

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

NOTIFICATION

New Delhi, the 29th June 2007

Final Findings
(Sunset Review)

Subject: Antidumping investigation (Sunset Review) involving import of 2 Methyl(5) Nitro Imidazole_- originating in or exported from China PR

No.15/18/2005-DGAD - Having regard to the Customs Tariff Act, 1975, (hereinafter referred to as Act.) 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 (hereinafter referred to as Rules.);

A. BACKGROUND

2. WHEREAS, having regard to above Rules the Designated Authority (hereinafter also referred to as the Authority) notified final findings vide Notification No.9/1/2001-DGAD dated 5.2.2002 recommending imposition of anti-dumping duties on all imports of 2 Methyl (5) Nitro Imidazole (hereinafter also referred to as subject goods) originating in or exported from China PR. In the original investigation the Preliminary findings were notified by the Designated Authority vide Notification No. 9/1/2001-DGAD dated 3.5.2001. Final findings of the Authority were notified by the Designated Authority vide Notification No. 9/1/2001-DGAD dated 5.2.2002 and the final duty was imposed on the subject goods vide Customs Notification No.30/2002-Customs dated 27.3.2002.

3. The Designated Authority, in terms of section 9A (5) of said Act. received a substantiated application from M/s. Aarti Drugs Ltd., Mumbai requesting for review and continuation of the anti-dumping duties levied on the subject goods, for another five years on the grounds that the dumping had continued in spite of imposition of anti-dumping duty on imports of subject goods from subject country and the domestic industry continued to suffer injury on account of dumping by the subject country. The Designated Authority issued a public notice No. 15/18/2005-DGAD dated 30.6.2006, published in the Gazette of India, Extraordinary, initiating anti-dumping (Sunset Review) investigations, to examine whether the expiry of anti dumping duty would lead to continuation or recurrence of dumping, injury or both.

B. PROCEDURE

4. In these proceedings the procedure described below has been followed:

- i) After initiation of the review the Authority sent questionnaires, alongwith the initiation notification, to the known exporters/producers in the subject country in accordance with the Rule 6(4), to elicit relevant information.
- ii) Notices were also sent to the domestic industry in India seeking relevant information in accordance with the Rules;
- iii) 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 in their country to respond to the questionnaire within the prescribed time.
- iv) Questionnaires were sent to the known importers and consumers of subject goods in India calling for necessary information in accordance with Rule 6(4),
- v) Request was made to the Directorate General of Commercial Intelligence and Statistics (DGCI&S) to arrange details of imports of subject goods for the past three years, and the period of investigations;
- vi) Copies of the initiation notification were also sent to FICCI, CII and ASSOCHAM for wider circulation.
- vii) No exporter/producer and importer responded to the questionnaires.
- viii) M/s. Aarti Drugs Ltd., Mumbai, being domestic industry, submitted the information/data;
- ix) The Authority verified the information furnished by the domestic industry to the extent possible on the basis of Generally Accepted Accounting Principles (GAAP) to examine the injury suffered, to work out optimum cost of production, cost to make and sell the subject goods in India and so as to ascertain if Anti-Dumping duty lower than the dumping margin would be sufficient to remove injury to Domestic Industry;
- x) The Authority held a public hearing on 29-5-07 to hear the interested parties orally, which was attended by representatives of the domestic industry. Another opportunity of personal hearing was provided to the domestic industry on 19.6.2007. The parties attending the public hearing were requested to file written submissions of views expressed orally. The written submissions received from interested parties have been considered by Designated Authority in this findings;
- xi) The Authority made available the public file to all interested parties containing non-confidential version of all evidence submitted by various interested parties for inspection, upon request.
- xii) The views expressed by various interested parties in response to the initiation notification and subsequent to the public hearing are discussed in the relevant paragraphs to the extent these are relevant as per rules and have a bearing upon the case. The arguments raised by the interested parties have been examined, considered and, wherever appropriate, dealt in relevant paragraphs.
- xiii) Investigations were carried out for the period of investigation (POI) from 1st April 2005 to 31st March 2006 However injury analysis have been carried out for the years 2002-03, 2003-04, 2004-05 and the period of investigation.
- xiv) *** in this notification represents information furnished by an interested party on confidential basis and so considered by the Authority under the AD Rules.

C. PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE

5. The product involved in the original investigation was 2 Methyl (5) Nitro Imidazole. This being a Sunset review, therefore, the investigation covers the product covered in the original investigation.

6. 2 Methyl (5) Nitro Imidazole also known as 2MNI, is a creamish coloured powder and is used as a Drug Intermediate for production of Metronidazole, Tinidazole, Dimetridazole, Ornidazole, Scenidazole.

7. The product is classified under Customs Tariff heading 2933.39 and at no.2933.39 09 as per Indian Trade Classification. The Customs and ITC HS classification is, however, indicative only and in no way binding on the scope of the present investigation .

