

To be published in Part-I Section I of the Gazette of India Extraordinary

F. No.14/5/2014-DGAD

Government of India

Ministry of Commerce & Industry

Department of Commerce

(Directorate General of Anti Dumping & Allied Duties)

4th Floor, Jeevan Tara Building, 5, Parliament Street, New Delhi 110001

NOTIFICATION

Date: 20th October, 2015

(Final Findings)

Subject: Anti-dumping duty Investigation in the matter relating to import of Gliclazide originating in or exported from China PR

1. F.No.14/5/2014-DGAD:- Whereas, having regard to the Customs Tariff Act 1975 as amended from time to time (hereinafter also referred to as the Act) and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules,1995 thereof, as amended from time to time (hereinafter also referred to as the Rules); M/s Bal Pharma Ltd., Bangalore (hereinafter also referred to as the applicant, the petitioner or the domestic industry) filed an application before the Designated Authority (hereinafter also referred to as the Authority) in accordance with the Act and the Rules, for initiation of antidumping investigation concerning imports of Gliclazide (hereinafter also referred to as the subject goods), originating in or exported from China PR, alleging dumping and consequent injury and requested for levy of anti-dumping duties on the imports of the subject goods, originating in or exported from the said country.
2. And whereas, the Authority on the basis of sufficient evidence, submitted by the applicant issued a public notice vide Notification F.No.14/5/2014-DGAD dated 28th August, 2014, published in the Gazette of India, Extraordinary, initiating the subject investigation in accordance with the sub Rule 5 of the Rules supra, to determine the existence, degree and effect of the alleged dumping and to recommend the amount of anti-dumping duty, which, if levied, would be adequate to remove the injury to the domestic industry.

A. PROCEDURE

3. The procedure described below has been followed;
 - i. The Authority under the Rules supra, received a written application from M/s Bal Pharma Ltd., Bangalore on behalf of the domestic industry, alleging dumping of Gliclazide originating in or exported from China PR.
 - ii. Preliminary scrutiny of the application showed certain deficiencies, which were subsequently rectified by the Applicant. The application was, therefore, considered as properly documented. The Authority, on the basis of sufficient evidence submitted by the Applicant to justify initiation of the investigation, decided to initiate the investigation against imports of the subject goods from the subject country.

NON-CONFIDENTIAL

- iii. The Authority notified the embassy of the subject country in India about the receipt of the anti-dumping application before proceeding to initiate the investigation in accordance with sub-rule (5) of Rule 5 supra.
- iv. The Authority issued a public notice dated 28th August, 2014 published in the Gazette of India, Extraordinary, initiating anti-dumping investigation concerning imports of the subject goods originating in or exported from subject country to determine the existence, degree and effect of alleged dumping and to recommend the amount of anti-dumping duty, which, if levied, would be adequate to remove the injury to the domestic industry.
- v. A copy of the public notice containing information as per Rule 6 (1) of the AD Rules has been forwarded to the known producers/exporters of the article alleged to have been dumped, the Government of the exporting country concerned, importers/users and other interested parties as per the provisions of sub rule (2) of Rule 6. List of such parties provided by the applicant in the application has been considered by the Authority for this purpose.
- vi. The Authority also provided a copy of the application referred to in sub-rule (1) of Rule 5 of the AD Rules to the known exporters, the government of the exporting country, and also to other interested parties who made request in writing for the same as per Rule 6 (3) of the AD Rules.
- vii. The Authority also wrote to such interested parties calling for any information, in such form as specified, from the exporters, foreign producers and other interested parties as per Rule 6 (4) and parties were asked to submit such information within the time limits intimated to them. Necessary extension wherever warranted has also been permitted by the Authority. The parties who were not known to the Authority were given an opportunity to make their views in writing within forty days from the date of initiation of proceedings.
- viii. The Authority sent questionnaires to elicit relevant information to the following known exporters in subject country in accordance with Rule 6(4) of the AD Rules:
 - a) Zhejiang Jiuzhou Pharmaceutical Co., Ltd, Zhejiang Province, China PR,
 - b) Sino bright Import & Export Co., Guangdong, China PR,
 - c) Shandong Keyuan Pharmaceutical Co., Ltd, Shandong China PR,
 - d) Dragonfarm Co., Ltd, Hangzhou, China PR,
 - e) CIP Global Co., Ltd., Jinan, China PR,
 - f) Zhejiang Hengdian Imp. & Exp. Co., Ltd, Hangzhou, China PR,
 - g) Zhejiang Medicines and Health Products Import &Export Co., Ltd, Hangzhou, China PR.
- ix. In response to the initiation notification and intimation, the following exporters / producers from China PR have responded to the Authority by filing Exporter Questionnaire Response;
 - a) Shandong Keyuan Pharmaceutical Co Ltd, China PR
 - b) Zhejiang Jiuzhou Pharmaceutical Co Ltd, China PR

