

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

NOTIFICATION

NEW DELHI, the 6th November 2003

PRELIMINARY FINDINGS

Sub: Anti-Dumping Investigation concerning imports of Chloroquine Phosphate originating in or exported from China PR.

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 with regard to the investigation:
 - i. The Designated Authority (hereinafter referred to as Authority), under the above Rules, received a petition 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 petitioner revealed certain deficiencies, which were subsequently rectified by the petitioner. The petition was, therefore, considered as properly documented.
 - iii. The Authority on the basis of sufficient evidence submitted by the petitioner decided 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 dumping allegation before proceeding to initiate the investigation in accordance with sub-Rule 5(5) of the Rules.
 - iv. The Authority issued a public notice dated 16.7.2003 published in the Gazette of India, Extraordinary, initiating Anti-Dumping investigations concerning imports of the subject goods classified under chapter 29 of Schedule I of the Customs Tariff Act, 1975 originating in or exported from China PR.

- v. The Authority forwarded a copy of the public notice to the known exporter (whose details were made available by petitioner) and gave them an opportunity to make their views known in writing within forty days from the date of the letter in accordance with the Rule 6(2):
- vi. The Authority forwarded a copy of the public notice to all the known importers (whose details were made available by petitioner) of subject goods in India and advised them to make their views known in writing within forty days from the date of issue of the letter in accordance with the Rule 6(2).
- vii. Request were made to the Central Board of Excise and Customs (CBEC) and Director General of Commercial Intelligence and Statistics (DGCI&S), Kolkata to arrange details of imports of subject goods made in India during the past three years, including the period of investigation.
- viii. The Authority provided a copy of the petition to the known exporter and the Embassy of the subject country in accordance with Rules 6(3) supra. A copy of the non-confidential petition was also provided to other interested parties, wherever requested.
- ix. The Embassy of China PR was informed about the initiation of investigation in accordance with Rules 6 (2) with a request to advise the exporters/producers from their country/territory to respond to the questionnaire within the prescribed time along with the copy of non-confidential version of the petition, copy of the initiation notification and the exporters questionnaire.
- x. The Authority sent a questionnaire to elicit relevant information to the following known exporters/producers, in accordance with the Rule 6(4):
 - 1. M/s. Shanghai Zhongxi (Group) Corporation, China PR
 - 2. M/s. Zibo Wanchang Group Co., Ltd., China PR
 - 3. M/s. Zhejiang Nhu Imports & Exports Co., Ltd., China PR
 - 4. M/s. Sinochem Jiangsu Imports & Exports Corpn. China PR
 - 5. M/s. Synchem International Co., Ltd., China PR
- xi. A questionnaire was sent to the following known importers/user associations of the subject goods for necessary information in accordance with Rule 6(4):
 - 1. M/s. Nem Organics Ltd., Mumbai
 - 2. M/s. Sharvani Pharmaceuticals Ltd., Mumbai
 - 3. M/s. Hicel Pharmaceuticals Ltd., Hyderabad
 - 4. M/s. Advent Pharma Pvt. Ltd., Mumbai
 - 5. M/s. Bayer (India) Ltd., Mumbai
 - 6. M/s. Bombay Drugs & Pharma Ltd., Mumbai
 - 7. M/s. Parag Pharmaceuticals (I) Pvt. Ltd., Mumbai
 - 8. M/s. Pushpam Pharmaceuticals, Mumbai
 - 9. M/s. Sandeep Pharma Ltd., Vadodara

- 10.M/s. Suneeta Laboratories Ltd., Indore
- 11.M/s. Tata Pharma Ltd., Mumbai
- 12.M/s. Valient Industeis Limited, Mumbai
- 13.M/s. Bayer(India) Ltd., Thane
- 14.M/s. E. Merck (India) Ltd., Mumbai
- 15.M/s. Indoco Remedies Ltd., Mumbai
- 16.M/s. Nicholas Piramal India Ltd., Mumbai
- 17.M/s. Pleithico Pharmaceuticals Ltd., Mumbai
- 18.M/s. Maneesh Pharmaceuticals Limited, Govandi
- 19.M/s. Medo Pharm, Chennai
- 20.M/s. S. Kant Healthcare, Mumbai

xii. Response/information to the questionnaire/notification was filed by the following exporters/producers

1. M/s. Sinochem Jiangsu Import & Export Corporation, China PR
2. M/s. Chongqing Kangle Pharmaceutical Co., Ltd., China PR

xiii. Response/information to the questionnaire/notification was filed by the following Importers/user/Associations:-

1. Nil

xiv. Information regarding injury was sought from the petitioner(s), which was also furnished by the petitioner. The injury parameters of the following domestic producers were furnished:-

1. M/s Ipca Laboratories Ltd., Mumbai
2. M/s. Mangalam Drugs & Organics Ltd., Mumbai

xv. The Authority kept available non-confidential version of the evidence presented by various interested parties in the form of a public file maintained by the Authority and kept open for inspection by the interested parties as per Rule 6(7).

xvi. Cost investigation was also 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) and the information furnished by the petitioner. The cost data of the following domestic producers was provided and analysed:--

1. M/s Ipca Laboratories Ltd., Mumbai
2. M/s. Mangalam Drugs & Organics Ltd., Mumbai

- xvii. ****In this notification represents information furnished by an interested party on confidential basis and so considered by the Authority under the Rules.
- xviii. Investigation was carried out for the period starting from 1st April 2002 to 31st March 2003 i.e. the period of investigation (POI).

B . VIEWS OF EXPORTERS, IMPORTERS AND OTHER INTERESTED PARTIES

PETITIONER'S VIEWS

PRODUCT UNDER CONSIDERATION

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 the Customs Tariff Act It is classified under Chapter 29 of the Customs Tariff Act.

