

MINISTRY OF COMMERCE & INDUSTRY

(Department of Commerce)

NOTIFICATION

New Delhi, the 5th February, 2002

FINAL FINDINGS

Subject:- Anti-dumping investigation concerning imports of 2 MNI (2-Methyl (5) Nitro Imidazole) from China PR—Final Findings.

No. 9/1/2001-DGAD - The Government of India 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 with regard to the investigations:
 - i. The Designated Authority (hereinafter referred to as Authority), under the Rules, received written application from M/s.Aarti Drugs Limited, Mumbai and M/s Unichem Laboratories limited, Mumbai have filed a petition on behalf of the domestic industry, alleging dumping of 2-Methyl(5) Nitro Imidazole (2MNI)originating in or exported from China PR
 - ii. The Authority issued a public notice dated 8th February,2001 published in the Gazette of India, Extraordinary, initiating anti-dumping investigations concerning imports of 2 MNI, classified under heading 2933.39 09of Schedule I of the Customs Tariff Act, 1975
 - iii. The Authority notified the Preliminary Findings vide Notification No. 9/1/2001-DGAD dated 3.5.2001 in the Gazette of India, Extraordinary.
 - iv. The Authority forwarded a copy of the preliminary findings to the known interested parties who were requested to furnish their views, if any, on the preliminary findings within forty days of the date of the letter;
 - v. The Authority also forwarded a copy of preliminary findings to the Embassy of China PR, New Delhi with a request that exporters and other interested parties may be advised to furnish their views on the preliminary findings.
 - vi. The Authority provided an opportunity to all interested parties to present their views orally on 25.9.2001. All parties presenting views orally were requested to

- file written submissions of the views expressed orally. The parties were advised to collect copies of the views expressed by the opposing parties and offer rebuttals, if any.
- vii. Argument raised by the interested parties before announcing the preliminary findings, which have been brought out in the preliminary findings notified have not been repeated herein for sake of brevity. However, the arguments raised by the interested parties have been considered in the preliminary findings and/or these findings.
 - viii. In accordance with Rule 16 of the Rules supra, the essential facts/basis considered for these findings were disclosed to known interested parties and comments received on the same have also been duly considered in these findings.
 - ix. The Authority made available non-confidential version of the evidence presented by various interested parties in the form of a public file kept open for inspection by the interested parties;
 - x. The Authority sought and verified information deemed necessary for the investigation.
 - xi. The Authority also conducted cost investigation (based on the information received from the domestic industry) and worked out optimum cost of production / cost to make and sell in India on the basis of Generally Accepted Accounting Principles.
 - xii. The investigations covered the period of 1st April, 2000 to 31st December, 2000 (9 months);
 - xiii. *** in this notification represents information furnished by an interested party on confidential basis and so considered by the Authority under the Rules;

B Petitioner's Views

- i. Petitioners have stated that market for 2-MNI; an intermediate in the production of Metronidazole was quite favourable earlier. With the imposition of anti-dumping duty on Metrinidazole , the exporters from China have started dumping this product into India. This has directly resulted in reduction of prices of 2-MNI. The industry has lost substantial sales and the imports are causing severe injury to the Indian producers of 2 MNI.
- ii. The petitioners have stated that the provisional anti dumping duty recommended by the Authority on 3.5.2001 has since been imposed by Central Govt vide notification dated 18.7.2001 and confirms large scale dumping resorted by the exporters from China in to the Indian market which has caused material injury to the domestic industry;

- iii. As regard to normal value the petitioners have stated that in a non-market economy such as China country can be determined on the basis of the following:
 - a. the price in a market economy third country;
 - b. constructed value in a market economy third country;
 - c. the price from such a third country to other countries, including India;
 - d. the price actually paid in India, adjusted to include a reasonable profit margin;
 - e. the price actually payable in India, adjusted to include a reasonable profit margin;

The petitioners have drawn attention that China is a non-market economy country and have cited Custom notification no 44/1999 dated 15.7.1999 and Custom notification no. 28/2001 NT dated 31.05.2001.

