

GOVERNMENT OF INDIA
MINISTRY OF COMMERCE & INDUSTRY
(DEPARTMENT OF COMMERCE)
DIRECTORATE GENERAL OF ANTI DUMPING &
ALLIED DUTIES

NOTIFICATION

FINAL FINDINGS

New Delhi: 15th July, 2004

Subject: Anti-dumping investigation concerning import of Chloroquine Phosphate originating in or exported from China PR - Final Findings.

No. 14/3/2003-DGAD - Having regard to the Customs Tariff Act, 1975 as amended in 1995 and the Customs Tariff (Identification, Assessment and Collection of Anti Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, thereof;

A. PROCEDURE

1. The Procedure described below has been followed:

- i. The Designated Authority (hereinafter referred to as Authority), under the above Rules, received an application filed by M/s Ipca Laboratories Ltd., Mumbai and M/s. Mangalam Drugs and Organics Ltd., Mumbai, on behalf of the domestic industry, alleging dumping of Chloroquine Phosphate originating in or exported from China PR (hereinafter referred to as subject country).
- ii. Preliminary scrutiny of the application filed by the applicant revealed certain deficiencies, which were subsequently rectified by the applicant. The application was, therefore, considered as properly documented.
- iii. The Authority on the basis of prima-facie evidence submitted by the applicant considered to initiate the investigation against imports of subject goods from China PR. The Authority notified the Embassy of China PR in New Delhi about the receipt of the dumping allegation before proceeding to initiate the investigation in accordance with Sub-Rule 5(5) of the Rules.
- iv. The Authority forwarded a copy of the public notice of initiation dated 16th July, 2003 to all the known exporters (whose details were made available by petitioner) and industry/user associations providing them an opportunity to

make their views known in writing in accordance with the Rule 6(2), 6(3) and 6(4). The Authority also forwarded a copy of designed questionnaire on non-market economy as per para 8(3) of Annexure-I of AD Rule to exporters to file their responses.

- v. The Authority made available the public file as per Rule 6(7) to all interested parties containing non-confidential version submitted by interested parties for inspection, upon request.
- vi. The Authority made a request to the Central Board of Excise and Customs (CBEC) and DGCI&S, Kolkata to arrange details of imports of the subject goods during past three years, including the period of investigation.
- vii. The Designated Authority notified preliminary findings vide Notification No. 14/3/2003-DGAD dated the 6th November 2003 with regard to Anti Dumping investigations concerning imports of Chloroquine Phosphate originating in or exported from China PR and requested the interested parties to make their views known in writing within forty days from the date of its publication.
- viii. The Central Government notified the duty vide notification no177/2003-Customs dated 15th December 2003.
- ix. The Authority held a verbal hearing on 09/1/2004 to hear the interested parties , which was attended by representatives of the interested parties. The parties attending the public hearing were requested to file written submissions of views expressed verbally. Designated Authority considered these submissions as such received from interested parties in these findings.
- x. Arguments raised by interested parties before notifying Preliminary Findings, which have been brought out in the Preliminary Findings notified earlier have not been repeated herein for sake of brevity. However, arguments raised after the preliminary findings by the interested parties have been appropriately dealt in these findings wherever appropriate.
- xi. Cost investigations were conducted to work out optimum cost of production and cost to make and sell the subject goods in India on the basis of Generally Accepted Accounting Principles (GAAP) on the information furnished by the applicant so as to ascertain if anti-dumping duty lower than the dumping margin would be sufficient to remove injury to the domestic industry.
- xii. The Authority verified the information provided by the petitioner companies to the extent considered necessary.
- xiii. In accordance with Rule 16 of the anti dumping Rules supra, the essential facts considered for these findings were disclosed on dated 11th June 2004 to known interested parties and comments received on the same have also been duly considered in these findings;
- xiv. The Authority considered the period of investigation of twelve months from 1st April 2002 to 31st March 2003 and injury analysis was carried out for the

periods 1999-2000, 2000-2001 and 2001-2002 along with the dumping period of investigation i.e, April,2002- December,2003.

- xv. **** in the Notification represents information furnished by interested parties on confidential basis and so considered by Authority under the Rules.

B. Product under consideration AND LIKE ARTICLE:

2. The product under consideration in the present petition is Chloroquine Phosphate. Chloroquine Phosphate is an organic chemical and primarily used as drug for Malaria. It is a white or almost white crystalline powder, hygroscopic, freely soluble in water, slightly soluble in alcohol, ether and methanol. Chloroquine Phosphate is classified under customs sub-heading no. 293921 under Chapter 29 of the Customs Tariff Act.

3. It contains not less than 98.5% and not more than equivalent to 101.0% N4(7-chloroquinolin-4-yl)-N1,N1-diethylpentane-1,4-diaminebis(di-hydrogen phosphate), calculated with reference to the anhydrous substance. For production of Chloroquine Phosphate intermediate 4:7 Dichloroquinoline is prepared by the reaction of Meta Chloro Aniline with Ethoxy Methylene Ester (EMME) followed by Alkaline Hydrolysis and Chlorination. This Intermediate is further condensed with Novaldiamine and Chloroquine obtained is treated with Phosphoric Acid to obtain Chloroquine Phosphate.

4. There is no known difference in Chloroquine Phosphate exported from China PR,PR and Chloroquine Phosphate produced by the domestic industry. Chloroquine Phosphate produced by the domestic industry and imported from China PR is comparable in terms of characteristics such as physical & chemical characteristics, manufacturing process & technology, functions & uses, product specifications, pricing, distribution & marketing and tariff classification of the goods. The Authority notes that these two are technically and commercially substitutable. The consumers have used and are using these two interchangeably. Chloroquine Phosphate produced by the petitioner company is a like article to the goods imported from China PR in accordance with the anti dumping rules.