- x. The two producers/exporters from China PR i.e Shandong Keyuan Pharmaceutical Co Ltd, China PR and Zhejiang Jiuzhou Pharmaceutical Co Ltd, China PR responded, however, they have not filed the Market Economy Treatment (MET) Questionnaire or have not rebutted the presumption of non market economy status of China PR as per the anti dumping rules.
- xi. Questionnaires were sent to the following known importers / users of subject goods in India calling for necessary information;
 - a. Dr. Reddy's Laboratories Limited,
 - b. Micro Labs Ltd,
 - c. Ipca Laboratories Ltd,
 - d. Alembic Limited,
 - e. Alkem Laboratories Ltd,
 - f. Panacea Biotech Ltd,
 - g. Indoco Remedies Ltd,
 - h. INTAS Biopharmaceuticals Ltd,
 - i. Cipla Ltd,
 - j. Aristo Pharmaceuticals Pvt. Ltd,
 - k. Pragati Impex,
 - l. C.J. Shah & Co.
 - m. Kores Labs
 - n. Harika Drugs Private Limited
 - o. Kreative Organics Pvt. Ltd.
- xii. In response, following importers/users have responded by filing Importer Questionnaire responses/submissions;
 - a) Dr Reddy's Laboratories Ltd,
 - b) Panacea Biotec Ltd.
- xiii. Also, following importers/users responded to the Authority by making submissions/writing letters but did not file any Importer Questionnaire Responses as applicable;
 - a) Serdia Pharmaceuticals (India) Pvt Ltd,
 - b) Ipca Laboratories Ltd,
 - c) Micro Labs Limited.
- xiv. The Authority made available non-confidential version of the evidences presented by various interested parties in the form of a public file kept open for inspection by the interested parties;
- xv. The Non-injurious Price based on the cost of production and cost to make & sell the subject goods in India based on the information furnished by the domestic industry on the basis of Generally Accepted Accounting Principles (GAAP) and Annexure III to the Anti-dumping Rules has been worked out so as to ascertain whether anti-dumping duty lower than the dumping margin would be sufficient to remove injury to the Domestic Industry.

- xvi. Information provided by interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has accepted the confidentiality claims, wherever warranted and such information has been considered confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis was directed to provide sufficient non confidential version of the information filed on confidential basis.
- xvii. On site verification of the information provided by the applicant were conducted at the premises of the applicant and also the exporter/s. Only such verified information with necessary rectification, wherever applicable, is relied upon for the purpose of this disclosure statement.
- xviii. In accordance with Rule 6(6) of the Anti Dumping Rules, the Authority also provided opportunity to all the known interested parties to present their views orally in a public hearing held on 16th June, 2015. The parties, which presented their views in the public hearing, were requested to file written submissions of the views expressed orally. The interested parties were advised to file their rejoinder submissions thereafter. A second public hearing was held on 11th August 2015. This second Oral Hearing has been necessitated due to the change in the Designated Authority from the time of first Oral Hearing. This development mandates that a new public hearing be held by the new Designated Authority as per the judgement of the Honøble Supreme Court in the matter of Automotive Tyre Manufacturersø Association (ATMA) vs Designated Authority, delivered in Civil Appeal No. 949 of 2006 on 07-01-2011
- xix. Investigation was carried out for the period starting from 1st April 2013 to 31st March 2014 (POI). The examination of trends, in the context of injury analysis, however, covered the periods Aprø0-Marø1, Aprø1-Marø2, Aprø2-Marø3 and the period of investigation.
- xx. Request was made to the Directorate General of Commercial Intelligence and Statistics (DGCIS) to arrange details of imports of subject goods for the past three years and the period of investigation. The information was also submitted from secondary source namely IBIS. The data of DGCIS shows higher volume of imports therefore the Authority has relied upon the DGCIS data for the purpose of this finding.
- xxi. *** in this Disclosure statement represents information furnished by an interested party on confidential basis, and so considered by the Authority under the Rules.
- xxii. Exchange rate for conversion of US\$ to Rupees considered for the POI is Rs 60.85 per 1 US\$ as per customs notifications from time to time.

B. PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE

- 4. The product under consideration in the present investigation is øGliclazideø. Gliclazide is a bulk drug with a chemical name ø1-(Hexahydrocyclopenta (c) pyrrol- 2 (1H)-yl)-3-((4-methylphenyl) sulfonyl} ureaø and contains 100% (+/-1%) of C₁₅H₂₁N₃O₃, calculated with reference to the dried substance. Gliclazide is a white or almost white powder in appearance

practically insoluble in water, freely soluble in dichloromethane, sparingly soluble in acetone and slightly soluble in ethanol (96%). The subject goods are classifiable under Chapter 29 of the Custom Tariff Act, 1975 under Tariff item 2942 00 90. As provided in the application, subject goods are also being imported under other sub-headings such as 29110090, 2912 19 90, 2921 59 90, 2924 19 00, 2927 00 90, 2930 90 99, 2932 99 00, 2933 19 90, 2933 59 90, 2933 99 00, 2934 99 00, 2935 00 90, 2937 19 00, 2941 90 11, 2941 90 90, 2942 00 11, 2942 00 90, 3822 00 11, 3822 00 19. However, the HS Code is indicative only and in no way binding on the scope of the present investigation.

5. Gliclazide is used in Gliclazide based pharmaceutical preparations/formulations concerning Anti diabetic / Hypoglycemic drugs. Gliclazide is used for control of hyperglycemia in gliclazide-responsive diabetes mellitus of stable, mild, non-ketosis prone, type 2 diabetes. It is used when diabetes cannot be controlled by proper dietary management and exercise or when insulin therapy is not appropriate. There are many types/brands of anti diabetic medicines based on different molecules available in the market and Gliclazide based anti diabetic medicines are one of them.
6. The petitioner has claimed that the subject goods, which are being dumped into India, are identical to the domestic like product produced by the domestic industry. The applicant has claimed that there is no known difference in applicant's product and subject goods exported from the subject country and are comparable in terms of characteristics such as physical & chemical characteristics, manufacturing process & technology, functions & uses, product specifications, pricing, distribution & marketing and tariff classification of the goods and there is no significant difference in the subject goods produced by the applicant and those exported from the subject country and both are technically and commercially substitutable.

Examination by the Authority

7. The Authority notes that the product under consideration in the present investigation is Gliclazide.
8. The Authority also notes that there are no submissions made by any of the responding interested parties disputing the product under consideration in the present investigation.
9. Rule 2(d) of the AD Rules defines like article as follows:

“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 the characteristics closely resembling those of the articles under investigation”.
10. The Authority has examined the claims and notes that there is no known difference in subject goods produced by the domestic industry and exported from subject country. The subject goods produced by the domestic industry and that imported from subject country are comparable in terms of physical & chemical characteristics, manufacturing process & technology, functions & uses, product specifications, pricing, distribution & marketing and tariff classification of the goods. The two are technically and commercially substitutable. The consumers are using the two interchangeably. None of the opposing interested parties have raised any objection in this

regard. In view of the above, the subject goods produced by the applicant are being treated as domestic like article to the product under consideration imported from subject country in accordance with the anti-dumping Rules for the purpose this final finding.

C. SCOPE OF DOMESTIC INDUSTRY AND STANDING

11. Rule 2 (b) of the AD rules defines domestic industry as under:

“(2) (b) “domestic industry” means the domestic producers as a whole engaged in the manufacture of the like article and any activity connected therewith or those whose collective output of the said article constitutes a major proportion of the total domestic production of that article except when such producers are relate to the exporters or importers of the alleged dumped article or are themselves importers thereof in such case the term ‘domestic industry’ may be construed as referring to the rest of the producers”

12. It is noted that the application has been filed by M/s Bal Pharma Ltd., Bangalore on behalf of the domestic industry. According to the applicant, they are the sole manufacturer of the subject goods in India. It has been submitted by the applicant that some other producers who were engaged in the manufacturing of subject goods seem to have discontinued their manufacturing since last several years and were not operational in the entire injury period of the present investigation. The applicant has also provided the names and address of such other producers who were engaged in the production of subject goods in the past as per their information but have expressed their inability to give details of production by them as no information is available in public domain. The applicant has further certified that there are no imports of the product under consideration by the applicant or any of its related party from the subject country as per best of their knowledge and information.
13. It has been contended by one of the responding exporter that no details have been provided as to when did the other producers stopped producing the subject goods and no production and sales information of other four producers have been considered in the application for any of the year of the injury investigation period.