- iv. As regard to injury and causal link they have stated that :
 - a. Imports from the subject countries have increased in absolute terms, till 1999-2000, there were hardly any imports of 2MNI. However, with the imposition of Anti-dumping duty on Metronidazole, the exporters started dumping 2 MNI in India causing injury to domestic industry.
 - b. Production of domestic industry has declined considerably resulting in financial losses to the industry.
 - c. Export Price from subject country have declined significantly.
 - d. Sales of domestic industry have declined considerably.
 - e. In spite of increase in cost of production, the domestic industry has not been able to increase its selling price.
 - f. Landed value of the imported material has been much lower than the selling price of domestic industry, resulting in undercutting of the prices of the domestic industry.
 - g. The domestic industry could increase its sales only after significant reduction in the selling prices. The company who did not reduce the prices, lost the sales volumes. The company who reduce the prices, regained the declined sales volumes.
 - h. The domestic industry has lost substantial market due to dumped imports.
 - i. Profitability of the domestic industry has been severely eroded due to dumped imports.
- v. As regard to issue raised by the importers M/s New Generic Drugs House, Mumbai regarding erratic supply of material to the company by the domestic industry they have stated that :

Sales of the domestic industry to the M/s Generic

Year	Sales by the domestic industry
1998-99	81000
1999-00	78895
2000-01	0

- vi. The domestic industry has pointed out that there are significant outstanding payments to be made by the user. M/s Generic has also resorted to large scale imports from China and the domestic industry has lost substantial sales in domestic market.
- vii. The petitioners have submitted that the final duties may also be recommended in terms of US \$ only, so that erosion in the quantum of protection does not take place on account of changes in the exchange rate.

C Views Of Exporters, Importers And Other Interested Parties:

3. Exports:

There has been no response from any of the exporters from China PR.

4. Imports

New Generic Drug House Ltd, Mumbai:

- a. The importers/ users of 2 MNI have requested that the whole matter be considered in the proper perspective and not to levy any anti-dumping duty on the imports of the product in question.
- b. They are a small scale industrial unit using 2 MNI for the manufacture of Tinidazole and have stated that they have no license to manufacture Metronidazole. Petitioners are discouraging the manufacture of Tinadazole by them and may like to establish a firm footing for one of the Petitioners for production of Tinidazole by themselves.
- c. M/s Generic have stated that the domestic and import price of 2 MNI are almost comparable and there is no evidence of dumping by China PR.
- d. The production of 2MNI by local producers is also dependent on imported raw materials and this dependency on imports may result in disruption of supplies

of locally produced 2 MNI and also abrupt increase in the domestic price of the product. The producers are also large captive consumers of the 2 MNI. This has the possibility of their giving preference for captive use at the cost of non-supply of 2 MNI to users like them as per their requirements.

- e. The production capacity of 2 MNI of petitioners is about 5000 MT per annum. Against this, the user are the only importer of 2 MNI with requirement not exceeding 100 MT to 150 MT per annum. This gap should not create any damage to the interest of the petitioners,

5. AUTHORITY'S POSITION:

- a. As regard to the issue of production of Metranidazole and Tinadazole, Authority notes that 2 MNI is a drug intermediate which is used for production of various drugs such as Metranidazole, Tinadazole etc. The issue is whether 2 MNI is being dumped or not and whether there is any injury to the domestic industry from dumped imports. The issue is not whether the company was earlier buying dumped Metranidazole or not before imposition of anti dumping duty on the same. The purpose for which M/s Generic imported the subject goods is of little consequence.
- b. As regard to companies submission that there is no dumping of 2 MNI from China PR and China PR is exporting 2 MNI to other countries at the same price, Authority notes that none of the Exporters from China PR have responded to this investigation.
- c. As regard to issue of petitioner is primary captive consumer, Authority notes that petitioners have sufficient capacity to meet the market demand of 2 Mni in India. The petitioners have the installed capacity of around 2280MT per annum and by their own admission M/s Generic have stated that they import around 100 – 150MT per annum and have sourced to the extent of 81MT in 1998-99 and 79MT during 1999-00 respectively from the domestic industry. Hence the arguments of M/s Generic has no merits.
- d. As regard to submission of information by M/s Generic it is noted that the landed price of imports of 2 MNI from ChinaPR and the information on domestic price are comparable, the Authority notes that the landed price as per the information provided by them is at Rs.*** per kg and not ranging from Rs*** to Rs*** per kg . The landed price per kg is lower than domestic net price indicated as per Exhibit A , B of Annexure 7.