5. There is no known difference in the technology adopted by the applicant and by the producers in China PR, though every manufacturer fine-tunes its production process according to available facilities and necessities.

6. The Authority, therefore, for the purpose of final determination holds that the goods produced by the Domestic Industry and those exported from the subject country are like article within the meaning of the Rules 2(d) of AD Rules.

C. DOMESTIC INDUSTRY

C.1 VIEWS OF THE EXPORTER

7. The applicant has not provided any reliable data in support of their claim to represent domestic industry i.e., having more than 50% share in the market. On the other hand the applicant themselves have placed doubt over the data provided by Government agency like DGCI&S.

C.2 EXAMINATION BY THE AUTHORITY

8. The present application is jointly filed by M/s Ipca Laboratories Ltd., and M/s Mangalam Drugs and Organics Ltd. They are multi product companies and are involved in production of number of products. The applicants have not imported the subject goods in the past three years. Applicants are exporting Chloroquine Phosphate to a number of countries.

9. Applicants have provided information regarding production and sales to establish the claim of domestic industry which were verified by a team of officers from DGAD. The Authority notes that the domestic producers constitute more than 50% of the total domestic production and therefore, have the standing to file the petition on behalf of the domestic industry as per Rule 5 (3) (a) and (b) of the Anti-Dumping Rules and also represent Domestic Industry in terms of Rule 2(b).

D. EXAMINATION OF MARKET ECONOMY AND Assessment of Normal Value, Export Price & determination of Dumping Margin

D.1. VIEWS OF THE DOMESTIC INDUSTRY

10. The views of domestic industry are summarised below,

- i. The trading company M/S Sinochem is a State Owned Company. It is stated by the domestic industry that under similar circumstances, EC has refused to grant MET to Chinese Company. EC has denied MET in situations where the company is State Owned. Such being the case, petitioners believe that examination of other parameters may not even be relevant in this case.
- ii. In fact, an individual treatment can only be granted to an exporter provided that the exporter demonstrates that it is free from state control and prices are based on market driven principles. Therefore, granting separate dumping margin to such an exporter can lead to serious circumvention of anti dumping duty. In the

instant case, as is evident from the decisions of the EC, the exporter cannot be granted even individual treatment.

- iii. The normal value should be determined on the basis of Para 7 of Annexure I. Further it is evident that the manufacturing company is selling goods through state owned trading company only, and the company has no control regarding prices, quantities or the destination of its export sales. Accordingly a separate dumping margin cannot be assessed for the manufacturing company Chong Qing Kang Le Pharmaceutical Ltd., as the trading Company, M/s. Sinochem Jiangsu Import & Export Corporation has admitted that they are a state owned company. Out of the two companies, M/s. Sinochem Jiangsu Import & Export Corporation is 100% Export Import Company and therefore, there can not have any domestic sales of the company.
- iv. European Commission and United States have treated China PR as non-market economy in the past three years in many anti dumping investigations and they are members of World Trade Organization. With regard to treatment of China PR as non-market economy by other WTO member countries, European Commission has treated China PR as a non-market economy in the matter of Ferro molybdenum from China PR. USA has treated China PR as a non-market economy in the matter of anti-dumping investigations concerning imports of Ball Bearing. Since, China PR is a "non-market economy" country, determination of normal value in China PR is to be done in accordance to the rules relating to non-market economies.

D.2 VIEWS OF THE EXPORTER

D.2.1 M/s. Chong Qing Kang Le Pharmaceutical Co., Ltd., China PR PR(Producer)

11. The views of the producer are summarised below,

- i. M/S Chong Qing Kang Le Pharmaceutical Co., Ltd., is a joint venture company jointly invested by an American company, Hong Kong Company and several Chinese companies including private shareholders.
- ii. There are no incentives or tax preferential treatment on inputs materials, sales, nor any subsidies on utilization of energy in relation to the production of the product concerned. They have not imported materials for the purpose of producing the product concerned.
- iii. The product is sold through its unrelated trading company. Domestic sales of the product concerned were for "injection use", and export sales were for tablet use. The production process and cost were not varied, but the quality for "injection" use was high priced than those for "tablet" use.
- iv. The Authority has proceeded on the presumption, since the co-operating Chinese Manufacturers are state owned company, they per se should be given

non-market economy status. The Authority has based its conclusions only on past antecedents without having regard to deference in facts. It is submitted that it is not necessary that every state-owned company runs on non-market economy principles and should be given such status. Further, it is submitted that the co-operating exporter is a board managed company taking its independent decisions with regard to pricing policies and day to day affairs of the company.

D.2.2 M/s. Sinochem Jiangsu Import & Export Corporation(Exporter)

12. The views of the exporter are summarised below,

- i. M/s. Sinochem Jiangsu Import & Export Corporation is a state-owned company invested by Sino Chemic General Corporation. It is a trading company. The producer of the product concerned is Chong Qing Kang Le Pharmaceutical Co., Ltd., and filed a separate reply relating to the Exporters questionnaire.
- ii. The government gives no incentives or tax preferential treatment in relation to the export sales of the product concerned. They are not related to companies involving in the production of the product concerned in China PR, India and other countries.

D.2.3 M/s. Zhejiang NHU Import & Export Co., Ltd.ChinaPR

13. M/s. Zhejiang NHU Import & Export Co., Ltd., stated that they have neither produced the subject goods as a producer nor sold it through any market channel as a seller.