8. The domestic industry also produces 2 Methyl (5) Nitro Imidazole having similar characteristics and specifications. No argument has been extended, by any interested party, on the issue of product under consideration or like article and therefore, the Authority holds that the product being manufactured by the domestic industry and the product being manufactured and exported from the subject country is like articles as per 2(d) of Anti Dumping Rules.

D. DOMESTIC INDUSTRY

9. In this case, during POI domestic industry had imported subject goods from China PR. The Authority notes that imports constitute significant portion of total imports in India. It has been contended that imports were made under Duty Exemption Scheme and did not enter into commerce of the country, therefore, applicant cannot be excluded from purview of domestic industry.

10. This issue would be examined in terms of Rule 2(b) of Anti Dumping Rules and Article 4.1(i) of the Anti-Dumping Agreement. As per Anti-Dumping Agreement ‘when producers are related to exporters or importers or are themselves importers of the allegedly dumped product, the term ‘domestic industry’ may be interpreted as referring to the rest of producers’. As per Rule 2(b) of the Rules, ‘ “domestic industry” means the domestic producer as a whole engaged in manufacture of the like article and any activity connected therewith or those whose collective output of the said article constitutes a major production of total domestic production of that article except when such producers are related to exporters or importers of the alleged dumped articles or are themselves importers thereof in which case such producer may be deemed not to form part of domestic industry’.

11. In this regard, the Authority notes that M/s Aarti Drugs Ltd., Mumbai had imported subject goods under duty exemption scheme which constitute approximately 32% of the total imports of India. The goods imported under duty exemption scheme necessarily need to be exported after use of imported inputs in the final product and its price impact may be insignificant in the merchant market. The Authority, therefore, holds that the imports made under duty exemption scheme would not disqualify the producer from being considered as domestic industry.

12. In the original investigation the application for anti-dumping investigation was filed by M/s. Aarti Drugs Ltd., Mumbai and M/s Unichem Laboratories Ltd., Mumbai on behalf of the domestic industry. In the present sunset review the information/data has been provided by M/s Aarti Drugs Ltd., Mumbai

INITIATION OF THE REVIEW AND ARGUMENTS RAISED

Views of Applicant Domestic Industry

13. Domestic industry has submitted that despite anti-dumping duty on 2 Methyl (5) Nitro Imidazole, dumping continued from the subject country. ‘Given the volume of imports and level of prices at which the goods have been exported to India in spite of existence of anti-dumping duty, it is likely that volume of import would further increase in case anti-dumping

duties are withdrawn. It is further contended that the imposition of anti dumping duty on subject country have helped the domestic industry to improve its performance, however, the domestic industry has not been able to improve to the extent it should have and thus, there is a great likelihood of dumping and injury in case, duty in force is revoked. Regarding present state of performance, the domestic industry submitted to maintain and increase their production and maintain its sales volume and Capacity utilization. Market share of the domestic industry has declined despite increase in demand and production, resulting in increase in inventory. Profitability of the domestic industry improved after imposition of duty and domestic industry started making marginal profits in the year 2004-05 as compared to earlier significant losses but again declined in the POI. Landing price of imports is significantly below the net sales realization of the domestic industry. Imports are already undercutting the prices of domestic industry to a significant extent, should the present duty be revoked, the extent of price undercutting would further increase. Further, the performance of domestic industry was already adverse during the period under consideration and it is likely that revocation of anti-dumping measure would result in intensified injury to the domestic industry. It has also been submitted that as per understanding of the domestic industry the production capacity in China for the product under consideration is higher than their domestic demand. Should the current measure be allowed to lapse, there is a threat that significant proportion of the unused production capability would be used to flood the Indian market.

Examination by the Authority

14. The Authority takes note of arguments raised by the domestic industry regarding continued injury to the domestic industry. These arguments have been taken into account while analyzing the injury to the domestic industry, threat of recurrence of dumping and injury to the domestic industry.

E. METHODOLOGY FOR CALCULATION OF DUMPING MARGIN

Dumping Determination: Normal Value, Export Price and Dumping Margin

Examination of Response to Market Economy Treatment Questionnaire by the Authority

15. The Designated Authority, as per para 8 (2) of the annexure 1 of AD rules for the purpose of assessing the normal value proceeded with the presumption that any country that has been determined to be or has been treated as a non-market economy for the purposes of anti-dumping investigations by the Designated Authority or by the competent authority of any WTO member country during the three years period preceding the investigation is a non-market economy country. In the past three years China PR has been treated as a non-market economy country in the anti-dumping investigations by WTO members such as EU and USA. In the instant case China PR has been proposed to be investigated as a non-market economy country.

16. As per Paragraph 8, Annexure I to the Anti Dumping Rules as amended, the presumption of a non-market economy can be rebutted if the exporter(s) from China provide information and sufficient evidence on the basis of the criteria specified in sub paragraph (3) in Paragraph 8 and prove the contrary. The cooperating exporters/producers of the subject goods from People's Republic of China are required to furnish necessary information/sufficient evidence as mentioned in sub-paragraph (3) of paragraph 8 in response to the Market Economy Treatment questionnaire to enable the Designated Authority to consider the following criteria as to whether:-

- a) the decisions of concerned firms in China PR 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.

