition of ADD on DFS which has led to imports of Indolinone.

The shift in trade pattern, Value addition being lower than prescribed threshold and incentive to evade ADD to export PUI rather than PUC collectively establish the phenomena of circumvention.

F. DUMPING OF PUI AND UNDERMINING THE REMEDIAL EFFECT OF THE ANTI-DUMPING DUTY

F.1 Submissions made by the exporters, importers and Other Interested Parties/other parties

22. None of the parties raised any submissions in this regard.

F.2. Submissions made by Domestic Industry

23. Following submissions have been made by the domestic industry with regard to dumping margin are as follows-

- i. China is a non-market economy. It has been treated so by European Union and United States in the past. No country has granted market economy country status to China after following detailed evaluation procedure and examination. In India also, the Designated Authority has treated China as non-market economy. The Designated Authority has treated China as non-market economy in practically all the investigations initiated against China after the amendment dated 31st May, 2002.
- ii. Dumping Margin has been determined considering the normal value and export price. The comparison made must be considered fair comparison. Both the normal value and export price have been determined at ex-factory level.
- iii. The normal value is determined on the basis of the cost of domestic industry.
- iv. In the previous anti-dumping duty investigations conducted by the Authority in the year 2002, year 2008 and year 2014. China has been treated as non-market economy country. The Authority may consider the same status to be provided to the Chinese exporters in the present investigation too.

24. Following submissions have been made by the domestic industry with regard to injury are as follows-

- i. Companies that already had plants for producing DFS are importing Indolinone and are now making Diclofenac Sodium and selling it in the market. This has left the duty on Diclofenac Sodium meaningless.
- ii. There is a significant change in the pattern of trade with reference to prices and quantity of the product and the same is undermining the remedial effects of ADD earlier imposed on imports of DFS.
- iii. The increase in quantity of Indolinone has directly resulted into substantial loss of market of the subject goods for the domestic industry.

F.3. Examination of the Authority

25. The Authority notes that Rule 26 (4) requires establishing that the article circumventing the existing ADD i.e. ADD is dumped. Further Rule 26 (5) states that evidence, procedure requirements of Rule 6 shall apply mutatis mutandis to investigation carried out under this Rule.

26. The Authority notes that under section 9A (1) (c) of the Customs Tariff Act, 1975 normal value in relation to an article means:

- (i) The comparable price, in the ordinary course of trade, for the like article, when meant for consumption in the exporting country or territory as determined in accordance with the Rules made under sub-section (6), or
- (ii) when there are no sales of the like article in the ordinary course of trade in the domestic market of the exporting country or territory, or when because of the particular market situation or low volume of the sales in the domestic market of the exporting country or territory, such sales do not permit a proper comparison, the normal value shall be either
 - (a) comparable representative price of the like article when exported from the exporting country or territory or an appropriate third country as determined in accordance with the Rules made under sub-section (6); or
 - (b) the cost of production of the said article in the country of origin along with reasonable addition for administrative, selling and general costs, and for profits, as determined in accordance with the Rules made under sub-section (6);

The Rule 10 along with Annexure 1 enumerates methodologies for determination of normal value, export price and dumping margin.

27. The Authority notes that none of the producers/exporters have filed Questionnaire Response.

28. Rule 6 (8) provides that “In a case where an interested party refuses access to, or otherwise does not provide necessary information within a reasonable period, or significantly impedes the investigation, the designated authority may record its findings on the basis of the facts available to it and make such recommendations to the Central Government as it deems fit under such circumstances”.

29. The Authority notes that while the Petitioner has submitted that China be treated as a Non-Market economy, since in the instant case none of the producers/exporters has responded, and Rule 6(8) needs to be resorted to the examination of issues raised on market situation by the petitioner may not be required.

30. The Authority resorting to Rule 6 (8) has constructed the normal value for the PUI i.e. Indolinone, based on the best utilization norms of raw materials, utilities and capacity utilization, international raw material

prices wherever applicable and a reasonable return on the basis of information available from the applicant.