D.3 EXAMINATION BY THE AUTHORITY

14. The Designated Authority in an anti-dumping investigation proceeds with a presumption that any country that has been determined to be, or has been treated as, a non-market economy country for purposes of an anti dumping investigation by the Designated Authority or by the competent authority of any WTO member country during the three year period preceding the investigation is a non-market economic country as per para 8(2) of Annexure-I of AD Rules In the instance case, China PR is proposed to be investigated as non-market economy. In the past three years China PR has been treated as non-market economy country in the anti- dumping investigations by other WTO member countries namely European Commission and USA. With regard to treatment of China PR as a non-market economy by other WTO Members countries, the applicant has cited cases namely, in the matter of Ferro molybdenum, Steel ropes & cables, Hot rolled flat products of non alloy steel from China PR where European Commission has treated China PR as a non-market economy.

15. The Authority sent a questionnaire to all the known exporters for the purpose of determination of normal value in accordance with Section 9A (1)(C). Responses have been received from the following producer/exporters from China PR:

- i. M/s. Sinochem Jiangsu Import & Export Corporation, China PR
- ii. M/s. Chong Qing Kang Le Pharmaceutical Co., Ltd., China PR

16. M/s. Sinochem Jiangsu Import & Export Corporation is a state owned company and it is a trading company. M/s. Chong Qing Kang Le Pharmaceutical Co., Ltd., is a producer of Chloroquine Phosphate and also filed the reply in the exporters questionnaire.

17. Neither the producer nor exporter filed response to the specific questionnaire on NME for its claim of market economy treatment and determination of normal value as per para 1 to 6 of Annexure-1 of AD Rules. The NME questionnaire was sent to the Chinese producer and their representative in India on 9/09/2003 and again on 18/03/2004 to file their response to rebut the presumption of NME treatment as per para 8(3) of Annexure-I of AD Rules. The Authority notes since the Chinese producer did not submit information with regards to its claim of market economy during the course of investigation and did not respond to the deficiency raised in the preliminary findings, the test of domestic sales in the ordinary course of trade is not possible in such circumstances to determine the normal value as per provisions contained in Section 9 A 1 (C). Therefore determination of normal value in respect of China PR is to be carried out in accordance with the Rules relating to non-market economies as contained in Para 7 & 8 of Annexure-1 of Rules as amended vide Notification dated 4.1.2002.

18. The Authority notes that para 7 of Annexure 1 of anti dumping rules, inter-alia provides that:

"In case of imports from non-market economy countries, normal value shall be determined on the basis of the price or constructed value in the market economy third country, or the price from such a third country to other countries, including India or where it is not possible, or on any other reasonable basis, including the price actually paid or payable in India for the like product, duly adjusted if necessary, to include a reasonable profit margin....."

19. Further Para 8 of Annexure 1 of the Rules Supra (as amended) provides that:

"8 (1) The term "non-market economy country" means any country which the designated authority determines as not operating on market principles of cost or pricing structures, so that sales of merchandise in such country do not reflect the fair

value of the merchandise, in accordance with the criteria specified in sub-paragraph(3)

(2) There shall be a presumption that any country that has been determined to be, or has been treated as, a non-market economy country for purposes of an anti dumping investigation by the Designated Authority or by the competent authority of any WTO member country during the three year period preceding the investigation is a non-market economic country;

Provided, however, that the non-market economy country or the concerned firms from such country may rebut such a presumption by providing information and evidence to the designated authority that establishes that such country is not a non-market economy country on the basis of the criteria specified in sub-paragraph (3)."

20. The Authority notes that the Chinese producer did not furnish necessary information/ evidence as mentioned in sub Para 3 of the Paragraph 8 of Annexure 1 of anti dumping Rules to enable the Designated Authority to consider the following criteria as to whether

- a. the decision of concerned firms in such country regarding prices, costs and inputs, including raw materials cost of technology and labour, output sales and investment, are made in response to market signals reflecting supply and demand and without significant State interference in this regard, and whether costs of major inputs substantially reflect market values:
- b. the production costs and financial situation of such firms are subject to significant distortions carried over from the former non-market economy system, in particular in relation to depreciation of assets, other write-offs, barter trade and payment via compensation of debts:
- c. such firms are subject to bankruptcy and property laws which guarantee legal certainty and stability for the operation of the firms, and
- d. the exchange rate conversions are carried out at the market rate;

21. The Authority, in view of no rebuttal by the Chinese producer on the issue of non market economy having regard to the Custom Notifications No. 28/2001 dated 31st May 2001 and No. 1/2002 dated 4th January 2002, is not in a position to examine its claim of market economy status to an individual company. The producer has not provided the cost of production of the subject goods as per market forces thus not permitting the Authority to apply the ordinary course of trade test and to determine the sales being at arm's length. Therefore the normal value in respect of China PR is determined as per Rules relating to non-market economies as contained in Para 7 of Annexure-1 of AD Rules.

NORMAL VALUE

22. The Authority in view of non-cooperation and inadequate response filed by the Chinese producer and exporter has constructed the normal value on facts available as per Rule 6(8) of AD Rules. The normal value is therefore assessed as US\$****/Kg. for the purpose of final Determination.

EXPORT PRICE

23. In response to the questionnaire the Chinese producer/exporter has furnished details of export made to India during the period of investigation. The Authority has considered the export price provided by the exporter M/s. Sinochem Jiangsu Import & Export Corporation, China PR and produced by M/S Chong Qing Kang Le Pharmaceutical Co., Ltd. China PR which corresponds to the transaction wise import data of DGCI&S. The adjustments claimed by the domestic industry with regard to inland freight, handling, insurance, overseas freight etc. have been considered to arrive at ex-factory export price to India. The Authority has determined the ex-factory export price as US\$ ****/Kg. of Chloroquine Phosphate for the purpose of final determination.