17. The Authority sent copies of the questionnaires to all the known exporters for the purpose of determination of normal value. No exporters/producer responded to the Exporter's and Market Economy Treatment (MET) questionnaire. Hence, the presumption of non-market economy remain unrebutted, therefore, the Authority is proceeding treating exporters/producers in China PR as operating in non-market economy.

18. In view of the above, the Authority is unable to apply the principles set out in paragraph 1 to 6 of Annexure 1 for determination of normal value for the Chinese exporters. Therefore, the normal value in respect of all exporters/producers from China PR is determined as per Rules relating to non-market economy as contained in para 7 of Annexure 1 of AD Rules.

19. As per para 7 of Annexure 1 of AD Rules, the Authority is required to determine normal value on the basis of '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.' No data or information was made available by the domestic industry about normal value in market economy third country. Exporters/Producers have also not responded in this case. The Authority, therefore, in absence of any other option, has determined the normal value by resorting to method 'any other reasonable basis'.

E.1 Normal Value for China for Non-cooperating Exporters

20. Under the circumstances, the authority has constructed the normal value by considering the raw material for manufacture of 2 Methyl (5) Nitro Imidazole at the international prices, the consumption norms of the domestic industry and reasonable profit. Based on above information available, the normal value has been calculated USD ***/kg. by considering the average exchange rate during POI of 1USD=Rs.44.41/-

E.2 Export Price for China for Non-cooperating Exporters

21. The domestic industry has submitted that export price is required to be determined after excluding transaction where landed price of the imports is above the benchmark. In a situation where export price appears unreliable, the rules permit construction of export price. In case of non-cooperative exporter, the practice of Authority is to take lowest price reported. Such being the case, in the present case where 63% imports during investigation period have been reported at lower price it would be appropriate to consider only these imports for determination of export price.

22. The Authority notes that significant imports have been made by the domestic industry itself under the duty exemption scheme and it has been noticed that these prices were below the reference price. The contention of the domestic industry that for determination of export price only imports made under duty exemption scheme or imports made below reference price should be taken into account, is not acceptable as no evidence is available that other import transactions are unreliable. The Authority, therefore, has determined the export price on the basis of all import transactions.

23. The export price has been determined on the basis of transaction-wise details provided by IBIS. During POI the CIF value of weighted average export price was Rs.*** /kg (US\$*** /kg.). After making adjustments on account of inland freight as US\$***, ocean freight as \$ *** and marine insurance as \$ *** the ex-factory export price has been calculated as US\$ *** (1 US\$ = Rs.44.41/- during the POI).

E.3 Dumping Margin

24. Based on the normal value and export price as determined above, the Authority determined the dumping margin as under:

Dumping Margin

Exporter/Producer	Normal Value USD/kg.	Export Price USD/kg.	Dumping Margin USD/kg.
All exporters from China PR	***	***	*** (31.90%)

F. METHODOLOGY FOR INJURY DETERMINATION AND EXAMINATION OF CAUSAL LINK

INJURY DETERMINATION

CONTINUATION OF INJURY

F.1 Views of the Domestic Industry

Views of Domestic industry are summarized below:

25. Imposition of anti-dumping duty has helped the domestic industry to improve its performance. Profitability of the domestic industry improved after imposition of duty and domestic industry started making marginal profits as compared to earlier significant losses. ROI and cash profit also followed the same trend that of profit. On the other hand market share of the domestic industry has declined despite increase in demand and production resulting in increase in inventory and the Capacity utilization is also remained more or less same. Further productivity of the domestic industry declined despite increase in production. Landing price of imports is significantly below the net sales realization of the domestic industry. Thus it is evident that imposition of ADD helped the industry to revive its performance to some extent; but the situation of DI is still dilapidated as it has only started to improve and further protection is required to stabilize its positive growth. Injury to the domestic industry is likely to recur in case present duty in force is revoked. The likely volumes and prices of imports from China subsequent to any repeal of measures would put the domestic industry at further risk.

F.2 Examination by the Authority

26. The Authority has taken note of various arguments raised in regard to injury to the domestic industry. The Authority also notes that anti-dumping duty is in force against China PR. In its final determination in respect of China PR, the Authority has determined that imports from subject country was at dumped prices. Therefore, for the purpose of injury and causal link analysis, the imports from subject country has been treated as dumped imports.

27. Article 3.1 of the ADA and Annexure II of the AD Rules provide for an objective examination of both, (a) the volume of dumped imports and the effect of the dumped imports on prices in the domestic market for the like products; and (b) the consequent impact of these imports on domestic producers of such products, with regard to the volume effect of the dumped imports. The authorities are required to examine whether there has been a significant increase in imports, either in absolute term or relative to production or consumption in the importing member. With regard to the price effect of the dumped imports, the authorities are required to examine whether there has been significant price undercutting by the dumped imports as compared to the price of the like product in the importing country, or whether the effect of such imports is otherwise to depress prices to a significant degree, or prevent price increase, which would have otherwise occurred to a significant degree.