D Examination Of Issues Raised:

6. The submissions made by the exporters, importers petitioners and other interested parties have been examined, considered and have been dealt with at appropriate places therein.

E Product Under Consideration:

7. The product involved in the petition is 2 MNI (5) Nitro Imidazole also known as 2MNI originating in or exported from China PR. The product is classified under heading 2933.39 of Schedule I of the Customs Tariff Act 1975 and at no.2933.39 09 as per Indian Trade Classification(ITC). The classification is however, indicative only and in no way binding on present investigation. 2 MNI is a creamish coloured powder. It is used as a Drug Intermediate for production of Metronidazole, Tinidazole, Dimetridazole, Ornidazole, Scenidazole. It is sparingly soluble in water and soluble in aqueous solution of acid or alkali soluble in 10 parts of N-N Dimethyl Formamide.

F LIKE ARTICLE:

8. Rule 2(d) of the Anti Dumping Rules define Like Article as:-

- i. "Like Article means an article which is identical or alike in all respects to the article under investigation for being dumped in India or in the absence of such article, another article which although not alike in all respects, has characteristics closely resembling those of the articles under investigation."
- ii. The petitioners have claimed that goods produced and sold by the and those imported from the subject country are being used interchangeably by the customers in India. No argument has been raised by any of the interested parties disputing the claim of the Domestic Industry in this regard. In the Preliminary Findings the Authority has treated 2MNI produced by the Domestic Industry as like article to the product exported from China PR with in the meaning of Rlule 2(d).
- iii. In light of the foregoing, Authority concludes that 2 MNI produced by the petitioner is a Like Article to the 2 MNI imported from China PR.

9. Domestic Industry:

- a. The petition has been filed by M/s. Aarti Drugs Ltd.,Mumbai, and M/s. Unichem Laboratories Ltd.,Mumbai on behalf of the domestic industry. The petitioners have claimed that it accounts for almost 100% of the production during the period of investigation as M/s.Aarey Drugs, Mumbai, M/s. Unique Chemicals, Mumbai and M/s.Advent Pharma Ltd.,Mumbai who are also

producers of the 2 MNI is intended for their captives consumption and have claimed that the production by these three companies would not form part of eligible production' for determination of standing and scope of the domestic industry and, therefore, has the standing to file the petition on behalf of the domestic industry under the aforesaid Rules. No arguments have been raised by any of the interested parties with regard to the standing of the Domestic Industry.

- b. In light of the foregoing, the Authority has determined that the petitioner has the standing to file the petition on behalf of the domestic industry under the rules.

G. Dumping Margin-Comparison of Normal Value And Export Price:

10. Normal Value:

- a. Under Section 9A (1)(c), 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 mark 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 alongwith reasonable addition for administrative, selling and general costs, and for profits, as determined in accordance with the rules made under sub-section (6):
- b. Authority notes that no exporter from China PR have responded to this investigation. In the circumstances, the normal value has been constructed on the basis of estimates of cost of production of subject goods duly adjusted to include selling, general and administrative expanses and a reasonable profit margin and best available information on record. The normal value accordingly arrive at US\$**** per KG (Rs.****per kg).

11. Export Price:

The petitioners have stated that the information published by DGCI&S cannot be relied upon and for the determination of volume and value of imports of 2 MNI to India, since the classification of the product is described as others and includes imports of number of 'other' products. The petitioners have furnished imports statistics from the Bombay Customs based on detailed statement. The petitioners have claimed adjustments towards landing charges, ocean freight, marine insurance, commission, inland transportation in the country of export, port handling charges. Authority relies upon the claims made by the petitioners with regard to export price with adjustments and accordingly determined the net export price at US \$ **** per KG (Rs. **** per kg.).