DUMPING- MARGIN

24. The rules relating to comparison provides as follows:

"While arriving at margin of dumping, the Designated Authority shall make a fair comparison between the export price and the normal value. The comparison shall be made at the same level of trade, normally at ex-works level, and in respect of sales made at as nearly possible the same time. Due allowance shall be made in each case, on its merits, for differences which affect price comparability, including differences in conditions and terms of sale, taxation, levels of trade, quantities, physical characteristics, and any other differences which are demonstrated to affect price comparability."

25. The authority has carried out weighted average normal value comparison with the weighted average ex-factory export price in Period of Investigation, for evaluation of the dumping margin for all the exporter/producers of the subject country.

The dumping margin for exporter/producers comes as under:

Exporter/Producer	Normal Value (US\$/Kg)	Export Price (US\$/Kg)	Dumping margin as % of Export Price
All exporters/Producers	****	****	28.9%

E. ASSESSMENT OF INJURY AND EXAMINATION OF CAUSAL LINK

E.1 VIEWS OF THE DOMESTIC INDUSTRY

26. The views of domestic industry are summarised below,

- i. Chloroquine Phosphate is used as drug of first choice for treating malaria. China PR and India are the two major producers of Chloroquine Phosphate. China PR has very low level of domestic consumption of the product as compared to their production. Chinese Producers, therefore, have no option but to sell the material, whatever are the prices. The National Anti Malaria Programme procures Chloroquine tablets through competitive bids. Further, the Department normally procures material in bulk, which does not get immediately consumed. In fact, the Department keeps sufficient stocks of the material at any point of time.
- ii. While reviewing the data for 2000-01, it is found that an import of 98.3 MT has been reported by the DGCI&S in 2000-01 @ Rs. 182.23 per kg. Petitioners further examined import data for a number of months, details of which are already on the record of the Authority. It was found that while the average import price was more than Rs. 500 per kg, imports of 98.3 MT has been reported @ 182.23 per kg. This very clearly shows that there is an apparent error in the data reported by the DGCI&S. Petitioners' market information also does not show this much volume of imports in that month. In view of the above, petitioners have ignored this import while determining volume of imports for the purpose of examination of injury.
- iii. A number of manufacturing units in India have been forced to close their production of subject goods due to persistent dumping from the subject countries.
- iv. Production has increased vis-à-vis base year, the same has declined significantly after increasing 2000-2001. Thus, the capacity has remained unutilized, as would also be seen from the trend of capacity utilization. The domestic industry has added capacity in 2000-2001. Production and hence capacity utilization increased significantly between 1999-2000 and 2000-2001. However, the fall in capacity utilization is due to dumped imports.
- v. The domestic industry had earlier undertaken significant cost reduction measures, which resulted in decline in the cost of production.
- vi. The landed price of imports is significantly below the selling price of the domestic industry. Thus, imports are significantly undercutting the prices of the domestic industry. The selling price of imports is below the non-injurious price

of the domestic industry. Thus imports are resulting in price underselling in the market.

- vii. Productivity of the domestic industry increased in 2000-01 but deteriorated thereafter on the lines of trend in production. Return on investments has significantly declined.
- viii. Chloroquine phosphate is covered under DPCO. Competent Authority has very recently revised the price of this product to Rs. 790 per kg. in the absence of dumped imports, petitioners would have sold their material at these prices. As against this price, the domestic industry has realized much lower than the DPCO price in the investigation period.
- ix. The domestic industry has been forced to increase the wages due to prevailing laws of the country. Thus, while the financial position and performance of the domestic industry is deteriorating, the domestic industry is forced to afford wage increases.

E.2 VIEWS OF THE EXPORTER

M/s. Sinochem Jiangsu Import and Export Corporation & M/s. Chongqing Kang Le Pharmaceutical Company Ltd.,

27. The views of the producer and exporter are summarised below,

- i. It is incumbent upon the investigation authority to base the determination of injury on positive evidence and to provide the respondent exporters with timely opportunities to see and prepare presentations on the basis of all information used by the Investigating Authority. It is submitted that in the instant case no meaningful summary of the calculation has been provided. Moreover, the methodology of calculations taking into account various factors like the cost of production, selling and administration expenses etc. has not be disclosed.
- ii. National Anti-Malaria Programme of the Government of India is the major customer of Chloroquine Phosphate formulations. Records reflect the obvious fall in Government procurement from 175 in 2000-01 to 50 in 2002-03. However in 2001-02 the Government procurement was 12.5 only and it increased in 2002-03. Now on comparing the data of actual sales with Government procurement it is found that domestic sales in 2000-01 were 125.66 whereas export sales were 152.55. In the year 2001-02 when Government procurement fell to 12.5 from 175 the domestic sale also fell down to the level of 87.32 from 125.66 in the previous year. On the other hand export sale in 2001-02 increased from 152.55 to 204.38. Now, in the year 2002-03 when Government procurement increased from 12.5 to 50 the domestic sale showed an increase from 87.32 to 113.49 while export sales decreased from 204.38 to 191.97. This shows that the domestic sales were much dependent on