28. For the purpose of injury analysis the Authority has examined the volume and price effects of dumped imports of the subject goods on the domestic industry and its effect on the prices and profitability to examine the existence of injury and causal links between the dumping and injury, if any.

(A) VOLUME EFFECT: Volume effect of dumped imports and impact on domestic industry:

The effects of volume of dumped imports from subject country has been examined as follows:

i) Import Volumes and share of the subject country:

Particulars	Unit	2002-03	2003-04	2004-05	2005-06
Market share					
In Imports					
Imports as per IBIS					
China	MT	61	16	206	350
Trend	Indexed	100	26	340	574
Other Countries	MT	0	0	0	0
Total Imports	MT	61	16	206	350
Trend	Indexed	100	26	340	574
Market share in Imports					
China	%	100	100	100	100
Other Countries	%	0	0	0	0
Total Imports		100	100	100	100

29. The data provided by DGCIS does not show any imports of 2MNI under the Customs Tariff heading 29333990 during period of investigation and previous years.

30. The transaction-wise details of imports provided by International Business Information Services (IBIS) shows that imports have been effected during POI and previous years. It appears that import transactions under relevant custom heading have not been captured in the data provided by DGCI&S, therefore, the data does not show any imports. In this investigation, transaction-wise data provided by IBIS has been relied upon for analysis. Information provided by IBIS shows that imports from the subject country from base year to POI increased by 474%. There are no import from other countries. Import from china command 100% share in the total import during POI. The Authority notes that the domestic industry has effected imports during POI and previous years. During POI, the imports of M/s Aarti Drugs Ltd. constitute approximately 32% of total imports. In the year 2004-05, it constitute approximately 52% of the total imports. In the year 2002-03, the domestic industry imported 5 MT of the subject goods. The domestic industry had imported the subject goods under duty exemption scheme for export purpose.

ii) Demand, Output and Market shares

a) Production of the Domestic Industry

Particulars	Unit	2002-03	2003-04	2004-05	2005-06
Capacity	MT	1786	1960	1960	2160
Trend	Indexed	100	110	110	121
Capacity Utilization	%	86.20	61.33	77.16	82.27
Trends	Indexed	100	71	90	95
Output					
Production	MT	1540	1202	1512	1777
Trend	Indexed	100	78	98	115

31. The data shows that the capacity of the domestic industry increased by 10% in 2003-04, 2004-05 and 21% during POI as compared to the base year. The production of the domestic industry declined in 2003-04 and rose in 2004-05 and POI. As compared to base year the production rose by 15% during POI. The capacity utilization (after enhancement) declined to 95% during POI as compared to base year.

b) Sales of Domestic Industry

Particulars	Unit	2002-03	2003-04	2004-05	2005-06
Natural and Potential Decline in Sales					
Sales - Domestic	MT	111	35	89	68
Trend	Indexed	100	31	80	61
Sales - Exports	MT	40	0	0	0
Total Sales	MT	151	35	89	68
Captive Consumption	MT	1309	1249	1570	1693
Sales including captive	MT	1420	1284	1659	176
Trends	indexed	100	90	117	124

32. The data shows that the company is primarily utilising the production for captive consumption. In 2002-03, 2003-04, 2004-05 and POI the captive consumption was 85.03%,

103.93%, 103-79% and 95.28% of the production respectively. The merchant sales during the same period was 7.22%, 2.87%, 5.90% and 3.83% of the production. The data shows the rising trend of the domestic sales (including captive consumption). It grew by 24% during POI as compared to base year. Data also shows that the captive consumption grew by 29% during POI as compared to base year whereas merchant sales declined to 61% during POI as compared to base year. The data of other producers (provided by the domestic industry) show that primarily other producers were using product for captive consumption. In 2003-04, merchant sales of other producers were only 4 MT whereas in 2004-05 and POI there was no merchant sales.

c) Demand and Market Share (demand calculated by including imports of the domestic industry)

Particulars	Unit	2002-03	2003-04	2004-05	2005-06
Demand		2072	1853	2414	2595
Trend	Indexed	100	89	116	125
Domestic Industry	MT	***	***	***	***
Captive Consumption of DI	MT	***	***	***	***
Sales of other producer including captive consumption	MT	***	***	***	***
Total Imports	MT	61	16	206	350
Market Share in demand					
China	%	3	1	9	13
Other Countries	%	0.00	0.00	0.00	0.00
Domestic Industry (merchant sales)	%	***	***	***	***
Domestic Industry (sales including Captive consumption)	%	***	***	***	***
Other Producers including captive	%	***	***	***	***

d) Demand and Market Share (demand calculated by excluding imports of the domestic industry)