Examination by the Authority

14. The Authority notes in this respect that the Authority has sent Initiation Notification to all such other producers inviting them to submit necessary response before the Authority to gauge the factual position of their status or any other relevant information. The Authority, however, notes from the information furnished by the applicant that all such other producers discontinued their production since last many years and there is no evidence available to suggest that such other producers were engaged in the production of subject goods during any of the year of the injury investigation period. It is also noted that none of the interested parties have raised any substantial issues with regard to the standing and domestic industry status of the applicant
15. In view of the above position and since the production of the applicant accounts for a major proportion (comprises 100% of Indian production) in the total production of the subject goods in India, the Authority finds that the applicant constitute domestic industry within the meaning

of Rule 2 (b) supra and satisfies the criteria of standing in terms of Rule 5 (3) of the Anti-dumping Rules.

D. CONFIDENTIALITY

Submissions made by the Opposing Interested Parties

16. The submissions made by the producers/exporters/importers/other interested parties with regard to confidentiality and disclosure of information are as follows:
- i. The domestic industry has claimed excessive confidentiality and claimed whole lot of information as confidential without providing any legitimate reasons and in violation of the Rules and detailed procedure laid down by the Hon'ble Authority.
 - ii. There is insufficient final finding of information in the Non confidential version of application provided by the applicant in the present investigation.
 - iii. Basis of dumping margin, injury margin etc not disclosed.
 - iv. Proper rebuttal on certain claims by the applicant can only be made after disclosure of all relevant information.
 - v. The domestic industry has claimed all the adjustments made to export price as confidential without assigning any reasons for claiming confidentiality on the same.
 - vi. The details relating to normal value, export price and dumping margin all have been claimed as confidential and the values have been given in ranges. The domestic industry has also not given any reasons for not disclosing the said details.
 - vii. Profit / loss and ROCE in percentage terms have been kept as confidential.

Submissions made by the Domestic Industry

17. The submissions made by the domestic industry with regard to confidentiality and disclosure of information and considered relevant by the Authority are as follows:
- i. The EQ Response filed by the exporters and Importers Questionnaire response by importers does not reveal even volume information where as volume information such as capacity, sales, production etc pertaining to the domestic industry have been made available in the public file by the applicant.
 - ii. The responding exporters did not even disclose the range of dumping margins denying reasonable opportunity to the applicant to make effective submissions.

- iii. The Authority may direct the exporters/importers to disclose the quantitative information about exports/imports into India since there can't be any justifiable reason for treating such rudimentary information as confidential
- iv. Zhejiang Jiuzhou Pharmaceutical Co., Ltd, a responding exporter, kept even the name of share holders as confidential without any logical reasoning which is an excessive use of confidentiality. The Authority should disclose the names of the share holders of this exporter.
- v. Mere submissions of certain importers who have not filed the Importer Questionnaire Response should not be taken on record to observe fairness in the proceedings and it is undeniable that such parties are duty bound to provide all such information as prescribed by the Authority concerning the investigation to take part in the current proceedings.
- vi. Applicant has claimed confidentiality on certain information provided by them as allowed in rule 7 of the AD rules and a meaningful summary of such information were also provided. The claims of interested parties made during the hearing that the applicant did not make necessary disclosure are baseless.
- vii. The exporters/importers kept the figures pertaining to Export Volume, Import Volume, Production Capacity, Capacity utilization, Inventory in volume, Import price range/index, Export price range/index, Dumping margin % range etc confidential and this should not be permitted by the Authority.

Examination by the Authority

18. The various submissions made by the interested parties with regard to confidentiality/disclosure of information and considered relevant by the Authority are examined and addressed as follows:

- i. With regard to confidentiality of information, Rule 7 of Anti-dumping Rules provides as follows:-

Confidential information: (1) Notwithstanding anything contained in sub-rules and (7) of rule 6, sub-rule (2), (3) (2) of rule 12, sub-rule (4) of rule 15 and sub-rule (4) of rule 17, the copies of applications received under sub-rule (1) of rule 5, or any other information provided to the designated authority on a confidential basis by any party in the course of investigation, shall, upon the designated authority being satisfied as to its confidentiality, be treated as such by it and no such information shall be disclosed to any other party without specific authorization of the party providing such information.

