

# **MINISTRY OF COMMERCE & INDUSTRY**

## **PRELIMINARY FINDINGS NOTIFICATION**

New Delhi, the 3rd May, 2001

**Subject:-** Anti-dumping investigation concerning imports of 2 MNI from China PR– Preliminary Findings.

**No. 9/1/2001-DGAD** - The Government of India having regard to the Customs Tariff Act, 1975 as amended in 1995 and the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, thereof:

### **A. PROCEDURE**

1. The procedure described below has been followed with regard to the investigations:
  - i. The Designated Authority (hereinafter referred to as Authority), under the Rules, received written application from M/s.Aarti Drugs Limited, Mumbai and M/s Unichem Laboratories limited, Mumbai have filed a petition on behalf of the domestic industry, alleging dumping of 2 MNI originating in or exported from China PR.
  - ii. The Authority, on the basis of sufficient evidence submitted by the Petitioner, decided to initiate investigations against imports of 2 MNI from China PR. The Authority notified the Embassy of China in India about the receipt of dumping allegation before proceeding to initiate the investigations in accordance with sub-rule 5(5) of the Rules;
  - iii. The Authority issued a public notice dated 8th February,2001 published in the Gazette of India, Extraordinary, initiating anti-dumping investigations concerning imports of 2 MNI, classified under heading 2933.39 09of Schedule I of the Customs Tariff Act, 1975 and No.2933.3909 under Indian Trade Classification (Based on Harmonised Commodity Description and Coding System) originating from China PR. The classification is, however indicative only and in no way binding on the present investigations;
  - iv. The Authority forwarded a copy of the public notice to the known exporters (whose details were made available by the petitioner) and industry associations and gave them an opportunity to make their views known in writing in accordance with the rule 6(2);

- v. The Authority forwarded a copy of the public notice to the known importers of 2 MNI in India and advised them to make their views known in writing within forty days from the date of the letter;
- vi. Request was made to the Central Board of Excise and Customs (CBEC) to arrange details of imports of 2 MNI for the past three years, including the period of investigation.
- vii. The Authority provided a copy of the petition to the known exporters and the Embassy of China PR in India in accordance with rules 6(3) supra;
- viii. The Authority sent questionnaire, to elicit relevant information, to the following known exporters, in accordance with the rule 6(4);
  - M/s. Huanggang Hongye Medical & Chemical Industry Co.Ltd., China
- ix. The Embassy of China PR in New Delhi was informed about the initiation of the investigations 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 them, alongwith the list of known exporters and producer from China PR.
- x. The questionnaire was also sent to the following importers of 2 MNI in India calling for necessary information in accordance with rule 6(4);
  - 1.M/s. Herren Drugs & Pharmaceuticals,Hyderabad
  - 2.M/s. Mithila Drugs Laboratories, Udaipur
  - 3. M/s. New Generic Drug House Ltd., Valsad.
  - 4. M/s.Pavitra Chemicals P.Ltd.,Mumbai
  - 5. M/s. Startronic Pharmachem P.Ltd.,Ankleshwar
  - 6.M/s.Unidrugs Innovative Pharma Tech.Ltd.,,Indore
- xi. Additional information regarding injury was sought from the petitioner, which was also received;
- xii. The Authority made available non-confidential version of the evidence presented by various interested parties in the form of a public file kept open for inspection by the interested parties;
- xiii. The Authority sought information from all parties concerned, deemed necessary for the investigation.
- xiv. The Authority also conducted cost investigation (based on the information received) and worked out optimum cost of production / cost to make and sell in India on the basis of Generally Accepted Accounting Principles.
- xv. The investigations covered the period of 1st April, 2000 to 31st December, 2000 (9 months);

xvi. \*\*\* in this notification represents information furnished by an interested party on confidential basis and so considered by the Authority under the Rules;

## **B Petitioner's Views**

2. Petitioners have stated that market for 2-MNI; an intermediate in the production of Metronidazole was quite favourable earlier. With the imposition of anti-dumping duty on Metrinidazole , the exporters from China have started dumping this product into India. This has directly resulted in reduction of prices of 2-MNI. The industry has lost substantial sales and the imports are causing severe injury to the Indian producers of 2 MNI.

2.1 The petitioners have also stated that profits of the domestic industry have significantly eroded.

## **C Views of Exporters, Importers and other interested parties:**

### **Exporters:**

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

### **Importers**

3.1 M/s. Unidrug Innovatives Pharma Technology Ltd.

Importers have stated that they have regularly purchased 2-MNI from M/s. Aarti Drugs Ltd. Mumbai and Unichem Laboratories, Mumbai. The importers have stated that, with the imposition of anti-dumping duty, the domestic industry will be free to raise the prices of 2-MNI, which would affect the small units due to competition.