Particulars	Unit	2002-03	2003-04	2004-05	2005-06
Demand		2067	1853	2306	2483
Trend	Indexed	100	90	112	120
Domestic Industry	MT	***	***	***	***
Captive Consumption of DI	MT	***	***	***	***
Sales of other producer including captive consumption	MT	***	***	***	***
Total Imports	MT	56	16	98	238
Market Share in demand					
China	%	3	1	4	10
Other Countries	%	0.00	0.00	0.00	0.00

Domestic Industry (merchant sales)	%	***	***	***	***
Domestic Industry (sales including Captive consumption)	%	***	***	***	***
Other Producers including captive	%	***	***	***	***

33. The demand has been calculated by addition of domestic sales, captive consumption and all imports. The data indicates that the demand grew by 25% during POI as compared to base year. The market share of subject country increased from 3% in base year to 13% during POI. The share of sales including captive consumption of the domestic industry declined from 69% in base year to 68% during POI. The share of other producers also declined from 29% to 19% during POI. The share of domestic industry (merchant sales) was 5% in 2002-03 and declined to 3% during POI.

34. The demand has also been calculated by addition of domestic sales, captive consumption and all imports excluding imports made by the domestic industry under duty exemption scheme. The data indicates that the demand grew by 20% during POI as compared to base year. The market share of subject country increased from 3% in base year to 10% during POI. The share of sales including captive consumption of the domestic industry increased from 69% in base year to 71% during POI. The share of other producers however, declined from 29% to 19% during POI. The share of domestic industry (merchant sales) was 5% in 2002-03 and declined to 3% during POI.

(B) Price Effect of the Dumped imports on the Domestic Industry

35. The impact on the prices of the domestic industry on account of dumped imports from the subject country has been examined with reference to the price undercutting, price underselling, price suppression and price depression, if any. For the purpose of this analysis the weighted average cost of production, weighted average Net Sales Realisation (NSR) and the Non-Injurious Price (NIP) of the domestic industry (worked out on the basis of the costing information of the domestic industry) have been compared with landed value of imports from the subject country. The landed value of imports have been calculated by taking imports excluding imports made by the domestic industry under duty exemption scheme as imports made by domestic industry under duty exemption scheme were not available in the market and had not affected the market price.

a) Price Undercutting

Particulars	Unit	2002-03	2003-04	2004-05	2005-06
Price undercutting/ prices suppression					
Export Price	Rs./kg.	136.40	144.12	136.35	167.16
Landed Value-China	Rs./kg	177.73	194.39	165.95	192.49
Net Sales Realisation	Rs./kg	***	***	***	***
Cost of Production	Rs./kg	***	***	***	***
Price Undercutting	Rs./kg	***	***	***	***
Price Undercutting (Range)	%				-(5-15)

b) Price Underselling

(Value in Rs./kg)

Net Sales Realisation	***
Non Injurious Price	***
Landed Value	192.49
Price Underselling	***
Price Underselling (%)	***
Price Underselling range	Less than 5%

36. A comparison for subject goods during the period under investigation was made between the weighted average landed value of dumped imports and the domestic selling price in the domestic market. The landed value of imports from the subject country was higher than the net sales realization of the domestic industry for the subject goods during the POI. The undercutting during POI was negative.

37. In determining the net sales realization of the domestic industry, the rebates, discounts and commission offered by the domestic industry and the Central Excise Duty have been adjusted.

38. The price suppression effect of the dumped imports has also been examined with reference to the cost of production, net sales realization and the landed values from the subject country.

39. The data on cost of production shows that cost of production has been rising from base year to POI. It increased by 22% during POI as compared to base year. The data on selling price shows that selling price has been rising from base year to POI. It increased by 25% in 2004-05 and 22% in POI as compared to base year. The landed value of subject goods increased by 9% in 2003-04, declined to 93% in 2004-05 and increased by 8% during POI as compared to base year.

40. The price underselling is an important indicator of assessment of injury; thus, the Authority has worked out a non injurious price and compared the same with the landed value to arrive at the extent of price underselling. The non-injurious price has been evaluated for the domestic producer by appropriately considering the cost of production for the product under consideration during the POI. The analysis shows that the weighted average landed value of the subject goods from subject country is less than the non injurious price determined for the domestic industry during the period of investigation. The underselling margin is less than 5% during the POI.

F.3 Examination of other Injury Parameters

41. After having examined the effect of dumped imports on the volumes and prices of the domestic industry and major injury indicators like volume and value of imports, capacity, output, capacity utilization and sales of the domestic industry as well as demand pattern with market shares of various segments in the earlier section, other economic parameters which could indicate existence of injury to the domestic industry have been analysed hereunder as follows:

i) Profits and Actual and Potential Effects on Cash Flow

(Merchant sale)

Particulars	Unit	2002-03	2003-04	2004-05	2005-06
Profitability					
Cost of sales weighted	Rs./kg	***	***	***	***
Trend	Indexed	100	101	119	124
Selling Price Weighted	Rs./kg	***	***	***	***
Trend	Indexed	100	103	125	122
Profit/ Loss	Rs./kg	***	***	***	***
Trend	Indexed	100	234	527	-34
Total Profit/ Loss-Domestic	Rs. Lacs	***	***	***	***
Trend	Indexed	100	74	423	-21
Cash Profit	Rs. Lacs	***	***	***	***
Trends	Indexed	100	54	221	51