DOMESTIC INDUSTRY

3. The present petition is jointly filed by Ipca Laboratories Ltd., and Mangalam Drugs and Organics Ltd. According to the Indian Pharmaceuticals Industry Sourcing Directory for 1996-97, there were eleven other producers of this product.

4. In addition of these producers, according to the information of the petitioner, IDPL, Hyderabad (a Govt. of India undertaking) was also manufacturing small amount of subject goods. Further, apart from Bayer (I) Ltd., Hicel Pharma Ltd., Ipca Laboratories Ltd., Mangalam Organics, Shervani Pharmaceuticals Ltd., Tata Pharma Ltd., and IDPL, the other producers were infact not producing subject goods. Bayer India Ltd., was producing subject goods for captive consumption only. M/s. Shervani Pharmaceuticals Ltd., M/s. Hicel Pharmaceuticals Ltd., M/s. IDPL and M/s. Tata Pharma Ltd., have closed their production. Further, M/s. Nem Organics Ltd. is producing very small volumes of subject goods.

5. Ipca Laboratories Ltd., and Mangalam Drugs and Organics Ltd., are a multi product companies and are involved in production of a number of products. The petitioners have not imported the subject goods in the past three years. Petitioners are exporting Chloroquine Phosphate to a number of countries.

LIKE ARTICLE

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

DUMPING

7. The following information with respect to the normal value of the alleged dumped product in the subject country may be provided:

8. Comparable price, in the ordinary course of trade, for the like article when meant for consumption in the exporting country or territory.

9. Price lists of the exporters, commercial invoices raised in the local market in the subject country, reputed trade journals, etc. may form a reasonable evidence to establish normal value in the exporting country. Please clarify the basis of pricing, such as ex-works/delivered or gross/net prices, etc. Please provide information on the adjustments in the selling prices required to be made on account of trade/commercial discounts, taxes, merchandise differences, taxation, etc. associated with the selling prices considered for determination of normal value.

10. In case there are no sales of the like articles in the ordinary course of trade in the domestic market of the exporting country or territory, or 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, please provide

- i. Comparable representative price of the like article when exported from the exporting country or territory to an appropriate third country, or
- ii. the cost of production of the subject goods in the country of origin along with reasonable addition for administrative, selling and general costs and for profits.

11. Normal value is the price of the goods in the domestic market of the exporting country or territory for the like article when meant for consumption in the exporting country or territory in the ordinary course of trade. Kind attention of the Designated Authority is requested to Para 7 of Annexure I under the Rules, which has been inserted by notification no. 44/99– Cus (NT) dated 15th July 1999 Para 7 of Annexure I state as under:

12. With regard to submissions and claims made by M/s. Chong Qing Kang Le Pharmaceutical Co., Ltd., China and Sinochem Jiangsu Import & Export Corporation, petitioner reiterates that the trading company is a State Owned Company. Petitioner referred to a number of EC decisions in this regard. It is submitted that under similar circumstances, EC has refused to grant MET to Chinese Company. EC has denied

MET in those situations wherein the company is State Owned. There is a clear admission in the present case that the trading company is State Owned Company. Such being the case, petitioners believe that examination of other parameters may not even be relevant (even though these parameters are equally important and the present company would not perhaps pass the MET test on a number of other parameters also).

13. In fact, going by the principles adopted by the EC, the company cannot be granted even individual treatment, leave aside MET. As you are kindly aware of, an individual treatment (individual dumping margin) can only be granted to an exporter provided that the exporter can demonstrate that it is free to set prices. In case the exporter is not free to set export price, granting separate dumping margin to such an exporter can lead to serious circumvention of anti dumping duty recommended. In the instant case, as is evident from the decision of the EC, the exporter can not be granted even individual treatment.

14. The exporters have not even claimed for market economy treatment. It appears that exporters know very well that they are not operating under market economy conditions. Hence, it is requested that 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. Such being the case, petitioner claims that the company is not eligible to get individual treatment (separate dumping margin). Accordingly, petitioner submits that 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.

15. 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. Kind attention of the Designated Authority is requested to Section 9A 1(c), which states as under:

a. "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:-

16. Rule provides that in case, there is no sales of the like article in the ordinary course of trade in the domestic market of the exporting country or territory, then Designated Authority can move to other option of determination of normal value. There is no limitation in the Rule that the sales in the domestic market should be of the same exporter. Sales can be other exporter also. The Supreme Court in the matter of Catalysts has held this view. Such being the situation, the Designated Authority should determined normal value for Sinochem Jiangsu Import & Export Corporation on the basis of information filed by the other exporter i.e., Chong Qing Kang Le Pharmaceutical Co., Ltd., China.

17. " In case of imports from non-market economy countries, normal value shall be determined on the basis of the price or constructed value in a market economy third country, or the price from such a third country to other countries, including India, or where it is not possible, 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.

18. It is evident from the above that the Rules clearly provide various methods for determination of normal values in case of non-market economy countries.

19. The Rules were further amended on 31st May, 2001 with regard to determination of normal value in case of non-market economies and Para 7 has been modified and Para 8 has been inserted in Annexure I to the Rules in this regard. The aforesaid amendment merely elaborated the previous amendment and designated certain countries as non-market economies. The Government of India further amended Para 8 of the Rules on 4th Jan., 2002, which states as under: -

"Para 8 of Annexure 1- Amended on 04.01.2002

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 the purpose 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 economy country.
3. Provided, however, that a 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 criteria specified in sub-paragraph (3)

4. The Designated Authority shall consider in each case 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;*

20. Provided, however, that where it is shown by sufficient evidence in writing on the basis of the criteria specified in this paragraph that market conditions prevail for one or more such firms subject to anti-dumping investigations, the Designated Authority may apply the principles set out in paragraphs 1 to 6 instead of the principles set out in this paragraph.