12. Dumping Margin:

- i. The Rules relating to comparison provides comparison of normal value and export price as follows:

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

- ii. Comparing the normal value and export price worked out above, the dumping margin works out as under:-

		US \$ per Kg
Normal Value		****
Export Price		****
Dumping Margin		****
Dumping Margin %		54.46

H. INJURY:

13.(i) Under Rule 11 supra, Annexure-II, When a finding of injury is arrived at, such finding shall involve determination of the injury to the domestic industry, "... taking into account all relevant facts, including the volume of dumped imports, their effect on prices in the domestic market for like articles and the consequent effect of such imports on domestic producers of such articles...." In considering the effect of the dumped imports on prices, it is considered necessary to examine whether there has been a significant price undercutting by the dumped imports as compared with the price of the like article in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree;

14. Various parameters for injury assessment are discussed below:

a. Production:-

Production of petitioners has been as under:

In MT	1998-99	1999-2000	2000-01(POI)
Domestic Industry Production	1542.59	1739.44	1130.81 (1507.75Ann)

It is evident from the above that the production of petitioners was increasing till 1999-00. However, the production has declined significantly in the current year due to much lower sales in that period. The Capacity utilisation of the Domestic Industry has reduced from 76.29% during 1999-00 to 66.13% during the Period of Investigation, showing a decline of about 10%. It has been alleged that till 1999-2000, there were hardly any imports of 2 MNI. However, with the imposition of Anti Dumping Duty on Metronidazole, the exporters have started dumping 2 MNI in India, which has resulted in loss of sales for the domestic industry and hence decline in production and capacity utilization of domestic industry.

b. Sales Volume:

Sales volume of the domestic industry has been as under:

In MT	1998-99	1999-2000	2000-01 (POI)
Domestic industry Sales	197.98	250.90	116.25 (155.00 Ann)

It is evident from the above that the sales of petitioners was increasing till 1999-00, has started declining thereafter. Till 1999-2000, there were no imports of 2 MNI and the industry was able to increase its sales as a result of increase in market demand. After imposition of Anti-dumping Duty on Metronidazole, the exporters reduced their price for the Indian market (resulting in dumping 2 MNI in India), which has directly affected the sales of the domestic industry. In fact, the domestic industry has already lost substantial market. The domestic sale has reduced by about 38% during the Period of Investigation as compared to the year 1999-00. However the Domestic Industry increase the Captive Consumption by about **** MTs during the Period of Investigation as compared to 1999-2000 and the over all reduction in total volume of sales (including captive consumption) during the Period of Investigation as compared to 1999-2000 was by about 3.03%.

c. Sales Price:

As indicative in para 9.4 in the Preliminary Findings an analysis of the month-wise selling price of the Domestic Industry viz-a-viz volume sold show that the selling price and the volume sold have declined during the Period of Investigation. The reduction in selling prices even below than the import price from China PR and consequent declined in the sales volume forced the Domestic Industry to reduce the prices which resulted in significant volume sold at a low price to liquidate their stocks during the month of November and December, 2000. This shows a direct correlation between the prices and volume sold. Thus the dumped imports of 2MNI from China have severely injured the domestic industry on price front. The industry was earlier making some profits. However, the industry has been forced to reduce its selling prices due to rapid and systematic decline in export price from China. The reduction in the selling prices is in spite of steep increase in cost of production due to increase in the prices of one of the key inputs, Ammonia (prices of which have very dramatically increased in Period of Investigation). This has resulted in sales below cost of production. The weighted average sales realization during the Period of Investigation as compared to 1999-00 has declined by about 11% whereas during the same period of Cost of Production has increased by about 25%.

d. Price Undercutting/Price Suppression/Depression

The dumped imports from China are undercutting the prices in the Indian market and forcing the domestic industry to reduce its prices further ever since the dumping from China PR started.

e. Lost Contract:

Petitioners have stated that the volume of dumped imports from the subject country is the loss of sales share by the industry. In spite of reducing prices, the domestic industry has already lost substantial market.

f. Employment Level:

Both the petitioner companies are multi product companies and are involved in production of various products. In view of severe dumping from China, there is no significant change in employment level of the domestic industry due to poor operating levels. However, it is apprehended that if the market for the subject goods does not improve in near future, the industry will be forced to further reduce/curtail the production and hence the employment.

g. PROFITABILITY:

The profits of the domestic industry have been very significantly eroded. It is evident from this information that whereas the cost of production of the domestic industry has increased by 25% during the Period of Investigation over 1999-00, its selling price has declined by about 11% during the same period, resulting in losses to the domestic industry from a situation of profits.

