

**MINISTRY OF COMMERCE
(DIRECTORATE GENERAL OF ANTI DUMPING &
ALLIED DUTIES)**

NOTIFICATION

New Delhi, the 21st February, 2000

PRELIMINARY FINDINGS

Subject: Anti-dumping investigation concerning imports of Metronidazole from People's Republic of China.

No. 17/1/99/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 also referred to as authority), under the above Rules, received a written application from M/s Aarti Drugs Ltd. And M/s Aarey Drugs and Pharmaceuticals on behalf of the domestic industry, alleging dumping of Metronidazole (hereinafter also referred to as subject goods) originating in or exported from People's Republic of China;
- ii. Preliminary- scrutiny of the application filed by 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 Metronidazole from People's Republic of China.

The authority notified the Embassy of People's Republic of China 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 29th July, 1999 published in the Gazette of India, Extraordinary, initiating anti-dumping investigations concerning imports of Metronidazole classified under customs subheading No.

2933. 2902 of the Customs Tariff Act, 1975 originating in or exported from People's Republic of China (hereinafter also referred to as the subject country);
- v. The Authority forwarded a copy of the public notice to all the known exporters (whose details were made available by the petitioner) of the subject goods and gave them an opportunity to take their views known in writing 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 Metronidazole in India and industry associations and advised them to make their views known in writing within forty days from the date of issue of the letter;
 - vii. Request was made to the Central Board of Excise and Customs (CBEC) to arrange details of imports of Metronidazole made into India during the past three years, including the period of investigation;
 - viii. The Authority provided a copy of the petition to the known exporters and the Embassy of the subject country in accordance with Rules 6(3) supra. A copy of the petition was also provided to other interested parties, wherever requested;
 - ix. The Authority sent a questionnaire to elicit relevant information, to the following known exporters, in accordance with the Rule 6(4).

People's Republic of China

Zhangjiagang City Foreign Trade Corporation

China National Electronic Imp+Exp Ziamen Co.,

Hubei Hongye Medical & Chemical Industry Co. Ltd.

Jiangsu Guo Tai International Group Co. Ltd.

Huanggang Yongan Pharmaceutical Co. Ltd.

Hawk Petroleum Pte. Ltd.

No exporters have responded.

- x. The Embassy of the subject country in New Delhi was informed about the initiation of the investigation in accordance with rule 6(2) with a request to advise the exporters/producers from their country to respond to the questionnaire within the prescribed time. A copy of the letter, petition and questionnaire sent to the exporters was also sent to the Embassy, alongwith a list of known exporters/producers;

xi. A questionnaire was sent to the following known importers of Metronidazole calling for necessary information in accordance with rule 6(4);

Ace Laboratories Ltd.

Alkem Laboratories Ltd.

Amoli Organics Ltd.

Concept Pharmaceuticals Ltd.

Dosch Pharmaceuticals Col

DWD Pharmaceuticals Ltd.

Flantingo Pharma Ltd..

Indo Pharma

Intermed

Lark Chemicals (P) Ltd.

Litika Pharmaceuticals Ltd.

Maneesh Pharma_(P) Ltd.

Medi Pharma Drug House

Mercury Laboratories Ltd.

New Generic Drug House

Panacea Biotec Ltd.

Pradipkumar Pharma (P) Ltd.

Shubham Pharmachem (P) Ltd.

Smruthi Organics Ltd.

Unibios Laboratories Ltd.

Unichem Laboratories

Unique Pharmaceuticals Labs.

Only one importer has responded.

- xii. Additional information regarding injury was sought from the petitioner, which was also furnished:
- xiii. The Authority conducted on-the-spot investigation at the premises of the petitioner to the extent considered necessary;
- xiv. The Authority made 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;
- xv. Cost investigations were 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;
- xvi. ****in this notification represents information furnished by an interested party on confidential basis and so considered by the Authority under the Rules;
- xvii. Investigation was carried out for the period starting from 1st April, 1998 to 31st December, 1998, which is hereinafter also referred to as the period of investigation (POI).