21. In the instant case, China is a non-market economy. European Commission and United States have treated China as non-market economy in the past three years in many cases. European Union and United States are members of World Trade Organization. In India also, the Designated Authority has treated China as non-market economy.

22. 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. Even after the amendment dated 4th Jan., 02, the Designated Authority have treated China as a non-market economy.

23. With regard to treatment of China as non-market economy by other WTO member's countries, European Commission, in the matter of Ferro molybdenum from China, has treated China as a non-market economy.

24. USA is treating China as a non-market economy in the matter of anti-dumping investigations concerning imports of Ball Bearing.

25. Since, China is a "non-market economy" country, determination of normal value in China is to be done in accordance to the rules relating to non-market economies.

26. According to these Rules, the normal value in China can be determined on any of the following basis:

1. The price in a market economy third country,
2. Constructed value in a market economy third country,
3. The price from such a third country to other countries, including India.
4. The price actually paid in India, adjusted to include a reasonable profit margin.
5. The price actually payable in India, adjusted to include a reasonable profit margin.

27. The normal value in China can, therefore, be determined on any of the above-mentioned basis.

28. The petitioner has determined normal value based on constructed cost of production of the subject goods. The methodology adopted for constructing cost of production has been described below: -

1. Raw material costs: - Petitioner has assessed costs on account of raw materials on the basis of costs incurred by the petitioner company, duly adjusted for a possible difference in the customs duty which is applicable in India.
2. Conversion and S&D costs: - Petitioner has assessed various items of conversion costs on the basis of petitioner company. No selling expenditure beyond ex-factory has been considered. These have been appropriately adjusted for difference in the plant utilisation, considering the plant utilisation of the Petitioner Company.
3. Interest:- Interest cost has been considered @5% of cost of production.
4. Profit:- Profit has been considered @ 5% of cost of production.

29. Export price has been determined on the basis of average export price for the period. According to GATT Agreement on Anti Dumping and Indian Rules, comparison of normal value and export price should be done at the same level of trade, preferably at the ex-factory level.

INJURY

30. Chloroquine Phosphate is used as drug of first choice for treating malaria. China and India are the two major producers of Chloroquine Phosphate in the World. China does not have malaria in their country, and therefore, the exporters/producers from China are dumping subject goods in Indian market.

31. One of the major customers of Chloroquine formulation is National Anti Malaria Programme of the Government of India. The Department 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.

32. In view of the above, requirement of the subject goods finds erratic pattern with regard to demand on year-to-year basis. However, it is reiterated that such procurement is not for self-consumption and goes on to add stocks. However, in case consumption of the product is considered after removing abnormality introduced through Govt. procurement, it would be seen that while demand of the product has not declined, the imports are quite significant in the present period (there are low procurement in the last two years by National Anti Malaria Programme of the Government of India resulting in lower imports as also domestic sales).

33. Petitioner has examined import data in detail for the injury period. While reviewing the data for 2000-01, it is found that an import of 98.3 MT has been shown in 2000-01 @ Rs. 182.23 per kg. 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.

34. It would appear that there is a decline in the import volumes (and therefore, imports could not have caused injury to the domestic industry). Import volumes from other countries show increase. However, as stated earlier, this is nothing but apparent transshipment of Chinese goods from Switzerland. Therefore, imports from Switzerland should also be included in the imports from China. Once these imports are included, it would be seen that the volume of imports shows an increase. It would also be seen that there is a very substantial fall in the import prices. The landed prices being very low, the domestic industry has been forced to reduce the prices substantially, which is far below the cost of production of the petitioner, thus resulting in significant financial losses to the petitioner.

35. Sales volumes of the domestic industry have declined. The decline in the sales volumes is in spite of reduction in the selling prices by the domestic industry.

36. The landed price of imports after charging prevailing level of customs duties is significantly below the selling price of the domestic industry. Thus, imports are significantly undercutting the prices of the domestic industry. As a result, the domestic industry has been forced to reduced the prices;

- a. the imports are resulting in price undercutting in spite of reduction in the prices by the domestic industry
- b. the landed price of imports is significantly below the cost of production of domestic industry causing price suppression
- c. the selling price of imports is below the non-injurious price of the domestic industry. The imports are thus resulting in price underselling in the market;
- d. the selling price of the domestic industry is significantly below the DPCO notified prices. The petitioners command a major proportion of Indian market. At the same time, product is covered under DPCO. The export price of the petitioners is far higher than the import price of the material in India. Under the circumstances, the sole reason for the sub-optimal domestic prices is the availability of the imported material at much lower prices,

37. A very vital parameter showing injury to the domestic industry is deteriorated financial performance of the domestic industry. A comparison of unit cost of production and unit selling price would show the domestic industry was making profits ion 1999-2000. However, due to dumping by the exporters from China, the profitability of the domestic industry has deteriorated.

38. In spite of reduction in production, the domestic industry is faced with increasing inventory levels; the average stocks of the domestic industry have increased significantly

39. The dumping margin from China is not only more than de-minimus but also very significant. The impact of dumping on the domestic industry is significant.

40. The cash flow of the domestic industry in respect of the subject goods significantly deteriorated in view of significant financial losses. Cash profits from the subject goods have adversely declined.

41. When the demand for the subject goods remained almost the same, sales of the domestic industry have declined. The domestic industry has registered negative growth.

42. The domestic industry anticipates difficulties in raising fresh capital, should the present trend of dumping continue?