(Captive consumption)

Particulars	Unit	2002-03	2003-04	2004-05	2005-06
Profitability					
Cost of Production weighted	Rs./kg	***	***	***	***
Trend	Indexed	100.00	101	119	125
Selling Price Weighted	Rs./kg	***	***	***	***
Trend	Indexed	100	103	125	122
Profit/ Loss	Rs./kg	***	***	***	***
Trend	Indexed	100	147	235	71
Total Profit/ Loss-Captive	Rs. Lacs	***	***	***	***
Trend	Indexed	100	147	289	94
Cash Profit	Rs. Lacs	***	***	***	***
Trends	Indexed	100	142	243	130

42. The profitability of the merchant sales of the domestic industry has been analyzed from the records of the company:

43. The cost of production from base year increased by 1% in 2003-04, 19% in 2004-05 and 24% during POI. The net selling price from base year increased by 3% in 2003-04, 25% in 2004-05 and 22% during POI. The profit/loss per unit from base year indexed 100 was 234 in 2003-04, 527 in 2004-05 and -34 during POI. The total profit/loss on merchant sale was 100 (Indexed) in base year, 74 in 2003-04, 423 in 2004-05 and -21 during POI.

44. The profitability of captive consumption of the domestic industry has also been analyzed by taking market price as transfer price for captive consumption.

45. The cost of production from base year increased by 1% in 2003-04, 19% in 2004-05 and 25% during POI. The net selling price from base year increased by 3% in 2003-04, 26% in 2004-05 and 22% during POI. The profit/loss per unit from base year indexed 100 was 147 in 2003-04, 235 in 2004-05 and 71 during POI. The total profit/loss on captive consumption was 100 (Indexed) in base year, 147 in 2003-04, 289 in 2004-05 and 94 during POI.

Employment and Wages

Particulars	Unit	2002-03	2003-04	2004-05	2005-06
Employment					
Employee	Nos.	***	***	***	***
Trend	Indexed	100	109	132	132
Wages paid to employees	Rs. Lacs	***	***	***	***
Trend	Indexed	100	88	106	115
Wages per MT	Rs. lacs	***	***	***	***
Trend	Indexed	100	113	108	99

46. Number of employees increased by 32% during POI as compared to base year. Similarly, wages paid to employees increased by 15%. However, wages per unit of production declined to 99% during POI as compared to base year.

Productivity

Particulars	Unit	2002-03	2003-04	2004-05	2005-06
Productivity					
Employees	Nos	***	***	***	***
Production	MT	***	***	***	***
Productivity per employee	MT	***	***	***	***
Trend	Indexed	100	72	75	88

47. The production per employee declined to 88% during POI as compared to base year.

Inventories

Particulars	Unit	2002-03	2003-04	2004-05	2005-06
Average inventories	MT	***	***	***	***
Trend	Indexed	100	99	83	104

48. The average inventory (sufficient for number of days sales including captive sales) shows that it was equivalent to 60 days in 2002-03 and declined to 51 days during POI.

Return on Investment and Ability to Raise Capital

(Merchant sales)

Particulars	Unit	2002-03	2003-04	2004-05	2005-06
Net Fixed Assets	Rs. Lacs	***	***	***	***
Capital Employed-NFA Basis	Rs. Lacs	***	***	***	***
Return on Capital Employed	%	***	***	***	***
Trends	Indexed	100	54	192	62

(Captive consumption)

Particulars	Unit	2002-03	2003-04	2004-05	2005-06
Net Fixed Assets	Rs. Lacs	***	***	***	***
Capital Employed-NFA Basis	Rs. Lacs	***	***	***	***
Return on Capital Employed	%	***	***	***	***
Trends	Indexed	100	150	252	127

Return (PBIT) on capital employed remained positive from base year to POI, in case of merchant sales as well captive sales including merchant sales.

vi) Profits and actual and potential effects on the cash flow

49. The domestic industry is a multi-product company therefore it was not possible to determine the actual magnitude of cash-flow of the product.

vii) Factor affecting prices

50. Evaluation of export prices from subject country shows that it had been increasing from base year to POI by 9%. The customs duty has also been declining from base year to POI. From 30% in 2002-03 it declined to 15% during POI. The combined effect of decreased export price and reduced customs duty consequently impacted the landed value of subject goods.

Conclusion on Injury Parameters

51. The demand of subject goods declined to 89% in 2002-03, grew by 16% in 2004-05 and 25% during POI as compared to base year. The decline and growth in demand was driven by captive consumption of domestic industry. The captive consumption of the domestic industry declined to 95.41% in 2003-04, grew by 20% in 2004-05 and 29% in 2005-06 as compared to base year. One of the producers, no longer producing the subject goods had been procuring the subject goods from the domestic industry. The other producer was primarily utilizing the production of captive consumption. In 2003-04, only 4MT was sold as merchant sales whereas in 2004-05 and POI no merchant sale was made by other producer. The variation of the total sales was on account of variation in the captive consumption only.