- Government procurement. It is evident that the market share in imports from China PR has remained at a static level from 1999-00 to 2002-03.
- iii. The market share in merchant demand reveals that domestic industry shows an increase from 91.83 to 100.17 during POI, while market share of imports from China PR is declining. Even the market share in gross demand also reflects a marginal decline in both domestic industry and imports. It is therefore, submitted that even though the demand of subject goods is declining the market share of domestic industry is not affected and as such there is no indication of substantial increase in importation in future. The only concern of the petitioner is the decline in profitability, the probable reason of which is the decline in demand due to substantial eradication of malaria which has in turn resulted into reduction of price at all levels.
 - iv. The decline of profitability of petitioners is the effect of decline in productivity per employee and increase in inventory. The decline in capacity utilization from 106 to 84 has also contributed to decrease in profit. Thus, the bad management of factors of production and other internal factors have infact resulted in decline in profitability as against alleged increased in imports.
 - v. The exporter submits that undisputedly the subject goods are covered under DPCO (Drug Price Control Order). In pursuance of power conferred under Section 3 of Essential Commodities Act, 1955, the Central Government has issued a DPCO with noble social objective of providing the life saving drugs at affordable prices. Under DPCO the Central Government has power to fix maximum price for a drug, above which no one can sell such life saving drugs and medicines. However the fixation of maximum price does not confer a right on manufacturer/seller of drug to sell the specified drugs at par with DPCO price. In accordance with objects of DPCO, Central Government has very recently revised the DPCO price for subject goods and has fixed price at Rs. 790/Kg. The price charged by importers is in consonance with DPCO objective and the petitioners have no right to seek price protection and to sell their drugs at DPCO price only. The fair amount of competition through Chinese manufacturers has served the public interest by enabling market forces to determine the price by putting a cut on unreasonable profit margins.

E.3 EXAMINATION BY THE AUTHORITY

28. Chloroquine Phosphate is used for treating malaria and symptoms like malaria. China PR and India are two major producers of Chloroquine phosphate but it is not consumed much in China PR as Chinese subcontinent is not affected with Malaria. The Authority notes that due to the production base and limited consumption in China PR, the producers/exporters from China PR have no other option but to cater international market.

29. National Anti Malaria Programme of the Govt. of India is one of the major buyers of Chloroquine Phosphate formulations. The Government is required to keep a sufficient stock which may be required at any time, however it was noted that during the injury period Government procurement pattern was not uniform.

30. One of the constituents of domestic industry consumes the product under consideration captively for producing Chloroquine Phosphate tablets apart from sales as bulk drug. However imports of the product under consideration are also made for producing Chloroquine Phosphate tablets. The product imported from China PR is converted into tablets by the formulators which compete with the domestic industry. The Authority notes that dumped imports from the subject country affect the domestic industry not only in merchant market as bulk drug but also in its captive market.

31. The non-injurious price has been evaluated for the domestic producers by appropriately considering the sales realisation for the product under consideration. Also in order to eliminate inefficiencies, the Authority has normated and benchmarked the best practices on utilisation of raw materials, utilities etc.

32. As regards the impact of the dumped imports on the domestic industry para (iv) of Annexure-II of the Anti Dumping Rules states:

"The examination of the impact of the dumped imports on the domestic industry concerned, shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the Industry, including natural and potential decline in sales, profits, output, market share, productivity, return on investments or utilisation of capacity; factors affecting domestic prices, the magnitude of margin of dumping actual and potential negative effects on cash flow, inventories, employment wages growth, ability to raise capital investments."

33. The Authority examined the following economic parameters in the case of domestic producers,

Injury parameter	Particulars	Unit	1999-00	2000-01	2001-02	2002-03
Actual Sales						
	Dom. Sales	MT	221	278	193	251
	Export Sales	MT	137	209	280	263
	Captive consumption	MT	129	231	174	93
	Total sales	MT	487	718	647	607
	Dom. Sales including captive	MT	350	509	367	344
Profits						
	Cost of production	Indexed	100.00	91.64	90.84	87.40
	Selling price	Indexed	100.00	89.64	88.15	71.36
	Profit/Loss	Indexed	100	12.73	-15.17	-543.36

Imports						
	China PR	MT	61.65	136.53	70.05	87.08
	Others	MT	7.00	0.00	0.00	0.00
	Total Imp	MT	68.65	136.53	70.05	87.08
Market share in Merchant Demand						
	Demand	MT	324.65	444.23	288.52	363.89
	Domestic industry	%	68.07	62.51	66.88	68.92
	Other producers	%	10.78	6.75	8.66	7.15
	Imports from China PR	%	18.99	30.73	24.45	23.93
	Imports from Other countries	%	2.16	0.00	0.00	0.00
Market share in total demand						
	Demand	MT	453.65	675.23	462.52	456.89
	Domestic industry	%	77.15	75.34	79.34	75.25
	Other producers	%	7.72	4.44	5.41	5.69
	Imports from subject country	%	13.59	20.22	15.16	19.06
	Other Countries	%	2.16	0.00	0.00	0.00
Productivity						
	Employees	Indexed	100.00	113.33	102.44	103.28
	Productivity per employee	Indexed	100.00	143.33	138.71	115.11
Return on investment						
	Trend	Indexed	100	16.14	-8.91	-412.67
Capacity utilization						
	Capacity	MT	516	725	725	725
	Capacity utilization	%	93.41	99.59	94.48	79.03
	Production	MT	482	722	685	573
Export price						
	China PR	Rs./Kg	659	563	586	461
	Landed value	Rs./Kg	921	788	799	605
Inventories						
	Closing stock	Indexed	100	120.05	327.31	150.54
	Opening stock	Indexed	100	51.55	61.89	168.74
	Average stock	Indexed	100	74.85	152.18	162.55
Wages						
	Wages paid to employees	Indexed	100	108.93	100.92	110.56

Volume and market share of dumped imports

34. Based on the import statistical information of DGCI&S Kolkata, the imports from China PR has increased both in absolute and relative terms during the POI. The Authority analysed the transaction wise import statistics from DGCI&S and observed that the entire imports are coming from China PR only. Imports from China PR increased in 2000-01, declined thereafter in 2001-02 and again increased in 2002-2003 by 24% from year 1999-2000.