43. Productivity of the domestic industry increased in 2000-01 but deteriorated thereafter on the lines of trend in production.

44. Return on investments has significantly declined. The domestic industry has been forced to a situation of losses from a situation of profit, resulting in negative return on

investment in the proposed investigation period as compared to a situation of positive return on investments earlier.

45. It would thus be seen that a number of parameters collectively and cumulatively show that the domestic industry has suffered material injury.

Threat of material injury

46. In addition to the material injury already inflicted on the domestic industry, imports from China are posing threat of material injury to the domestic industry.

"A determination of a threat of material injury shall be based on facts and not merely on allegation, conjecture or remote possibility. The change in circumstances, which would create a situation in which the dumping would cause injury, must be clearly foreseen and imminent. In making a determination regarding the existence of a threat of material injury, the Designated Authority shall consider, inter-alia, such factors and;"

- a. A significant rate of increase of dumped imports into India indicating the likelihood of substantially increased importation;
- b. Sufficiently freely disposable or an imminent, substantial increase in capacity of the exporter indicating the likelihood of substantially increased dumped exports to Indian market, taking into account the availability of other export markets to absorb any additional exports;
- c. Whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further imports; and,
- d. Inventories of the article being investigated, In the instant case,
 1. There is an increase in the import volumes. The increase would have been more, had the domestic industry not made efforts to curtail the same by reducing prices or not effecting legitimate prices (at the cost of financial losses). The efforts of Chinese producers to increase their sales can be seen from further reduction in the selling prices, as would be seen from the price reported for the month of January 2003;
 2. The price undercutting is very significant. Further, in spite of steep reduction in the selling prices by the domestic industry, the imports are available at prices lower than the selling prices of the domestic industry, thus continuously resulting in significant price undercutting
 3. Capacities created by the producers in China are far more than their domestic demand. In fact, China is understood to be having almost negligible demand for

this product due to topical conditions. Production facilities seems to have been set up keeping in view the foreign market;

4. Inventories of the article with the domestic industry have increased

In view of the above, it can be said that the imports from China are causing threat of further material injury to the domestic industry.

EXPORTER'S VIEWS

M/s. Sinochem Jiangsu Import & Export Corporation

47. M/S Sinochem Jiangsu Import & Export Corporation is a state-owned company invested by Sino Chemic General Corporation.

48. It is a trading company, not a producer of the product concerned. The producer of the product concerned is Chong Qing Kang Le Pharmaceutical Co., Ltd., who has also submitted the reply relating to the Exporters questionnaire.

49. The government gives no incentives or tax preferential treatment in relation to the export sales of the product concerned.

50. They are not related to companies involving in the production of the product concerned in China, India and other places.

M/s. Chong Qing Kang Le Pharmaceutical Co., Ltd., China PR

51. 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.

52. 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.

53. Since the product concerned is sold through its unrelated trading company, trading companies involving in this proceeding has provided the information. 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.

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

C. EXAMINATION BY AUTHORITY

55. The foregoing submissions made by the interested parties, to the extent these are relevant as per Rules and have a bearing upon the case, have been examined, considered and dealt with at appropriate places in these findings.

PRODUCT UNDER CONSIDERATION

6. 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. It is classified under Chapter 29 of the Customs Tariff Act.

57. It contains not less than 98.5% and not more than equivalent to 101.0% of N4(7-chloroquinolin-4-yl)-N1,N1-diethylpentane-1,4-diaminebis(dihydrogen phosphate), calculated with reference to the anhydrous substance.

58. 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 Novalidiamine and Chloroquine obtained is treated with Phosphoric Acid to obtain Chloroquine Phosphate.

59. Chloroquine Phosphate is classified under customs sub-heading no. 293921 under the Customs Tariff Act.

LIKE ARTICLE

60. There is no known difference in Chloroquine Phosphate exported from China and Chloroquine Phosphate produced by the domestic industry. Chloroquine Phosphate produced by the domestic industry and imported from China 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 two are technically and commercially substitutable. The consumers have used and are using the two interchangeably. Chloroquine Phosphate produced by the petitioner company is a like article to the goods imported from China in accordance with the anti dumping rules.

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

62. The Authority, therefore, for the purpose of preliminary determination pending 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).

DOMESTIC INDUSTRY

63. The present petition is jointly filed by Ipca Laboratories Ltd., and Mangalam Drugs and Organics Ltd. According to the Indian Pharmaceuticals Industry Sourcing Directory for 1996-97, there were eleven other producers of this product.

64. In addition of these producers, according to the information of the petitioner, IDPL, Hyderabad (a Govt. of India undertaking) was also manufacturing small amount of subject goods. Further, apart from Bayer (I) Ltd., Hicel Pharma Ltd., Ipca Laboratories Ltd., Mangalam Organics, Shervani Pharmaceuticals Ltd., Tata Pharma Ltd., and IDPL, the other producers were infact not producing subject goods. Bayer India Ltd., was producing subject goods for captive consumption only. M/s. Shervani Pharmaceuticals Ltd., M/s. Hicel Pharmaceuticals Ltd., M/s. IDPL and M/s. Tata Pharma Ltd., have closed their production. Further, M/s. Nem Organics Ltd., is producing very small volumes of subject goods.

65. Ipca Laboratories Ltd., and Mangalam Drugs and Organics Ltd., are a multi product companies and are involved in production of a number of products.

66. The petitioners have not imported the subject goods in the past three years. Petitioners are exporting Chloroquine Phosphate to a number of countries.