B. PETITIONER'S VIEWS

2. The petitioners have raised the following issues in their submissions.

- i. The Indian Producers of Metronidazole are facing severe injury due to indiscriminate dumping by the exporters of the subject country. There are five producers in India two of whom have discontinued production in view of severe dumping being faced.
- ii. Metronidazole is manufactured by Indian producers as per Indian Pharmacopoeia for selling in the domestic market and as per British and US Pharmacopoeia for exports. There is no significant difference in the specifications as per India, British and US Pharmacopoeia and there is no significant difference in the cost of production as per these Pharmacopoeias.
- iii. The imports of the subject goods are allowed free under the Exim Policy of India. Earlier such imports were not causing any injury to the domestic industry, as export prices were fair. However, the exporters from the subject country have drastically reduced their prices since 1998-99, which has forced

the domestic industry also to reduce their prices drastically causing significant injury to the latter.

- iv. The petitioner are manufacturing Metronidazole since many years. Production technology adopted by them is the same as adopted by the other producers world over. Their product and the product imported from the subject country have similar characteristics and specifications.
- v. As regards Normal value it is stated that despite their efforts no information is available as to the price of Metronidazole in the domestic market of China nor any information available on price evidence for the Chinese exports to other countries. Therefore, the petitioner have taken recourse to the constructed cost of production which, accordingly to them, is a good indicator of prices of Metronidazole in China. Thus, the Normal value of Metronidazole in China has been constructed on the basis of estimates of cost of production. The cost of production has been estimated on the petitioner "experience as the petitioner" technology and cost of production is claimed to be comparable with other producers of Metronidazole in the World.
- vi. As to the export price of Metronidazole, the petitioner have stated that the DCCI and S statistics reflect true picture about the export price alongwith the adjustments on various accounts.
- vii. As regards injury, the petitioner have submitted the following :
 - a. Imports from China and market share of China is increasing, while the share of domestic industry is not increasing despite the increase in demand. This is due to the imports from China at dumped prices.
 - b. There is a significant decline in the export price coupled with reduction in Customs duties, which has resulted in the decline in the landed price of imports.
 - c. There is a decline in the selling price of Metronidazole in domestic market.
 - d. There is a decline in profitability also.
- viii. Further, it is stated that the demand of Metronidazole is increasing and the domestic industry has sufficient capacity to meet the requirement of the Indian industry. However, grave injury is caused to domestic industry from imports. The domestic industry is producing Metronidazole at the same technological and quality level as the producers world over. The lowering of prices by the exporters from the subject country is the sole reason for the present state of market in India.

C. Views of Exporters, Importers and other interested parties

3.1. Importers'/user industries' views

- i. Only one importer have responded and stated that the petitioner from M/s Aarey Drugs and Pharmaceuticals Ltd., is closed for last 18 months due to raids by Central Excise and Income Tax Authorities, and that the closure of their unit is not due to dumping of Metronidazole from China.
- ii. Further, it is stated that the Petitioner's claim that their cost of production is comparable with Chinese cost of production is not correct. The latter is much lower because of large scale of operation in the range of 1200 MT/annum, 900 MT/annum, which is not the capacity of any Indian manufacturer.

3.II Exporters' view.

No exporter has furnished any response to the questionnaire nor any view in the matter.

D. Examination of the issues raised

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

E. Product under consideration

5. The product involved in the present investigation is Metronidazole originating in or exported from the subject country classified at Sub heading No. 2933.2902 under ITC (HS) classification. The classification is only indicative and in no way binding upon the scope of present investigation. Metronidazole is an Organic Chemical. It is an anti-diarrhoea (and anti-microbial bulk drug. Metronidazole is used as a raw material for production of medicines for treatment of diarrhoea.

F. Like articles

6. The petitioner have claimed that there is no significant differences in their product and that exported from China, which can have an impact on price. Further, it is claimed that Metronidazole produced by them and imported from China have similar characteristics and specifications and should be treated as like articles. Moreover, there is no difference in the technology adopted by the petitioner and by the producers in People's Republic of China.

In this regard, the Authority finds that Metronidazole produced in India and that imported from the subject country have the same end-uses and both have similar fundamental technical characteristics. Both are, thus, technically and commercially substitutable and, therefore, are treated as Like Articles under the meaning of the Anti-Dumping Rules.