35. The market share of domestic industry in merchant demand remained more or less uniform. However, market share of domestic industry in gross demand declined very marginally over the injury period after an increase in 2001-2002. At the same time, market share of imports from China PR has increased both in merchant as also gross demand from 18.99% in 1999-2000 to 23.93% in the POI and 13.59% in 1999-2000 to 19.06% in the POI respectively. The Authority notes that the market share of the domestic industry is uniform in the merchant demand whereas it has declined by less than 2% which is not significant.

Actual and potential decline in sales

36. Sales of the domestic industry increased in 2000-01, but declined in 2001-2002 and again increased in the POI. Since the domestic industry has significant captive consumption also, sales including captive consumption were also examined. The increase in sales in 2000-01 was largely due to significant increase in Govt. procurement of tablets/formulations. Though the Govt. procurement declined thereafter, the decline in sales of the domestic industry was much more than decline in Govt. procurement.

37. The Authority notes that the sales volume in respect of gross demand has declined during the POI. The Authority notes that due to declining sales volumes, the domestic industry could not increase the production as it would have otherwise lead to increased inventories.

Production & Capacity Utilisation

38. Though the production of Chloroquine Phosphate of the domestic industry has increased by 18.88% during POI in comparison to 1999-00, whereas there has been a decline in the capacity utilisation from 93.41% during 1999-2000 to 79.03% during the POI except the period 2000-2001 when the demand of the subject goods was highest in the injury period. The Authority notes that domestic industry has suffered financial loss in the year 2001-2002 when capacity utilization of the domestic industry was 94.5%.

39. Production of the domestic industry increased in 2000-01 but it declined thereafter. While increase in production in 2000-01 was to some extent due to increase in demand and placement of huge order by NAMP, the decline in production thereafter is far higher than the decline in demand by NAMP. Therefore it can not be said that decline in production was due to decline in demand. In fact, it was found that while the gross demand was almost in the same region between 2001-02 and 2002-03, the production of the domestic industry has declined.

Growth

40. The domestic sales volume has increased whereas volume of imports from China PR has increased by 19 % during the same period. The volume of imports has increased much more when the merchant demand of the subject goods is uniform and the market share of domestic industry is also static. Merchant demand has increased from 324.65 MT during 1999-2000 to 363.89 MT during the POI whereas demand including captive consumption has also increased from 453.65 during 1999-2000 to 456.89 MT during the POI.

Profitability

41. The unit cost of production has declined from 100 in 1999-2000 to 87.40 during the POI whereas unit selling price has declined significantly from 100 in 1999-2000 to 71.36 in the POI. The unit cost of production has not declined in proportion to the unit-selling price, which led to the further increase in financial loss during the POI. The Authority notes that the domestic industry is incurring the loss due to the fact that the domestic industry is forced to reduce the selling price below its cost of production due to dumped imports from subject country. The industry has suffered material injury on account of depressed selling price.

42. The selling price of the domestic industry declined over the injury analysis period much more than the decline in the cost of production of the domestic industry. From a situation of profits in 1999-2000 and 2000-01, the domestic industry started suffering financial losses since 2001-2002, which further aggravated in 2002-03 due to significant decline in the landed value from Rs 799/kg in 2001-2002 to Rs605/Kg during POI of the subject goods.

43. Cost of production of the domestic industry has declined largely due to decline in raw material prices. However, the decline in the selling price is far greater than the decline in the cost of production. Even when the cost of production of the domestic industry was high, the domestic industry was earning profits, whereas the domestic industry suffered financial losses even when the cost of production declined. The trend behavior may be seen from this graph, as to how the profit of the domestic industry has been eroded from a situation of profitability.

Price undercutting

44. The Authority notes that the dumping by the subject country has a significant impact on the net sales realization by the domestic industry on the subject goods. Dumped imports were undercutting the prices of the domestic industry as landed value of imports from the subject country was below the selling price of the domestic

industry. Import price from China PR declined very significantly throughout the injury period. The decline between 1999-2000 to POI was about 28%.

45. It was also found that throughout the injury analysis period, the imports from subject country were undercutting the prices of the domestic industry and the undercutting margin was within a range of 5% to 16% during the POI.

Price Underselling

46. The Authority notes that price underselling is an important indicator of assessment of injury; thus, the Authority has worked out a non injurious price and compared the same to the landed value to arrive at the extent of price underselling.

47. The analysis shows a significant level of incidence of price underselling causing injury to the domestic industry. Thus the examination of the available evidence shows that the domestic industry as a whole suffered injury on its sales of subject goods during POI. The Authority has determined the extent of price underselling during the POI and found it to be within a range of 12% to 21% during the POI.

Price depression

48. The authority notes that continued lowering of import prices of the subject goods by China PR forced domestic industry to sell the products at prices much lower than its cost of production. Even at these lower prices the price undercutting was in a range of 5%-16%, had it been selling its goods at higher prices the undercutting would have been more severe and significant. Thus, there is very significant price depression in this case. Imports from China depressed the prices of the domestic industry in the Indian Market. As a consequence, the domestic industry prices declined and as shown in table below:

	1999-00	2000-01	2001-02	2002-03
Selling Price	973	839	780	644
Decline as compared to base year		13.77	19.84	33.84

The imports were having significant depressing effect on the price of the domestic market, as the domestic industry is not able to raise its selling price in view of the dumped imports.