67. The Authority notes that the domestic producers constitute more than 50% of the total domestic production and there is no opposition to the petition by any of the domestic producers, 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. NORMAL VALUE & EXPORT PRICE

68. 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. In case 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);

69. Provided that in the case of import of the article from a country other than the country of origin and where the article has been merely transshipped through the country of export or such article is not produced in the country of export or there is no comparable price in the country of export, the normal value shall be determined with reference to its price in the country of origin.

70. In the instance case, China is proposed to be investigated a non-market economy. Petitioners have claimed that China is a non-market economy. European Commission and United States have treated China as non-market economy in the past three years. With regard to treatment of China as a non-market economy by other WTO member's countries, European Commission, in the matter of Ferro molybdenum from China, has treated China as a non-market economy. USA is treating China as a non-market economy in the matter of anti dumping investigations concerning imports of Ball Bearing.

71. Therefore, determination of normal value in respect of China is to be done 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. Accordingly, petitioners have claimed that normal value in China can be determined on the basis of estimates of cost of production in India including selling, general and administrative expenses and profit.

72. The Authority sent 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:

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

73. The response to the Exporter's Questionnaire has been analysed. It has been stated that M/s. Sinochem Jiangsu Import & Export Corporation is a state owned company and is a trading company. The producer of the product concerned is M/s. Chong Qing Kang Le Pharmaceutical Co., Ltd., who has also filed the reply in the exporters questionnaire. It is mentioned that there are no incentives or tax preferential treatment on input material in relation to the production of the product concerned. However, an added value tax invoice copy No. 00043105 has also been enclosed on which it has been mentioned that this page cannot be used for reimbursement or evidence for tax deduction. This indicates a system of tax reimbursement in place allowing tax deduction. This has not been clarified in the questionnaire whether such deduction has been duly accounted for while calculating the cost of production as provided under Appendix-1 in respect of information relating to domestic sales. It is seen that the transaction had been conducted at varying rates. It is also seen that the sales made in the domestic market are also made to import and export companies. The information provided with such variations in the selling price, without the domestic marketing policy of the company in the domestic market, does not clarify reasons for such wide variations in the selling prices.

74. The manufacturer company has made export sales primarily through M/s. Sinochem Jiangsu Import & Export Corporation and Jiangsu Guotai Group Huatai Import & Export. The response has been filed only by M/s. Sinochem Jiangsu Import & Export Corporation. Further, the producer company has sold at different rates for further exports to India. The rationale behind this trading policy is not clear. In respect of exports through Customers I & II, the prices vary.

75. During the investigation period, the company has admitted to have sold the subject good at varying prices in the domestic market to India. The company has not provided details in respect of the expenditure at the level of production costs as required under Appendix – 8A, 8B & 8C. Further receipts on account of other incomes have not been allocated to the product under consideration. The expenditure incurred by the export companies have not been clubbed so as to show a final cost sheet indicating clearly the elements of cost at each stage. . The income and expenditure statement to the balance sheet has not been provided for the period of investigation.

76. The information provided by the trading company i.e., M/s. Sinochem Jiangsu Import & Export has also been analysed. The supporting documents in respect of adjustments claimed on account of overseas freights, overseas insurance, etc. have not been provided. The trading company has exported to Indian Customers at varying prices, the genesis of the pricing policy need to be explained. The trading company

has also provided a sketch of its balance sheet for the year ending 2000. It has been mentioned that the company is entitled to receive tax refund receivable for exports. It has not been provided whether the impact of tax adjustment has been properly adjusted in the cost. The trading company has also claimed adjustments on account of selling and distribution, general and administrative over-heads, sufficient supporting documents for which have not been provided. The producing company explained that the exports to India are made through two customers M/s. Sinochem Jiangsu Import & Export Corporation and M/s. Jiangsu Guotai Group Huatai Import & Export . M/s. Jiangsu Guotai Group Huatai Import & Export has not furnished any information in respect of such exports. The Authority however notes that the exporter has not furnished the details as per the exporters questionnaire regarding factory cost and profit of exports to India, cost and profit of domestic sales and cost and profits of exports to countries other than India as solicited in Appendixes 8A, 8B & 8C respectively.

77. As communicated to the known exporters and to the Embassy of China, the Authority proposes to examine the claim of the petitioner in the light of Para 7 & 8 of Annexure 1 of anti dumping Rules as amended. The Authority notes that the exporter has not submitted information with regards to its claim of market economy, therefore, the test of domestic sales in the ordinary course of trade is not possible in the given circumstances and to determine the normal value as per provisions contained in Section 9 A 1 (C). The Authority notes that para 7 of Annexure 1 of anti dumping rules, inter-alia provides that:

78. "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....."

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.

79. 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).

80. The Authority also notes that the exporter has not furnished 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;

81. Provided, however, that where it is shown by sufficient evidence in writing on the basis of the criteria specified in this paragraph that market conditions prevail for one or more such firms subject to anti-dumping investigations, the Designated Authority may apply the principles set out in paragraphs 1 to 6 instead of the principles set out in this paragraph.

82. Therefore the Authority in view of no rebuttal by the exporter on the issue of non market economy with evidence in the light of Custom Notification No. 28/2001 dated 31st May 2001 and No. 1/2002 dated 4th January 2002 on the anti dumping in respect of issue of Non Market Economy under anti dumping Rules Supra and the fact that the cost of production of the subject goods as per market forces has not been made available by the exporter thus not permitting the Authority to apply the ordinary course of trade test and to determine the sales being at arm's length.

83. In view of the inadequate response filed by the exporter, the Authority has relied on the facts available as per Rule 6 (8) Supra.

84. The normal value is therefore referenced as US\$****/Kg. for the purpose of preliminary determination pending final Determination.