52. The merchant sale of the domestic industry declined during POI and preceding years as compared to base year. Total sale (merchant sale and captive consumption) of domestic

industry declined to 94% in 2003-04, grew by 17% in 2004-05 and 21% in POI as compared to base year. The domestic industry enhanced capacity in 2003-04 by 10% and 21% in POI as compared to base year. The capacity utilization (enhanced) declined to 71% in 2003-04, 19% in 2004-05 and 95% during POI.

53. On merchant sales (small percentage of the total sales), the domestic industry was making profit. In 2004-05, there was sharp rise in profitability before making per unit loss in POI. It has been noted that the domestic industry had been selling one of the former producer of subject goods at constant price. The total profit/loss exhibit similar trend.

54. For captive consumption, domestic industry has been transferring goods at cost. In case, for captive consumption market prices are taken as transfer price, then the profitability of goods remain positive. However, there would be decline in profitability during the POI. Total profit would show similar trend. Return on captive employed for merchant sale and captive consumption remain same during injury period, however, there was decline on return during POI.

OTHERS KNOWN FACTORS

Volume and prices of imports from other sources

55. During the POI the imports have taken place only from China PR. Thus other sources are not possible factor causing injury to the domestic industry.

Contraction in demand and / or change in pattern of consumption

56. The total demand of the subject goods shows significant growth. It increased by 25% during POI as compared to the base year, therefore, this factor is not possible reason which could have caused injury to the domestic industry.

Trade restrictive practices of and competition between the foreign and domestic producers

57. The subject goods are freely importable and there are no trade restrictive practices in the domestic market. Therefore, this factor could not have been reason to cause injury to the domestic industry

Development of technology and export performance--

58. Technology or technology related issues have not been raised by any interested party as cause of injury to the domestic industry. It is noted that the domestic industry was exporting some quantity during the base year however, during the POI there were no export, therefore, this factor is not causing injury to the domestic industry.

Productivity of the Domestic Industry

59. Productivity of the domestic industry has shown improvement. It has declined to 12% during POI as compared to the base year. Wages to the employees have increased by 15% during POI and wages per unit of production remained same during POI as compared to the base year.

CAUSAL LINK

60. The submissions made by interested parties in respect of the issue of causal link have been examined. A detailed examination was made with regards to the issues pertaining to the material injury to the domestic industry and causal link between the material injury to the domestic industry and dumped imports. Paragraph (v) of Annexure II of the Anti-dumping Rules reads as under:

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

61. The growth in demand of subject goods primarily driven by captive consumption had benefited the domestic industry as indicated from increase in capacity, captive consumption and reduction in the average inventory.

62. The decline in market share of the domestic industry on account of merchant sale in 2003-04 to 2% was due to decline of demand of product and cannot be attributed to imports as imports in 2003-04 was only 16 MT. Thereafter the share of merchant sales increased to 4% in 2004-05 and declined to 3% in POI whereas share of imports from subject country increased to 9% and 13% during the same period. However, 52% of total imports in 2004-05 and 32% in POI was made by the domestic industry itself under the duty exemption scheme. The landed value of imports during 2004-05 and 2005-06 was higher than that of net sales realization of the domestic industry. Therefore, the decline in merchant sale cannot be attributed to the rise of imports.

63. The selling price of the domestic industry increased by 3% in 2003-04 and 25% in 2004-05 as compared to base year whereas cost of sales increased by 1% and 19% during the same period. On the other hand the landed value of imports after increasing by 9% in 2003-04 declined to 93% of the base period indicating very clearly that selling price was not being benchmarked with the landed value of imports. During POI, cost of sales increased as compared to 2004-05 whereas selling price declined during the same period. The landed value of imports increased during POI as compared to 2004-05 again indicating that selling price was not being benchmarked with the landed value of imports. The Authority has also observed that domestic industry was selling goods to one of earlier producer at a constant price.

64. The foregoing analysis shows that the production and sales of the subject goods was primarily driven by the demand of captive consumption. The share of merchant sale indicated no relationship with the quantity of imports. The selling price remained unaffected with the volume of imports and its landed value. The profitability and profit of the domestic industry shows no relationship with the quantity of its imports and its landed value.