h. CONCLUSION ON INJURY:

- i. Decline in production and capacity utilisation during POI compared to the year 1999-2000;
- ii. Decline in sales volume during the POI compared to year 1999-2000;
- iii. Selling price of subject goods in domestic market has declined during the POI compared to the year 1999-00;
- iv. Domestic Industry has lost sale contracts due to imports;
- v. Profitability of the domestic industry have significantly eroded;
- vi. Injury to the domestic industry has been caused by the dumped imports

The Authority, after considering the above, concludes the domestic industry has suffered material injury from the imports of 2 MNI originating from China PR;

I . Causal Link:

15. It has been submitted that:

- i. The entire imports are from China only. There are no known imports of the subject product from other countries. The imports from other countries could not have thus caused any injury to the domestic industry.

- ii. The demand of the subject product has not declined, as is evident from the increasing production of the domestic producers till 1999-2000 i.e., dumping from China PR started.
- iii. There is no technological development in the industry or any other such factor which could have resulted in injury to the domestic industry. The imports of the subject product have started with the imposition of anti-dumping duty on Metronidazole. The producers from China have reduced the prices and the consumers have now found intermediate cheaper.
- iv. The selling price of domestic industry has declined in spite of increase in the cost of production. The industry has been turned into a situation of losses from a situation of profits.
- v. The landed price of imports from China was below the selling price of the domestic industry upto July/August, 2000, resulting in price undercutting. As a direct result, the domestic industry was forced to reduce the prices in order to liquidate their stocks.

In view of the above, Authority notes that the injury to domestic industry has been caused by the dumped imports.

16. Indian Industry's Interest And Other Issues:

- a. The purpose of anti-dumping duties, in general, is to eliminate dumping which causing injury to the domestic industry and to reestablish a situation of open and fair competition in the Indian market, which is in the general interest of the country.
- b. It is recognised that 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 on the Indian market will not be reduced by the anti-dumping measures, particularly if the levy of the anti dumping duty is restricted to an amount necessary to redress the injury to the domestic industry. On the contrary, imposition of anti dumping measures would remove the unfair advantages gained by dumping practices, would prevent the decline of the domestic industry and help maintain availability of wider choice to the consumers of subject goods. Imposition of anti dumping measures would not restrict imports from the subject countries in any way, and therefore, would not affect the availability of the product to the consumers.
- c. To ascertain the extent of anti-dumping duty necessary to remove the injury to the domestic industry, the Authority relied upon reasonable selling prices of subject goods in India for the domestic industry, by considering the optimum cost of production at optimum level of capacity utilisation for the domestic industry.

J . Conclusions;

17. **The Authority, after considering the foregoing, concludes that:-**

- a. 2 MNI originating in or exported from China PR has been exported to India below normal value resulting in dumping;
- b. The Indian industry has suffered material injury;
- c. Injury has been caused by imports from the subject country;

K . Final Findings

18. **The Authority, after considering the foregoing, concludes that:**

- a. The Authority considered to recommend the amount of Anti Dumping Duty equal to the margin of dumping or less which if levied would remove the injury to the Domestic Industry. The average landed price of the Imports, for the purpose, was compared with the Non Injurious Price of the petitioner companies, determined for the Period of Investigation. Where ever the difference was less than the Dumping Margin, a duty lower than the Dumping Margin is recommended.
- b. Subject to the above the Authority confirms the Preliminary Findings dated 3.5.2001 with regard to imposition of Anti Dumping Duty on 2MNI from China PR and recommends imposition of definitive Anti Dumping Duty equal to the difference between the amount indicated in Column (3) below and the landed value of imports on all imports of 2MNI (2-Methyl (5) Nitro Imidazole) originating in or exported from China PR falling under Chapter 29 or any other Chapter of the Customs Tariff Act 1975.

Country	Name of the producer/ Exporters	US \$ /Kg
1	2	3
China PR	All Exporters	4.32

19.19. 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 levied under Section 3, 3A,8B and 9, 9A of the Customs Tariff Act, 1975.

20.20. An appeal against this order shall lie to the Customs, Excise and Gold (Control) Appellate Tribunal (CEGAT) in accordance with the Act supra.

(L V SAPTHARISHI)
Designated Authority