EXPORT PRICE

85. In response to the questionnaire the Chinese manufactur/exporter has furnished details of export made to India during the period of investigation. The Authority has considered the export price as per information provided by the exporter M/s. Sinochem and produced by M/s. Chongqing, China PR and the adjustments claimed in regard to inland freight, handling, insurance, overseas freight etc. have been considered and allowed to arrive at ex-factory export price to India. The Authority has thus determined the ex-factory export price as US\$ ****/Kg. of Chloroquine Phosphate for the purpose of preliminary determination pending final determination.

Other Exporters/Producers from China;

Normal Value

86. The Authority notes that none of the exporters from China except above mentioned two exporters responded by way of questionnaire response to the initiation notification. The Authority in view of non-cooperation, has constructed the normal value for all other producers/exporters on the basis of best available information in accordance with Rule 6 (8) of anti dumping Rules.

87. The normal value is therefore referenced as US\$****/Kg. for other exporters/producers of China PR for the purpose of preliminary determination pending final determination.

Export Price

88. The Authority notes that the export price has been determined on the basis of the import statistics from DGCI&S Kolkata. The adjustments claimed on ocean freight, ocean insurance, commission, inland freight and port expenses to an extent of US\$****/Kg. US\$****/Kg. US\$****/Kg. US\$****/Kg. and US\$****/Kg. respectively by the petitioners have been taken into account to arrive at ex-factory export price.

89. The ex-factory export price is referenced as US\$****/Kg for the purpose of preliminary determination pending final determination.

DUMPING- Comparision of Normal Value & Export Price

90. The rules relating to comparison provides as follows:

91. "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."

92. 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(NV) \$/Kg	Export Price(EP) \$/Kg	Dumping margin as % of EP
(a) M/s. Chong Qing Kang Le Pharmaceutical Co., Ltd., China PR / M/s. Sinochem Jiangsu Import & Export Corporation, China PR	****	****	43.66%
(b) All other exporters/Producers	****	****	52.14%

E. INJURY AND CAUSAL LINK

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

- a. "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."
- b. The Authority notes that the non-injurious price has been evaluated for the various domestic producers by appropriately considering the sales realisation from the related products. Also in order to eliminate inefficiencies, the Authority has normated and benchmarked the best practices on utilisation of raw materials, utilities etc..

- c. As regards the injury, which could happen on account of higher cost of production in India, the Authority notes that under the Indian Anti Dumping Rules it is the lesser duty rule which is applied.

94. 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.

95. For the examination of the impact of the dumped imports on the domestic industry in India, we may consider such indices having a bearing on the state of the industry as production, capacity utilisation, sales quantum, stock, profitability, net sales realisation, the magnitude and margin of dumping, etc. in accordance with Annexure II(iv) of the rules supra.

96. 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						
	Sales	Indexed	100.00	125.66	87.32	113.49
	Export Sales	Indexed	100	152.55	204.38	191.97
	Captive consumption	Indexed	100.00	179.07	134.88	72.09
	Total sales	Indexed	100.00	147.37	132.85	124.60
	Sales including captive	Indexed	100.00	145.34	104.85	98.23
Profits						
	Cost of production	Indexed	100.00	92.07	90.12	85.88
	Selling price	Indexed	100.00	89.85	86.24	72.49
	Profit/Loss	Indexed	100	-32.25	-61.08	-623.00
Market Share in Imports						
	Imports					
	China	MT	61.65	136.53	70.05	91
	Trend	Indexed	100.00	221.46	51.31	129.91
In Demand						
	Merchant Demand	Indexed	100	136.83	88.72	113.29
	Demand including captive	Indexed	100.00	148.84	101.85	101.58
Market share in Merchant Demand						

	Domestic industry	%	68.07	62.51	67.00	68.19
	Other producers	%	10.78	6.75	8.68	7.07
	Imports from subject country	%	18.99	30.73	24.32	24.74
	Other countries	%	2.16	0.00	0.00	0.00
Market share in total demand						
	Domestic industry	%	77.15	75.34	79.43	74.61
	Other producers	%	7.72	4.44	5.41	5.64
	Imports from subject country	%	13.59	20.22	15.16	19.75
Productivity						
	Employees	Indexed	100.00	113.33	102.44	103.28
	Productivity per employee	Indexed	100.00	145.76	142.12	119.35
Return on investment						
	Trend	Indexed	100	-49.88	-58.32	-217.56
Capacity utilization						
	Capacity	MT	516	725	725	725
	Capacity utilization	%	93.41	99.59	94.48	79.03
	Production	Indexed	100	149.79	142.12	118.88
Export price						
	China	Rs./MT	659	563	563	450
	Landed value	Rs./MT			766	590
	China				766	590
Inventories						
	Closing stock	Indexed	100	115.79	321.05	147.37
	Opening stock	Indexed	100	52.78	61.11	169.44
	Average stock	Indexed	100	74.55	150.91	161.82
Wages						
	Wages paid to employees	Indexed	100	108.93	100.92	110.56

97. Chloroquine Phosphate is used for treating malaria and symptoms like malaria, which is rampant in this sub-continent. The Authority notes that only China and India are the two major producers of Chloroquine phosphate and China does not have Malaria as such in their country. The Authority, therefore, notes that due to above mentioned reason the producers/exporters from China have no other option but to cater the international market.

98. National Anti Malaria Programme of the Govt. of India is the major customer of Chloroquine Phosphate formulations. As malaria is treated as an epidemic and required to keep a sufficient stock which may be required at any time. Due to its erratic requirement, an erratic demand pattern is also found. It is also seen that the demand of product has not declined where as imports have gone up if transshipments have added with the Chinese imports.