Factors affecting domestic prices

49. The CIF price of the subject goods from China PR has decreased during the entire injury period. It has decreased by 29% during the POI. The domestic selling price is

based on the landed value of the dumped imports and the volume that is coming into the domestic market. The domestic industry has significant price depression along with the price undercutting which have been affecting domestic prices due to the decline in the import price of the subject goods.

Inventory

50. Inventories with the domestic industry have increased in the POI from the base year 1999-2000 even when the domestic industry made an effort to reduce the inventories by curtailing production. The Authority notes that the average inventory stocks have increased from 100(indexed) during 1999-2000 to 162.55 during the POI. The Authority notes that exports have resulted into low level of inventories, otherwise inventories level, considering no increase in exports would have been much higher than present level. The average inventory stock as a percentage of production has increased from 5.67% during 1999-2000 to 7.76% during the POI even after significant export sales otherwise stock position would have been severe.

51. The Authority also notes that because of the significant decline in export price during the POI, the domestic industry reduced its selling price with a view to keep the selling price at a level to compete and to maintain minimum level of stocks.

Return on Investment and ability to raise capital

52. Return on investments has significantly declined during the POI. The domestic industry has been forced to a situation of losses, resulting in negative return on investment from a situation of positive return on investments in 2000-2001. The rate of return on investment during POI for the product under consideration is negative due to loss for the domestic industry. The domestic industry did not raise fresh capital or plan new investment for this product. The Authority notes that the domestic industry is not able to earn the reasonable profit which is resulting into negative return on investments.

Employment

53. Number of employees of the domestic industry has increased in 2000-2001 when demand of the product was the highest thereafter it declined in the subsequent years with the decline in production and sale. The domestic industry reduced number of employee as a cost cutting measure to improve the productivity .The Authority notes that this change in employment level is due to the significant loss to the domestic industry and cost cutting measure to maximize the efficiency and productivity. The Authority, however, notes that this decline in level of employment cannot be ascertained that led to injury to the domestic industry.

Productivity

54. Productivity of the domestic industry, as reflected in terms of production per employee, showed increase between 1999-2000 and 2000-2001. However, productivity declined thereafter upto POI. It was found that the domestic industry utilized its production facilities for production of other products when the plant was not being used for production of Chloroquine Phosphate as a result of dumping. It could not, therefore, be said that the domestic industry suffered some injury due to decline in productivity.

Wages

55. The Wages of the domestic industry show an increase from 100(indexed) to 110.56(indexed) during the entire injury period. However it is found that the decline in profitability is much more than the increase in wages of the domestic industry. Thus, while increase in wages reflects normal wage increases, it can not be ascertained that the increase in wages is the reason for financial losses.

Cash Flow

56. Both the petitioner companies are the multi product companies and they do not maintain records of cash profits separately for the product under consideration. Therefore the Authority could not decisively determine cash flow pertaining to the product under consideration. The Authority notes that the injury on account of this factor cannot be established.

Magnitude of Dumping Margin

57. The magnitude of dumping margin from China PR is significant, as examined and worked out in the heading under assessment of dumping determination.

G. Causal Link

58. The authority has examined the submissions made by interested parties in respect of the issue of causal link. Subsequent to the preliminary findings, a detailed examination was made by the Authority with regards to the issues pertaining to the material injury to the domestic industry and causal link between the material injury to the domestic industry and dumped imports. Paragraph (v) of Annexure II of the Anti-dumping Rules reads as under:

" It must be demonstrated that the dumped imports are, through the effects of dumping, as set forth in paragraphs (ii) and (iv) above, causing injury to the domestic

industry. The demonstration of a causal relationship between the dumped imports and the injury to the domestic industry shall be based on an examination of relevant evidence before the designated authority. The designated authority shall also examine any known factors other than the dumped imports which at the same time are injuring the domestic industry, and the injury caused by these other factors must not be attributed to the dumped imports. Factors which may be relevant in this respect include, inter alia, the volume and prices of imports not sold at dumping prices, contraction in demand or changes in the patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and the productivity of the domestic industry."

59. The Authority notes that market share of the domestic industry was uniform in the merchant demand but it decreased in the period of investigation by 2% in the gross demand which is not significant. In examining the price effect whether the dumped imports have significantly undercut the price of the like product in India, the Authority notes that the landed value of the subject goods from the subject country was lower than the net selling price of the domestic industry thereby undercuts the selling price of the domestic industry. Moreover, undercutting to the domestic prices does not show the full impact of the dumped imports since the domestic prices are depressed. This undercutting along with price depression in effect is eroding the profitability of the domestic industry. The landed value of dumped imports was below the domestic selling price throughout the injury period and exerted pressure on the domestic industry to decrease the price even when the domestic industry is suffering losses. The Authority notes that the price factor of the dumped imports is the cause of injury to the domestic industry

60. The Authority examined the impact of all known factors and their consequences on the situation in the Industry;

61. The exports of subject goods have increased in proportion to the production of the subject good. The growth in exports is higher than the increase in production and domestic industry is able to maintain its production due to increase in exports other wise production in period of investigation would have declined much more if the domestic industry would not have exported. Moreover exports have resulted into lower inventories levels. Hence, the Authority notes that exports have not caused any injury to the domestic industry.