G. Domestic Industry

7. The petition has been filed by M/s. Aarey Drugs and Pharmaceuticals Ltd., 103/7, Sahakar Bhawan, 340/48, N.N. Street, Mumbai-400009. There are five manufacturers of Metronidazole in India including the petitioner. Out of these five producers of Metronidazole in India, three are importers of the subject goods and, therefore, are excluded from the purview of the domestic industry. Thus, the production of two manufacturers including the petitioner has been taken into account to determine the size of the domestic industry which is, thus, determined, at 146 M.T. Out of the domestic industry's total production of 146 M.T., the petitioner produced 89.8 M.T. Thus, the petitioner accounts for a major proportion of the production of Metronidazole of the domestic industry and, therefore, the Authority notes that they (the petitioner) have the requisite standing to file the petition on behalf of the domestic industry under the Rules.

H. Dumping

8. The Parameters of dumping, namely, the Normal value, the Export price and the dumping margin, in relation to the exporters of the subject country are examined and determined in terms of section 9A(1)(c) of the Customs Tariff (Amendment) Act, 1995.

I. Exporter's claims on Normal value and Export price

9. Information on Normal value and export price was elicited from the exporters of the subject goods in the form of questionnaires sent by the Authority to the exporters of the subject country. However, no exporter has furnished response to the questionnaire nor any claims made by any exporter in relation to Normal value and export price.

J. Determination of Normal Value, Export price and Dumping Margin by the Authority

10. In the absence of response from the exporters and in the absence of claims in regard to Normal value and Export price, the Authority has no other alternative but to

treat the informations furnished by the petitioner and the informations gathered from the DGCI and S Source as the best available informations for determination of Normal value, Export price and Dumping margin for all exporters from the subject country. Accordingly, these are determined as under:

Country : People's Republic of China

Exporter: All Exporters

Normal Value

The Authority notes that no information on the domestic selling price of Metronidazole in China is available either from the petitioner's source or from the exporter's source. Nor any information available on price evidence for the Chinese exports to other countries. Therefore, the Authority has no alternative but to rely upon the constructed cost of production as furnished by the petitioner which the Authority treats as the best available information to determine the Normal value. The Authority has carefully examined the various elements of the constructed cost and determined the Normal value at US\$ 10.35/K.g.

Export price

In regard to export price, the Authority relies upon the data of the DGCI&S which is the official agency of India, for wide statistics. The Authority notes that the weighted average cif value of exports from the subject country during the period of investigation is US\$ 7.55/ K.g. as per DGCI&S. The petitioner have claimed adjustments of US\$xxxx/K.g. on accounts of Ocean freight, marine insurance, commission, clearing and forwarding charges and inland freight. The Authority, however, allows adjustments only on Ocean freight, marine insurance, commission to the Indian indenting agent and inland freight, which total upto US\$ 0.55/K.g. Thus, the export price at ex-factory level is determined at US\$ 7.00/Kg.

Dumping Margin

Comparing the Normal value and export price so determined, the Authority calculates the dumping margin at US\$ 3.35/K.g., which is 47.85% of the export price.

Non-Cooperative exporters

The Authority treats, all exporters from the subject country, as non-cooperative exporters and determines the dumping margin as % of export price at 47.85% for all exporters from the People's Republic of China.

K. INJURY

Injury

12. The Authority notes that the petitioner have claimed injury caused to the domestic industry on account of dumped imports from the subject country. The Authority examines this claim of injury to the domestic industry taking into account all relevant facts and the principles laid down under Rule 11 Supra and Annexure II to the Rules.

For determination of injury, the Authority has examined the impact of dumped imports on the domestic industry in India. In this regard, the Authority has considered such indices having a bearing on the state of the industry as production, capacity utilisation, sales quantum, profitability, net sales realisation, the magnitude and margin of dumping etc. in accordance with Annexure II(iv) of the Rules Supra.

(a) Volume of Imports

As per the statistics published by the official agency DGCI&S, the quantum of imports from the subject country during the period of investigation and preceding two years is as under :-

Year Volume

1996-97 149 M.T.

1997-98 272.31 M.T.

POI 186 M.T.

From the above figures, it is observed that the volume of total imports from the subject country during the POI has increased from 149 M.T. during the year 1996-97 to 248 M.T. (annualised) during the POI.

(b) Price of Imports

As per the DGCI and S data, the cif price of imports of Metronidazole during the last three years including the period of investigation has shown a decline as under :-

Year cif price/ Kg.

1996-97 US\$ 9.52

1997-98 US\$ 8.44

POI US\$ 7.55

The above figures show that the cif price of import from China has declined by over 10% during the period of investigation over the previous year, i.e. 1997-98 and by 20.27% over the year 1996-97.