Volume and market share of dumped imports

99. Based on the import statistics information of DGCI&S Kolkata, the imports from subject country has increased both in relative and absolute terms during the POI. It is also evident that the imports have increased in relation to production of the domestic industry and share of imports in demand of the product in the country. It is also observed that import volumes from other countries have increased and there is nothing but the transshipment of Chinese goods from Switzerland, if these imports are taken into account along with the Chinese imports, there found to be a increase in volume in imports

100. There has been a increase in imports and the rate of growth of dumped imports from subject country is quite evident.

Production & Capacity Utilisation

101. The production of Chloroquine Phosphate of the domestic industry has decreased from 149.79 in 2000-2001 to 118 during the POI 2001-2002. In general production has declined. There has been a consistent decline in the capacity utilisation from 106.61 in 2000-2001 to 101.15 in 2001-2002 and finally 84.61 during the POI.

Graph showing Total Production

(Production in MT have been shown on yearly basis including POI)

102. Sales of the domestic industry have declined from 125.66 in 2000-2001 to 113.49 during the POI, whereas the export sales are increased from 152.55 in 2000-2001 to 191.97 during the POI, but the captive consumption has drastically fell from 147.37 in 2000-2001 to 124.60 during the POI. Taking into totality the overall sales including the captive consumption, it has come down from 145.34 in 2000-2001 to 98.23 during the POI. The Authority, notes that the sales volume has significantly declined during the POI if captive consumption is treated as part of sales of the domestic industry. The Authority further notes that the dumped imports are instrumental for a declining trend both in capacity utilisation as well as in the sales volume of the subject goods respectively, and since the sales volumes is declining, the domestic industry does not want increase the production which will lead to the inventory stock..

(Sales have been shown in this graph separately, as merchant sales, sales including captive consumption and sales including both captive and export sales respectively on yearly basis including POI).

Profitability

103. The unit cost of production has declined from 100 in 1999-2000 to 89.35 during the POI whereas unit selling price has declined significantly from 100 in 1999-2000 to 72.49 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. 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, to hold on market, due to dumped imports from subject countries. The industry has suffered the material injury on account of depressed selling price resulting in non-recovery of cost of production thereby suffering financial losses. The Authority, therefore, notes that due to dumped imports the domestic industry is forced to reduce the selling price to compete in the market.

104. Chloroquine Phosphate is covered under DPCO and the competent Authority has very recently revised the price of this product to Rs. 790/Kg. The domestic industry is not able to reach to the level of price fixed by the DPCO as the realization is much lower and this is because that the domestic industry is forced to keep its sales at par with the dumped imports from China. While cost of sales, production value and sales value have also increased; the increase in the cost of sales is more than increase in the sales value. This has directly resulted in decline in the profits of the domestic industry.

Total Profit/Loss (Indexed)

(Loss has been shown in the indexed form on yearly basis).

Price undercutting

105. The Authority notes that the dumping by the subject country has a significant impact on the net sales realisation by the domestic industry for the subject goods. To hold on its market share the petitioner had to compete with the low priced dumped imports from the subject country. Thus 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. The selling price of domestic industry is much below the cost of production of subject goods and imports were thus preventing the domestic industry in effecting legitimate price increase.

Price Underselling and Price suppression/depression

106. The Authority has also examined the claim of domestic industry that the industry is suffering on account of direct losses. The Authority notes that price underselling is an important indicator of assessment of injury, thus ,the Authority has worked out a fair selling price and compared the same to the landed value to arrive at the extent of price underselling.

107. The analysis shows a significant level of incidence of price underselling causing injury to the domestic industry. The imports were having significant suppressing/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. 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 undercutting and price underselling during the POI and holds that domestic industry has suffered significant price undercutting and price underselling during the POI due to dumped imports from the subject country.

Inventory/Loss Contracts

108. The Authority notes that the average inventory stocks have increased from 100 during 1999-2000 to 161.82 during the POI. The Authority holds that the increasing trend in stocks along with the displacement in the market in the POI is due to the dumped imports from the subject country.

109. The Authority, therefore, notes that because of the decline in export price, the domestic industry is forced to match the selling price with the export price and keep the selling price at a level to compete; in this process the domestic industry is not able to recover the marginal cost. It is further noted that the domestic industry is unable to sell at such a low price resulting loss of contract. In this process the domestic industry is losing its consumers due to the availability of dumped imports from subject country. The Authority holds that due to the dumped imports, the domestic industry is forced to sell the product at a loss.

Return on Investment and ability to raise capital

110. The rate of return on investment during POI for the product under consideration is negative due to loss for the domestic industry, as a result of which the domestic industry has not able to raise fresh capital or plan new investment in this product.

111. Return on investment has declined and the domestic industry is also not able to earn the reasonable profit which is resulting negative return on investments but the Authority notes that this could not be ascertained.

Employment

112. The employment level of domestic industry is more or less stable without any change but decreased marginally during the POI. The Authority notes that this change in employment is due to the significant loss to the domestic industry and a cost cutting measure to maximise 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.

113. The productivity of the domestic industry has not improved even after one of the petitioners effort of cost cutting measures to improve the loss situation. It is also observed that the production per employee has not improved.

Threat of Injury

114. As regards the threat of injury, the Authority notes that the Anti-Dumping Rules states as follows:

115. "A determination of a threat of material injury shall be based on facts and not merely on allegation, conjecture or remote possibility. The change in circumstances, which would create a situation in which the dumping would cause injury, must be clearly foreseen and imminent. In making a determination regarding the existence of a threat of material injury, the DA shall consider, inter-alia, such factors and;

- a. a significant rate of increase of dumped imports into India indicating the likelihood of substantially increased importation;
- b. sufficient freely disposable or an imminent, substantial increase in capacity of the exporter indicating the likelihood of substantially increased dumped exports to Indian market, taking into account the availability of other export markets to absorb any additional exports;
- c. whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further imports; and,
- d. inventories of the article being investigated.