LIKELIHOOD OF RECURRENCE OF DUMPING AND INJURY

The domestic industry has made submissions regarding recurrence of dumping:

Surplus capacity and export orientation of Chinese producers

65. It has been submitted that the capacities created by producers in China PR are significantly higher than demand in their local market. Further, there are several producers of the subject goods who are competing very aggressively with each other not only in the domestic market but in export market as well. It has been submitted that the capacities created by producers in China PR for Metronidazole and such other products where the product under consideration is consumed, are significantly higher than demand in their local market. It has been informed that the capacity in China is 5000 MT, production in China is 4000 MT, consumption in China is 1500MT, export from China is 2500 MT and excess unutilized capacity is 1000 MT. The Indian demand is 1526 MT. It has also been informed that by utilizing their excess capacity the Chinese producers would be in a position to reduce its losses. Therefore, the Chinese producers are resorting to dumping

Continuance of Dumping

66. It has been submitted that imports at present are being made under Advance License category. Anti-dumping duty paid imports are possibly nil at present due to duty itself, even though the difference between landed price of imports (without anti-dumping duty) and selling price of domestic industry is too significant. It has been submitted that in such a situation, on revocation of anti-dumping duty, the dumping of goods would aggravate in the imports other than the advance license category. It has also been submitted that there is no reason to believe that why the exporters and producers from China would not continuously dump on revocation of duty.

Examination by the Authority

67. As analysed in earlier section relating to dumping, the subject goods had been exported during POI at the dumped price. In absence of any evidence to the contrary, the dumping may continue on withdrawal of duty.

Recurrence of Injury

68. Regarding recurrence of injury the domestic industry has made following submissions:
Vulnerability of the Domestic Industry

69. It has been submitted that the performance of the domestic industry improved with the imposition of anti dumping duties. However, the performance is so fragile that revocation of anti dumping duties would once again lead to deterioration in the performance. Given the price undercutting that the imports would cause, the domestic industry would have to choose between reduction in the selling price and loss of volumes. Should the domestic industry reduce the prices to the extent of price undercutting, it is noted that the cash flow, ROI and profits of the domestic industry would once again decline. Should the domestic industry however choose to hold on to the prices, it is evident that the domestic industry would loose entire outside sale. It should be noted that there are very limited customers and producers of the product under consideration. The prevailing prices are known to all the customers. There is no difference in the product in terms of its properties. Therefore, the revocation of anti dumping duties would lead to pressure on the domestic industry to choose between price reduction and loss of volume. Either way, the revocation of anti dumping duties would lead to injury to the domestic industry. The entire merchant sales of the domestic industry are in the region of 300 MT. Surplus

unutilised capacities with each of the Chinese producers are in excess of this available demand. Therefore, any revocation of duty would mean that each of the Chinese producers would be able to cater to this entire demand. It has been submitted that the capacities created by producers in China PR for Metronidazole and such other products where the product under consideration is consumed, are significantly higher than demand in their local market. It has been informed that the capacity in China is 5000 MT, production in China is 4000 MT, consumption in China is 1500MT, export from China is 2500 MT and excess unutilized capacity is 1000 MT. The Indian demand is 1526 MT. It has also been informed that by utilizing their excess capacity the Chinese producers would be in a position to reduce its losses. Therefore, the Chinese producers are resorting to dumping.

Significant price undercutting by imports with current measures

70. Imports from subject country are undercutting price of the domestic industry and would be further undercut prices of domestic industry in the Indian market in case duty is revoked. There is a great likelihood of further injury to the domestic industry from dumped imports as the level of price difference between imported product and domestic industry's product is too significant even when domestic industry is charging unremunerative prices.

Level of dumping margin

71. It has been submitted that the dumping margin is significant as per the calculation made by the domestic industry and submitted to the Designated Authority.

Third Country Dumping

72. The 2 Methyl(5) Nitro Imidazole is being exported by Chinese producers to a number of countries in the world. Information available suggests that producers and exporters from China are dumping 2 Methyl(5) Nitro Imidazole in the other world markets also. This is evident from prices at which goods have been exported to a number of countries.

73. It has been submitted that there is a great possibility that revocation of duty will result in flooding of material in Indian market. In other words, the Indian market is vulnerable to imports, should the price offered by the exporter be lucrative.

Examination by the Authority

74. The domestic industry primarily used the production of subject goods for its captive consumption. The injury to the domestic industry on account of 3% merchant sales during POI cannot be directly attributed to the imports of the subject goods. The production, sales, profitability and profits are mainly on account of its captive consumption and remained unaffected because of imports.

75. Even if the merchant sales of the domestic industry gets affected by imports on withdrawal of duty, the production of the domestic industry and its profitability relating to its captive consumption will not be affected. Therefore, on withdrawal of duty, there is no likelihood of recurrence of injury to the domestic industry.

G. FINAL FINDINGS

76. The Authority after considering the foregoing concludes that:

77. Subject goods originating in or exported from China PR during POI has been found to be exported at below their normal value .And discontinuation of anti-dumping duties on the subject goods from subject country may result continuance of dumping.

78. The injury limited to merchant sale of the goods has not been found to be caused by dumped goods. And discontinuation of anti-dumping duties on the subject goods from subject country is unlikely to affect the performance of domestic industry and may not result in recurrence of injury.

79. In view of the above, the Designated Authority considers it appropriate to recommend discontinuation of the anti-dumping duties recommended earlier vide Notification No9/1/2001-DGAD dated 5.2.2002 and imposed on all imports of 2MNI classified under chapter 29 of the Customs Tariff Act, 1975 (as amended) originating in or exported from China PR

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

(R. Gopalan)
Designated Authority