62. Chloroquine Phosphate is primarily used as drug for Malaria. One of the petitioner companies M/s. Ipca Labs is involved in production of formulations also for which the company is using Chloroquine Phosphate produced captively. The Authority notes that there is decline in captive consumption of the company during the POI. NAMP

(National Anti Malaria Programme) regularly floats tenders for procurement of Chloroquine Phosphate Tablets. It would be seen that IPCA has been able to get order from NAMP only in 2000-01. This has resulted into decline in production of formulation by IPCA after 2000-2001 followed by decline in captive consumption also. This decline in captive consumption has resulted into increase in domestic sales of the company. The Authority notes that decline in captive consumption is not a cause of injury to the domestic industry.

63. It is noticed that plant utilization on account of one of the petitioner company has been low during the POI. In normal circumstances, lower plant utilization should result into higher allocation of fixed cost. This issue was examined during the course of verification. However, in case of low production, company has option of either to produce other chemicals in same plant or to keep the plant as idle. In this case the company has used the plant to produce other chemicals, which resulted into higher utilization of the plant. The company has allocated its fixed overheads of the plant to Chloroquine Phosphate and other products produced in same plant based on equivalent production quantity. Thus in case of production of Chloroquine Phosphate, comparative lower plant utilization has not shown any significant effect on its cost. Therefore, the Authority notes that lower capacity utilization in case of subject goods have not resulted into higher allocation of fixed cost and injury (self inflicted) has not been caused on this account.

64. Merchant demand has increased from 324.65 MT during 1999-2000 to 363.89 MT during the POI whereas demand including captive consumption has also increased from 453.65 during 1999-2000 456.89 MT during the POI. There is no contraction of demand of the subject goods which could have contributed to any injury to the domestic industry.

65. The entire imports are coming from China PR only. Hence imports from other countries had no volume effect or price effect on the domestic industry. There is no other factor such as trade restrictive practice or development in technology which could have caused material injury to the domestic industry.

66. The known factors other than dumped imports, which could at the same time, have injured the domestic industry, were examined to ensure that the possible injury caused by these factors was not attributed to the dumped imports. The authority also examined the effects of other known factors of the domestic industry and notes that the material injury suffered by the domestic industry is not due to the other known factors.

F. Conclusions on Injury:-

67. From the foregoing, the following conclusions are made by the Authority regarding injury suffered by the domestic industry.

- a. Imports from the subject country have increased in absolute terms.
- b. Imports are significantly undercutting the selling price of domestic industry
- c. The profitability of the domestic industry has been severely eroded resulting into financial loss.
- d. The imports were having significant depressing effect on the price of the domestic market as the domestic industry is not able to raise its selling price in view of the dumped imports.
- e. The domestic industry is suffering from price underselling as landed value of the subject goods are below the non injurious price of the domestic industry.
- f. The domestic industry has suffered material injury.

H. INDIAN INDUSTRY'S INTEREST & OTHER ISSUES

68. The Authority holds that the purpose of anti-dumping duties, in general, is to eliminate injury caused to the Domestic Industry by the unfair trade practices of dumping so as to re-establish a situation of open and fair competition.

69. The Authority also recognizes that though the imposition of anti-dumping duties might affect the price levels of the products manufactured using the subject goods and consequently might have some influence on relative competitiveness of these products, however, fair competition in the Indian market will not be reduced by these anti-dumping measures. On the contrary, imposition of anti-dumping measures would remove the unfair advantages gained by the dumping practices and would prevent the decline of the domestic industry and would help in maintaining availability of wider choice of the subject goods to the consumers.

I. LANDED VALUE

70. The landed value of imports for the purpose shall be the assessable value as determined by the customs under Customs Tariff Act, 1962 and applicable level of custom duties except duties levied under Section 3, 3A, 8B, 9, 9A of the Customs Tariff Act, 1975.

J. CONCLUSIONS:

71. The Authority has, after considering the foregoing, come to the conclusion that:

- a. Subject goods in all forms originating in or exported from China PR have been exported to India below its normal value.
- b. The domestic industry has suffered material injury.
- c. The injury has been caused to the domestic industry by dumping of the subject goods originating in or exported from the subject country.
- d. The Authority thus considers necessary to recommend anti-dumping duty on imports of subject goods falling under Chapter 29 originating in or exported from the subject country.

72. Accordingly the Authority recommends the definitive anti dumping duty be imposed on all imports of Chloroquine Phosphate originating in/or exported from China PR. The anti dumping duty shall be the difference between amount mentioned in Col. 9 of the following table and the landed value of imports/Kg. to be imposed from the date of notification to be issued in this regard by the Central Government on all the imports of Chloroquine Phosphate falling under Chapter 29, Custom Sub-heading 293921 of the Customs tariff originating in or exported from the country mentioned below:-

Sl. No	Sub-heading	Description of goods	Specification	Country of origin	Country of Export	Producer	Exporter	Amount	Unit of Measurement	Currency
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
	293921	Chloroquine Phosphate	bulk	China PR	China PR	Any producer	Any exporter		Kg.	US\$
	293921	Chloroquine Phosphate	bulk	China PR	Any country other than China PR	Any producer	Any exporter		Kg.	US\$
	293921	Chloroquine Phosphate	bulk	Any country other than China PR	China PR	Any producer	Any exporter		Kg.	US\$

73. Landed value of imports for the purpose shall be the assessable value as determined by the Customs under the Customs Act, 1962 and all duties of customs except duties under sections 3, 3A, 8B, 9 and 9A of the Customs Tariff Act, 1975.

74. Subject to the above, the Authority confirms the Preliminary Findings dated 6th November 2003.

75. An appeal against this order shall lie before the Customs, Excise and Service Tax Appellate Tribunal in accordance with the Customs Tariff Act, 1975 as amended in 1995 and Customs Tariff Rules, 1995.

(ABHIJIT SENGUPTA)
DESIGNATED AUTHORITY