31. For the purpose of evaluating exfactory export price of PUI in POI, DGCIS data has been adopted. The imports of PUI made by the applicant have been excluded from analysis so as to eliminate possibility of any distortion that may occur on account of including such imports. The weighted average 'CIF' price of PUI during POI has been considered as 341.69 Rs/Kg. Adjustments on account of Ocean Freight, Marine Insurance, Commission, Port Expenses, Bank Charges and Inland Freight Expenses have been considered to an extent of **** \$/MT, **** % of CIF, ***% of FOB, **** % of FOB, ****% of FOB and *** % of FOB respectively on the basis of data provided by the Petitioner and Authority's past consistent practice on norms related to such adjustments. The table 3 below depicts the dumping margin.

Table 3: Computation of Dumping Margin

S. No.	Adjustment	\$/MT
1.	Constructed Normal Value	****
2.	CIF Import Price	****
3.	Ocean Freight	****
4.	Marine Insurance	****
5.	FOB Export Price	****
6.	Commission	****
7.	Port Expenses	****
8.	Bank Charges	****
9.	Inland Freight Expenses	****
10.	Net Export Price	****
Dumping Margin		****
Dumping Margin (%)		20-30

The dumping margin is proposed to be considered as **** \$/MT (20%-30%) which is significant and above de minimis limits under the AD Rules.

Undermining Remedial effect of ADD existing on PUC by Circumvention

32. The Authority notes that Rule 26 (4) stipulates that provision regarding evidence and procedure of Rule (6) be applied mutatis mutandis. Rule 6 (1) (iv) requires summarization of factors of alleged injury. Further the manifestation of dumped imports of PUI as injury to the Domestic Industry has been examined as per Rule 11 and Annexure 2 by evaluating price and volume effect.

a. Volume effect

33. The Authority has considered the transaction-wise import data provided by DG systems and DGCI&S for the assessment of volume and value of imports of both PUC & PUI from the subject country. Whereas the imports of Indolinone have increased significantly post 2011-12, imports of DFS have declined. Imports of Indolinone have in fact increased significantly even beyond the levels at which DFS was being imported earlier as depicted in Table 4 below:

Table 4: Trade Pattern of PUC and PUI

Year	Volume-MT		Rate -Rs./Kg	
	DFS	INDO	DFS	INDO
2008-09	67.15	68.20	350.85	349.10
2009-10	110.51	104.50	337.81	327.96
2010-11	46.38	157.00	351.94	342.20
2011-12	91.40	215.08	446.32	392.53
2012-13	27.40	132.00	538.30	446.46
2013-14	4.00	271.80	537.48	362.06
2014-15	54.40	702.02	443.24	350.01
April 15 – Sep 15	8.50	280.00	483.94	320.93
POI	62.90	982.02	448.74	341.69

The demand of PUC as computed by factoring PUI conversion also to PUC is tabulated below (Table 5)

Table 5: Demand of PUC for Injury Period

Particulars	2011-12	2012-13	2013-14	2014-15	POI	POI Annu
Imports (PUI)	215.08	132.00	271.80	702.02	1,092.02	728.02
Imports(PUC)	91.40	27.40	4.00	54.40	62.90	41.93
Conversion factor	***	***	***	***	***	***
Computed import	***	***	***	***	***	***
Total imports	****	****	****	****	****	****
Indexed	100.00	51.81	89.21	245.10	374.03	249.35
Domestic Sales - Amoli	****	****	****	****	****	****
Indexed	100.00	79.42	79.55	104.75	159.53	106.35
Captive consumption - Amoli	****	****	****	****	****	****
Indexed	100.00	125.84	109.47	141.87	211.27	140.85
Domestic sales - Aarti	****	****	****	****	****	****
Indexed	100.00	95.62	120.74	122.07	203.16	135.44
Captive consumption - Aarti	****	****	****	****	****	****
Indexed	100.00	4.88	24.28	0.30	2.74	1.83
Other producers sales	****	****	****	****	****	****
Indexed	100.00	91.48	76.94	80.83	123.43	82.29
Total Demand excluding captive	****	****	****	****	****	****
Indexed	100.00	79.79	88.90	133.69	207.19	138.13
Total demand including captive	****	****	****	****	****	****
Indexed	100.00	80.49	86.41	123.05	189.52	126.35

The Authority finds that the majority of imports from China PR were of Diclofenac Sodium; volume of which has declined post imposition of ADD. However, imports of PUI, Indolinone enhanced significantly post imposition of ADD on DFS and the same have increased now even beyond the level at which PUC was being dumped earlier.