(c) Production

The production of the petitioner has declined from 147.20 M.T. during 1997-98 to 120 M.T. (annualised) during the period of investigation.

(d) Sales volume of the domestic industry

The sales of the petitioner have declined to 100 M.T. (annualised) during the period of investigation compared to the figures of 118 M.T. during the previous year, i.e. 1997-98.

(e) Selling Price/net Sales realisation

The Authority notes that the net sales realisation of the petitioner has declined from US\$.....in 1997-98 to US\$ during the period of investigation. Further, it is noted that the net sales realisation during the POI is significantly below the selling price notified by the Government of India through the Drug Price Control Order.

(f) Profitability:

The Authority finds that the petitioner have incurred losses during the period of investigation as well as during the previous year, i.e. 1997-98. The loss per Kg. of Metronidazole sold by the petitioner is Rs. during the POI.

L. Conclusion of Injury

13. In the light of the above observations contained in para 12, the Authority arrives at the following conclusions :

- a. Quantum of imports from the subject country has significantly increased during the POI as compared to the preceeding years.
- b. There has also been a decline in the cif price of imports from the subject country.

- c. There has been a decline in average sales realisation for the petitioner in respect of the subject goods during the POI as compared to the previous year.
- d. The loss suffered by the petitioner during the POI is also substantial.

M. Casual link

14. The Authority finds that the imports of Metronidazole from the countries other than the subject country are almost nil or de minimus during the period of investigation. On the other hand, the imports of the subject goods from People's Republic of China are increasing while the prices of such imports are declining. This has the effect of undercutting the prices of domestic Metronidazole forcing the domestic industry to sell at unremunerative prices which are below the non-injurious selling price as determined by the Authority. The Authority holds that due to dumped imports from the subject country at low prices vis-a-vis their cost of production, the domestic industry were forced to match their prices with the low prices of Chinese exports. Resultantly, the petitioner incurred substantial losses during the period of investigation. The material injury to the domestic industry was, therefore, caused by the dumped imports from the subject country.

N. Indian Industry's interest and other issues

15. The purpose of anti dumping duties, in general, is to eliminate dumping which is causing injury to the domestic industry and to re-establish a situation of open and fair competition in the Indian market, which is in the general interest of the country.

16. 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 Metronidazole. Imposition of anti dumping measures would not restrict imports from the subject country in any way, and, therefore, would not affect the availability of the product to the consumers.

17. To ascertain the extent of anti-dumping duty necessary to remove the injury to the domestic industry, the Authority may rely upon reasonable selling price of Metronidazole in India for the domestic industry, by considering the optimum cost of production at optimum level of capacity utilisation for the domestic industry.

O. Conclusions

18. After considering the foregoing, it is seen that:

- a. Metronidazole described under para 5 and originating in or exported from People's Republic of China has been exported below Normal value, resulting in dumping.
- b. The Indian Industry has suffered material injury.
- c. The injury has been caused by the dumped imports from the subject country.

19. It is considered necessary to impose anti-dumping duty provisionally, pending final determination, on all imports of Metronidazole originating in or exported from the subject country.

20. 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 domestic industry. The average landed price of the imports, for the purpose, was compared with the Non-injurious selling price of the petitioner, determined by the Authority for the period of investigation. Wherever the difference was less than the dumping margin, a duty lower than the dumping margin is recommended. In respect of residual exporters, the Authority recommends the same level of duty as recommended for the exporters named by the petitioner, since all exporters in this case are treated as non-cooperative. Accordingly, it is proposed that provisional anti dumping duty be imposed, from the date of notification to be issued in this regard by the Central Government, on all Metronidazole originating in or exported from People's Republic of China falling under Customs sub-heading No. 2933.2902 of the Customs Tariff Act, pending final determination.

21. The provisional Anti-Dumping duty in respect of the subject country and its exporters shall be the difference between the amount mentioned in column 4 of the following table and landed value of imports per Kg.

Sl No.	Country	Exporter	Amount (Rupees per/Kg.)
1.	2.	3.	4.
1.	People's Republic of China	All Exporters	519

22. 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, 9 and 9A of the Customs Tariff Act, 1975.

P. Further Procedure

23. 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, petitioners and other interested parties known to be concerned are being addressed separately by the Authority, who may make known their views, within forty days of the dispatch of this notification. 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 disclose essential facts before announcing the final findings.

RATHI VINAY JHA...
Designated Authority