3.2 Being manufacturers of Tinidazole employing the 300 persons directly dependent on the company, if anti-dumping duty is imposed on 2-MNI, it would tend the domestic industry to have a monopoly on the product and raise the prices of 2-MNI.

### **New Generic Drug House Ltd., Mumbai:**

3.3 The importers have furnished information in the prescribed format. They have requested that the whole matter be considered in the proper perspective and not to levy any anti-dumping duty on the imports of the product in question.

## **D Examination of issues raised:**

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

## **E Product under consideration:**

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

## **F Like Article:**

6.1 Definition of Like Article states as under:

"Like Article means an article which is identical or alike in all respects to the article under investigation for being dumped in India or in the absence of such article, another article which although not alike in all respects, has characteristics closely resembling those of the articles under investigation."

6.2 The petitioner has claimed that goods produced by it are like articles to the goods produced, originating in or exported from the subject country. There is no arguments to the contrary.

6.3 In light of the foregoing, Authority concludes that 2 MNI produced by the petitioner is a Like Article to the 2 MNI imported from China PR.

## **G Domestic Industry:**

7.1 The petition has been filed by M/s. Aarti Drugs Ltd., Mumbai, and M/s. Unichem Laboratories Ltd., Mumbai on behalf of the domestic industry. The petitioners have claimed that it accounts for almost 100% of the production during the period of investigation as M/s.Aarey Drugs, Mumbai, M/s. Unique Chemicals, Mumbai and M/s.Advent Pharma Ltd., Mumbai who are captive producers of the 2 MNI and have claimed that the production by these three companies would not form

part of eligible production for determination of standing and scope of the domestic industry and, therefore, has the standing to file the petition on behalf of the domestic industry and constitute domestic industry, under the aforesaid Rules.

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

## **H Dumping:**

8. Under Section 9A (1)(c), normal value in relation to an article means:

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

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 transhipped 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 or origin".

### **Normal Value:**

8.1 Petitioners have stated that they have not been able to get any reasonable and authentic evidences with regard to domestic prices of 2 MNI in China PR or price list of exporters either for selling in their domestic market or for export to other countries other than India.

8.2 The petitioners have requested that the normal value may be based on constructed cost.

8.3 Authority notes that no exporter from China PR have responded to this investigation. In the circumstances, the normal value has been constructed on the basis of estimates of cost of production of subject goods duly adjusted to include selling, general and administrative expanses and a reasonable profit margin and best available information on record. The normal value accordingly arrive at US\$ \*\*\* per Kg.

**Export Price:**

8.4 The petitioners have stated that the information published by DGCI&S cannot be relied upon and for the determination of volume and value of imports of 2 MNI to India, since the classification of the product is described as others and includes imports of number of ‘other’ products. The petitioners have furnished import statistics from the Bombay Customs based on detailed statement. The petitioners have claimed adjustments towards landing charges, ocean freight, marine insurance, commission, and inland transportation in the country of export, port-handling charges.

8.5 Authority notes that the information furnished by the importer (presumably only major importer) is almost in conformity with the import data furnished by the petitioner. Hence, Authority relies upon the importer claims with adjustments as claimed by the petitioner and accordingly determines the export price at US \$ \*\*\* per KG

**Dumping Margin:**

8.6 The Rules relating to comparison provides comparison of normal value and export price as follows:

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

8.7 Comparing the normal value and export price, the dumping margin works out as under:-

	US \$ per Kg
Normal Value	***

Export Price	***
Dumping Margin	***
Dumping Margin %	54.4%

For the purpose of fair comparison between normal value and export price the Authority took into account the information furnished by the petitioner and other published information available with the Authority. The normal value and export prices determined as detailed above are at ex-works level.

## I Injury:

9.0 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;

9.1 The Authority notes that the margin of dumping and quantum of imports from subject country are more than the limits prescribed under the Rule.

9.2 Production:- Production of petitioners has been as under:

In Kg.	1998-99	1999-2000	POI	Annualised (POI)
Domestic Industry Production	1542594	1739447	1130809	1507745

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

### 9.3 Sales Volume:

The sales of petitioners increased by 4.48% during 1999-2000 over 1998-99 and declined by 3.03% during Period of investigation. Till 1999-2000, there were no imports of 2 MNI and the industry was able to increase its sales as a result of increase in market demand. After imposition of Anti-dumping Duty on Metronidazole, the exporters reduced their price for the Indian market (resulting in dumping 2 MNI in India), which has directly affected the sales of the domestic industry. In fact, the domestic industry has already lost substantial market.