The volume injury assessment on Domestic Industry in totality and M/s Amoli Organics and M/s Aarti Drugs is tabulated below in Tables – 6 (a), 6 (b) and 6 (c).

Table 6 (a): Injury Assessment of PUC (DFS)-Domestic Industry

Particulars	Unit	2011-12	2012-13	2013-14	2014-15	POI	POI*
Capacity	MT	1,550	1,905	1,905	2,280	3,420	2,280
Production	MT	1,327	1,557	1,430	1,783	2,656	1,771
Capacity Utilization	%	86%	82%	75%	78%	78%	78%
Sales							
Domestic	MT	****	****	****	****	****	****
Indexed		100.00	86.19	97.03	112.06	177.97	118.71
Captive Consumption	MT	****	****	****	****	****	****
Indexed		100.00	82.59	79.06	91.06	136.71	91.06
Exports	MT	****	****	****	****	****	****

Indexed		100.00	173.98	146.43	177.04	257.40	171.68
Total Sales	MT	****	****	****	****	****	****
Indexed		100.00	109.94	105.55	124.06	187.90	125.22
Average stocks	MT	****	****	****	****	****	****
Indexed		100.00	109.33	138.67	182.67	206.67	206.67
Demand Excluding D1	MT	****	****	****	****	****	****
Indexed		100.00	79.78	88.91	133.67	207.16	138.08
Demand including D2	MT	****	****	****	****	****	****
Indexed		100.00	80.48	86.38	123.00	189.50	126.30
Domestic Sales as % of Gross imports	%	191%	317%	207%	87%	91%	91%

Particulars	Unit	2011-12	2012-13	2013-14	2014-15	POI	POI*
Capacity	MT	****	****	****	****	****	****
Production	MT	****	****	****	****	****	****
Capacity Utilization	%	****	****	****	****	****	****
Sales		****	****	****	****	****	****
Domestic	MT	****	****	****	****	****	****
Captive Consumption	MT	****	****	****	****	****	****
Exports	MT	****	****	****	****	****	****
Total Sales	MT	****	****	****	****	****	****
Average stocks	MT	****	****	****	****	****	****
Demand Excluding D1	MT	****	****	****	****	****	****
Demand including D2	MT	****	****	****	****	****	****
Domestic Sales as % of Gross imports	%	****	****	****	****	****	****

Note : D1= Excluding captive consumption

D2 -= Including captive consumption'

POI- Apr'14-Sep'15

POI*; Annualised

Table 6 (c): Injury Assessment of PUC(DFS)-Aarti Drugs							
Particulars	Unit	2011-12	2012-13	2013-14	2014-15	POI	POI*
Capacity	MT	****	****	****	****	****	****
Production	MT	****	****	****	****	****	****
Capacity Utilization	%	****	****	****	****	****	****
Sales		****	****	****	****	****	****
Domestic	MT	****	****	****	****	****	****
Captive Consumption	MT	****	****	****	****	****	****
Exports	MT	****	****	****	****	****	****
Total Sales	MT	****	****	****	****	****	****
Average stocks	MT	****	****	****	****	****	****
Demand Excluding D1	MT	****	****	****	****	****	****
Demand including D2	MT	****	****	****	****	****	****
Domestic Sales as % of Gross imports	%	****	****	****	****	****	****

Note : D1= Excluding captive consumption
D2 -= Including captive consumption'

POI- Apr'14-Sep'15

POI*; Annualised

The volume effect is manifested in terms of the relative market share of domestic sales with regard to gross imports of DFS (directly and circumvented through Indolinone) which has declined from *** to ****. For M/s Amoli Organics Ltd. the same has reduced from **** to ***, and for M/s Aarti Drugs Ltd. from *** to ***. This indicates a steep fall in the relative market shares of Domestic Industry/Applicant/Supporter.