116. The Authority has examined the aspects of threat of injury and noted that the imports are severely undercutting the prices in the domestic market, which have been analyzed in details on pre-pages. Interested parties have not provided sufficient evidence regarding surplus capacity and upsurge of imports. Therefore the Authority notes that there is not sufficient evidence to establish threat of injury as claimed by the petitioner.

Conclusions on Injury:-

117. 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 losses.
- d. The domestic industry is suffering from price suppression/depression, as landed price of the subject goods from the subject country is less than the cost of production of domestic industry.
- e. The domestic industry is suffering from price underselling as landed price of the subject goods are below the fair selling price of the domestic industry.
- f. The domestic industry has suffered material injury.
- g. There is no clear evidence of threat of injury .

F. Causal Link:

118. In determining whether injury to the domestic industry was caused by the dumped imports, the Authority took into account the following facts:

119. Substantial imports of subject goods from China at dumped priced forced the domestic industry to maintain its selling prices to un-remunerative level, which has resulted in a situation of price undercutting in the Indian market.

120. The imports from China suppressed the prices of the product in the Indian market to such an extent that the domestic industry was prevented from recovering its full cost of production and earn a reasonable profit from the sale of subject goods in India. The dumped imports were coming into India at price that significantly undercut the prices of like domestic product. Thus the landed price of dumped imports caused both price depression.

121. Merchant demand has increased from 100 during 1999-2000 to 113.29 during the POI (demand has rather increased). Demand including captive has also increased during the POI. Further, there is no other factor such as trade restrictive practice or development in technology which could have caused material injury to the domestic industry. Increase in imports in absolute terms as also relative to the production and consumption in India have directly resulted increase in the sales, which further resulting in decline in the share of the domestic industry in the demand of the product in the country. Further, the dumped price of imports have prevented the domestic industry from optimizing their profitability.

22. The Authority, therefore, notes from the above that the landed value of imports from the subject country has been at a price below the selling price of the domestic industry. Further, the imports into India have been at a price lower than the fair selling price for the domestic industry. As a consequence thereof the domestic industry has

not been able to earn a reasonable return. These parameters collectively and cumulatively indicate that the petitioner has suffered material injury due to the dumped imports.

G. INDIAN INDUSTRY'S INTEREST & OTHER ISSUES

123. 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 in the Indian market, which is in the general interest of the country.

124. 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.

125. The Authority notes that the imposition of anti-dumping measures would not restrict imports from China PR in any way, and, therefore, would not affect the availability of the products to the consumers. The consumers would still maintain two or more sources of supply.

LANDED VALUE

126. 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.

H. CONCLUSIONS:

127. 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 also 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.

Accordingly the Authority recommends the provisional 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:-

TABLE

Sl. No	Sub-heading	Description of goods	Specification	Country of origin	Country of Export	Producer	Exporter	Amount	Unit of Measurement	Currency
	293921	Chloroquine Phosphate	bulk	China PR	Any country other than China PR	M/s. Chongqing , China PR	M/s. Sinochem , China PR	15.831	Kg.	US\$
1.	293921	Chloroquine Phosphate	bulk	China PR	Any country other than China PR	M/s. Chongqing , China PR	Any exporter	15.831	Kg.	US\$
1.	293921	Chloroquine Phosphate	bulk	China PR	Any country other than China PR	Any producer	M/s. Sinochem , China PR	15.831	Kg.	US\$
	293921	Chloroquine Phosphate	bulk	China PR	China PR	M/s. Chongqing , China PR	M/s. Sinochem , China PR	15.831	Kg.	US\$
	293921	Chloroquine Phosphate	bulk	China PR	China PR	M/s. Chongqing , China PR	Any exporter	15.831	Kg.	US\$
	293921	Chloroquine Phosphate	bulk	China PR	China PR	Any producer	M/s. Sinochem , China PR	15.831	Kg.	US\$
	293921	Chloroquine Phosphate	bulk	Any country other than China PR	China PR	M/s. Chongqing , China PR	M/s. Sinochem , China PR	15.831	Kg.	US\$
	293921	Chloroquine Phosphate	bulk	Any country other	China PR	M/s. Chongqing , China PR	Any exporter	15.831	Kg.	US\$

				than China PR						
293921	Chloroquine Phosphate	bulk	Any country other than China PR	China PR	Any producer	M/s. Sinochem , China PR	15.831	Kg.	US\$	
293921	Chloroquine Phosphate	bulk	China PR	Any country other than China PR	Any producer	Any exporter	16.38	Kg.	US\$	
293921	Chloroquine Phosphate	bulk	Any country other than China PR	China PR	Any producer	Any exporter	16.38	Kg.	US\$	
293921	Chloroquine Phosphate	bulk	China PR	China PR	Any producer	Any exporter	16.38	Kg.	US\$	

I. FURTHER PROCEDURE

128. The following procedure would be followed subsequent to notifying the preliminary findings:

- a. The Authority invites comments on these findings from all interested parties and the same would be considered in the final findings;
- b. Exporters, Importers, Petitioner and other interested parties known to be concerned are being addressed separately by the Authority, who may make known their views, within forty days from the date of the dispatch of the letter. Any other interested party may also make known its views within forty days from the date of publication of these findings;
- c. The Authority would conduct verifications to the extent deemed necessary;
- d. The Authority would provide opportunity to all interested parties for oral submissions, for which the date and time shall be communicated to all known interested parties separately;
- e. The Authority would disclose essential facts before announcing final findings.

(L.V. Saptharishi)
Designated Authority