### 9.4 Sales Volume, Selling Price and Price Undercutting:

The month-wise selling prices of domestic industry show that the selling price have declined during the period of investigation. Yet Authority observes a steep decline in the volume sold by the domestic industry, as would be seen the table below:

Period	Selling Price Rs. Per KG	Sales Volume In KG
April 2000	100.00	100.00
May 2000	100.64	74.59
June 2000	98.25	78.10
July 2000	93.63	85.45
August 2000	86.15	49.63
September,2000	83.39	49.60
October 2000	75.99	28.66

Note: Indexed figures considering April 2000 as 100

The reduction in the selling prices, even below than the import price from China PR and consequent decline in the sales volumes forced the domestic industry to reduce the prices after August,2000. This resulted in significant increase in the volumes sold at a low price by the domestic industry to liquidate their stock, as would be seen from the table below.

Period	Selling Price Rs Per KG	Sales Volume In KG
October,2000	75.99	28.66

November,2000	75.62	84.24
December,2000	76.12	170.85

Note : Indexed figures considering April 2000 as 100

9.5 Analysis of sales of the two petitioner companies would reveal that while one company chose to reduce the prices and regained the market, the other refrained from reducing the prices, which resulted in steep reduction in its sales volumes. Thus, there is a direct correlation between the prices and volumes sold. Further, there are not many suppliers of this product in the market. In fact, China is the sole exporting country. Thus, there is direct correlation between the increase in imports and reduction in prices and volumes by the domestic industry.

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

9.7 Employment level: Both the petitioner companies are multi product companies and are involved in production of various products. Therefore, there is no significant change in employment level of the domestic industry due to poor operating levels.

9.8 Profitability: The profits of the domestic industry have been very significantly eroded. It is evident from the information on unit cost of production, selling price & profit and loss provided by the domestic industry it is observed that the cost of production of the domestic industry has increased, its selling price has declined, resulting in losses to the domestic industry from a situation of profits.

9.9 Conclusion on Injury:

The following parameter show injury to the domestic industry:

- Decline in production and capacity utilisation during POI compared to the year 1999-2000;
- Decline in sales volume during the POI compared to year 1999-2000;
- Selling price of subject goods in domestic market has declined during the POI compared to the year 1998-99;
- Domestic Industry has lost sales due to imports;
- Profitability of the domestic industry have significantly eroded;

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

## **J Causal Link**

### **It has been submitted that:**

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

10.2 The demand of the subject product has not declined, as is evident from the increasing production of the domestic producers.

10.3 There is no technological development in the industry or any other such factor, which could have resulted in injury to the domestic industry. The imports of the subject product have started with the imposition of anti-dumping duty on Metronidazole. The producers from China have reduced the prices and the consumers have now found intermediate cheaper.

10.4 The selling price of domestic industry has declined in spite of increase in the cost of production. The industry has been turned into a situation of losses from a situation of profits.

10.5 The landed price of imports from China was below the selling price of the domestic industry upto July,2000, resulting in price undercutting. This also resulted in significant increase in the volumes sold at a low price by the domestic industry to liquidate their stock.

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

## **K Indian Industry's Interest and other issues:**

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

11.1 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, imposition of anti dumping measures would remove the unfair advantages gained by dumping practices, would prevent the decline of the domestic industry and help maintain availability of wider choice to the consumers of subject goods. Imposition of

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

11.2 To ascertain the extent of anti-dumping duty necessary to remove the injury to the domestic industry, the Authority relied upon reasonable selling price of 2 MNI in India for the domestic industry, by considering the optimum cost of production at optimum level of capacity utilization for the domestic industry.

## Conclusions:

The Authority, after considering the foregoing, concludes that:-

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

12.1 It is considered necessary to impose anti dumping duty provisionally pending final determination on all imports of 2 MNI originating in or exporting from China PR;

13. Accordingly, Authority considered to recommend the amount of anti-dumping duty equal to the margin of dumping or less, which if levied, would remove the injury to the domestic industry (clause (d) Rule 4 supra as amended). Accordingly, it is proposed that provisional anti-dumping duties be imposed, on 2 MNI originating in or exported from China PR falling under Customs sub-heading 2933.39.09 of the Customs Tariff Act, pending final determination. The Anti-dumping Duty shall be the difference between the amounts mentioned in column 3 below and the landed value of imports in US \$ per Kg, from the date of notification to be issued in this regard by the Central Government, on all imports of 2 MNI originating in or exported from subject country falling under Chapter 29 of the Customs Tariff, pending final determination.

Country	Name of the producer/ Exporters	Amount of duty (US \$ /Kg)
1	2	3
China PR	All Exporters	4.79

14. Landed value of imports for the purpose shall be the assessable value as determined by the customs under the Customs Act, 1962 and all duties of

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

15. 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 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.

## **M Further Procedure:**

16. The following procedure would be followed subsequent to notifying the preliminary findings:-
17. The Authority invites comments on these findings from all interested parties and the same would be considered in the final finding;
18. 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;
19. The Authority would conduct further verification to the extent deemed necessary;
20. The Authority would disclose essential facts before announcing final findings.

**(L V SAPTHARISHI)**  
Designated Authority