b. Price Effect

34. The impact of imports of Indolinone on the prices of the domestic industry has been examined with reference to price undercutting. For the purpose of this analysis, a comparison of the landed price of imports for PUI from subject country during the period of investigation, after appropriate adjustment in order to derive price of DFS was made with the selling price for DFS of the domestic industry in the domestic market. While undertaking this, the Authority has excluded imports of PUI by Amoli to ensure a fair and un distorted comparison. In determining the net sales realization of the domestic industry, taxes, rebates, discounts and commission incurred by the domestic industry have been adjusted. Further, since

the domestic industry has produced and supplied DFS, whereas the product has been imported from China in unfinished form, the expenses incurred in India in converting Indolinone to DFS have been added on the basis of value addition determined by the Authority. Thus, the landed price of imports of Indolinone was adjusted upward by the amount of value addition and thereafter compared with the selling price of the domestic industry. The comparison has shown that the adjusted landed price of imports of Indolinone is significantly below the selling price of DFS by the domestic industry. Thus, the imports of Indolinone are resulting in price undercutting and are thus having adverse price effect. The import price of Diclofenac Sodium being reported from the subject country has increased whereas the import price of Indolinone has declined. In fact, this has eroded the efficacy of the ADD imposed on the PUC. It is noted that there has been significant increase in imports of Indolinone post imposition of which is then being processed into Diclofenac Sodium in India. The landed price of imports of Indolinone is materially below the selling price of the domestic industry, after due adjustment for the value addition involved between Indolinone and DFS. The price undercutting on Domestic Industry's domestic sales of DFS through the circumventing product i.e. Indolinone has been examined by constructing the landed price of DFS from Indolinone by adding the value addition determined. The price undercutting is noticed to be positive except 2013 – 14. Also the computed price of DFS from Indolinone during the injury period showed be nearly the same as landed value of directly imported DFS (with ADD), so as to ensure that the existing AD measure is not undermined. However this is noticed to be significantly lower.

The table 7 below illustrates the extent of circumvention.

Table 7; Extent of Circumvention

Landed Value	Unit	2011-12	2012-13	2013-14	2014-15	POI
Landed value (DFS without ADD)	Rs./kg	485.60	585.69	584.78	482.25	488.24
Landed value (DFS with ADD)	Rs./kg	629.60	729.69	728.78	652.89	658.33
Landed value (Indolinone)	Rs./kg	427.08	485.76	393.93	380.82	371.77
Landed value (computed DFS)	Rs./kg	****	****	****	****	****
Quantum of Circumvention	Rs./kg	****	****	****	****	****

The tables 8 (a) to 8 (c) depict price effect on Domestic Industry.

Table 8 (a)

Price undercutting /Underselling – Domestic Industry						
	Unit	2011-12	2012-13	2013-14	2014-15	POI
Net selling price	Rs./kg	****	****	****	****	****
Cost of sales	Rs./kg	****	****	****	****	****
Price undercutting	Rs./kg	****	****	****	****	****
Indexed		100.00	-141.52	69.10	177.63	107.50
Price underselling	Rs./kg	****	****	****	****	****
Price underselling (Indexing)		-100.00	-380.05	180.31	311.85	304.01

Table 8 (b)

Price Undercutting /Underselling –Amoli Organics						
	Unit	2011-12	2012-13	2013-14	2014-15	POI
Net selling price	Rs./kg	****	****	****	****	****
Cost of sales	Rs./kg	****	****	****	****	****
Price undercutting	Rs./kg	****	****	****	****	****
Indexed		100.00	-111.02	105.19	245.08	220.99
Price underselling	Rs./kg	****	****	****	****	****
Indexed		100.00	269.41	-231.29	-360.40	-386.96

Table 8 (c)

Price undercutting /Underselling –Aarti Drugs						
	Unit	2011-12	2012-13	2013-14	2014-15	POI
Net selling price	Rs./kg	****	****	****	****	****
Cost of sales	Rs./kg	****	****	****	****	****
Price undercutting	Rs./kg	****	****	****	****	****
Indexed		100.00	-168.87	39.67	108.63	2.57
Price underselling	Rs./kg	****	****	****	****	****
Indexed		100.00	722.95	43.27	-80.35	56.79
Price underselling	Rs./kg	****	****	****	****	****
Indexed		-100.00	-269.41	231.29	360.40	386.96

The table 9 below depicts Injury Margin for 2 producers separately, which is noted to be positive.

Table 9: Injury Margin – POI

Parameters	M/s Amoli Organics Ltd. (Rs/Kg)	M/s Aarti Drugs Ltd. (Rs/Kg)
Landed Value	457.28	457.28
Non-Injurious Price	****	****
Injury Margin	****	****
Injury Margin %	10-20	2-12

35. Post Disclosure Comments by the Domestic Industry

- a. After imposition of Antidumping duty on Diclofenac Sodium imports of Indolinone from China increased.
- b. Converting Indolinone to DFS is the process of Hydrolysis.
- c. Indolinone has characteristics of DFS.
- d. Value addition in production process from Indolinone to DFS is less than 35%
- e. Increase in imports of Indolinone post imposition of duty on DFS from china proves that there is a change in pattern of trade.
- f. There is no economic justification for increase in imports of Indolinone. Indolinone to DFS is just a hydrolysis process away. It is convenient for China to stop just a process away and export Indolinone to India.
- g. Imports of PUI are at dumping prices and margin of dumping is significant.
- h. Imports of Indolinone are causing price undercutting.
- i. Imports of Indolinone have increased significantly after imposition of ADD on DFS.
- j. Imports of Indolinone are beyond the level at which DFS was being imported earlier.
- k. Import price of DFS has increased but the same has decreased for Indolinone.
- l. A significant number of importers have been importing Indolinone and selling DFS.
- m. Extension of ADD existing on DFS to Indolinone is necessary consideration huge imports of Indolinone on dumped prices.

36. Examination by the Authority

No comments has been provided by Embassy of China/any other interested party.

The Authority notes that the Domestic industry has reiterated the submissions already made by them which have been appropriately addressed in the concerned paras in this finding under the heading phenomena of circumvention and undermining of remedial measures.

Conclusions

37. Having examined the contention of interested parties and on the basis of the analysis as above, the Authority concludes that:

- 1) Imports of circumventing product i.e. Indolinone have increased significantly and those of DFS declined after imposition of the AD measure on DFS.
- 2) The value addition in converting circumventing product i.e. Indolinone to circumvented product (DFS) is less than the prescribed threshold in the Rules.
- 3) The circumventing product i.e. Indolinone has been exported at dumped prices during the POI.

The circumventing product i.e. Indolinone has thereby undermined the existing AD measure on the circumvented product i.e. DFS imposed vide Custom Notification No. 91/2008-Customs (ADD) dated 30th July, 2008 and Custom Notification No. 44/2014-Customs (ADD) dated 21st November, 2014.

Recommendations

38. The Authority keeping in view the aforesaid, recommends imposition of the existing AD Duty on DFS imposed vide Custom Notification No. 44/2014-Customs (ADD) dated 21st November, 2014 on 'Indolinone' also at the rate equal to the amount as specified in the corresponding entry in column (8), in the currency as specified in the corresponding entry in column (10) and as per unit of measurement as specified in the corresponding entry in column (9) of the duty table mentioned below.

- i) The AD Duty will be applicable from the date of its notification by the Ministry of Finance i.e. Central Government.
- ii) The validity of AD Duty would be co-terminus with the duty on DFS levied through Custom Notification No. 44/2014-Customs (ADD) dated 21st November, 2014

Duty Table

S. N	Heading	Description of Goods	Country of Origin	Country of Exports	Producer	Exporter	Duty Amount	Unit	Currency
(1)	(2)*	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
1.	29142990, 29214490, 29224990, 29337900, 29339900, 29081900, 29147090, 29420090,	Indolinone	People's Republic of China	Any	Any	Any	2715	MT	US Dollar

S. N	Heading	Description of Goods	Country of Origin	Country of Exports	Producer	Exporter	Duty Amount	Unit	Currency
	29333990								
2.	29142990, 29214490, 29224990, 29337900, 29339900, 29081900, 29147090, 29420090, 29333990	Indoline	Any country other than People's Republic of China	People's Republic of China	Any	Any	2715	MT	US Dollar

*The customs classification is however indicative only and in no way binding on the scope of investigation.

Further Procedure

39. An appeal against the order of the Central Government that may arise out of this Final Findings Notification shall lie before the Customs, Excise and Service Tax Appellate Tribunal in accordance with the Customs Tariff Act.

Dr. Inder Jit Singh
Additional Secretary & Designated Authority