(2) The designated authority may require the parties providing information on confidential basis to furnish non-confidential summary thereof and if, in the opinion of a party providing such information, such information is not susceptible of summary, such party may submit to the designated authority a statement of reasons why summarization is not possible.

(3) Notwithstanding anything contained in sub-rule (2), if the designated authority is satisfied that the request for confidentiality is not warranted or the supplier of the information is either unwilling to make the information public or to authorise its disclosure in a generalized or summary form, it may disregard such information.

- ii. Information provided by the interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has accepted the confidentiality claims, wherever warranted and such information has been considered confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis was directed to provide sufficient non confidential version of the information filed on confidential basis. The Authority made available the non-confidential version of the evidences submitted by various interested parties in the form of public file.

E. MISCELLANEOUS SUBMISSIONS

Submissions made by the Opposing Interested Parties

19. The summation of submissions made by the producers/exporters/importers/other interested parties with regard to miscellaneous issues during the course of the investigation is as follows;
 - i. Authority has acted in haste to initiate the present investigation, because overall interest of the essential drug users and pharma industry and overall end impact has not been taken into consideration by the Authority.
 - ii. The petitioner is not in a position to meet the Indian demand for the subject goods. Sales by the petitioner account only about 28% of the Indian demand. Even if their full capacity is taken into consideration, then also they can cater to only 50% of the Indian demand. This is when the diabetic cases in India have shown an increase of 123% between 1999 and 2013 as per a report in the Times of India dated 15.6.2015. The petitioner is also exporting huge quantities, which is also adding to the demand supply problem.
 - iii. Gliclazide formulations are controlled by NPPA and Gliclazide bulk drug price is not controlled, thus, anti dumping duties will have unfair effect on the drug manufacturers using the subject goods as raw material.
 - iv. AD duties may make imports costlier and demand supply gap may push up prices and diabetic patients may suffer. There is only a single producer of subject goods in India, thus, AD duty is not desirable.
 - v. Central Government did not impose anti dumping duty in the matter of Penicillin G and 6 APA, which was also a bulk drug, considering the demand supply issue. Hence, the Authority should not impose anti dumping duties in the present case also.

- vi. The price of Gliclazide Tablets produced by certain producers is subject to DPCO price control. Anti dumping duties, if proposed, should be worked out keeping in view these facts.
- vii. Imposition of anti dumping duties on subject goods will be against the policy of Government to make prices of branded/generic medicines cheaper.
- viii. The domestic industry has not provided a hard copy and a soft copy in excel file of the raw/original import data received by it from IBIS along with the application nor it has indicated that the same has been provided to the Authority.
- ix. It has been claimed on behalf of M/s Shangdong Keyun Pharma Co. Ltd, China that the Domestic Industry has claimed an inflated rate of return on Capital Employed to arrive at the non injurious price. It has been submitted that the Law requires that return to be adopted must be reasonable and not hypothetical. Reasonable means which can be substantiated with reason. Simple reason that DGAD has been adopting 22% consistently cannot be a ground for claiming reasonability. They have further stated that Designated Authority should adopt ROCE earned by the Industry when there was no allegation of dumping as reasonable profit margin and not 22% ROCE.

Submissions made by the Domestic Industry

20. The miscellaneous submissions made by the domestic industry during the course of the investigation are as follows:
- a) The claim of certain interested parties that overall interest of the majority users and overall end impact have not been taken into consideration by the Authority has no legal basis as the limited purpose of anti dumping duties are to remove the injurious effect of dumping and to re-establish fair play in the market.
 - b) The demand for Gliclazide has been in the range of 122 MT during the POI and the domestic industry's capacity has been at 60 MT/PA with significant level of inventories at hand during the POI. Even though it appears that the current capacity of domestic industry is sufficient to meet only about 50% of Indian demand, the fact of the matter is that the same has no bearing on the demand for diabetic medicines or diabetic patients as such in India. Gliclazide is only one of the molecules used for formulations for the treatment of Type II diabetes and the market information as per IMS- Health shows as follows with regard to the share of Gliclazide based diabetic medicines in India in overall diabetic medicine sales in India;

S.No		2013-14		2014-15		Growth (%)
		Rs.Cr	Share (%) of the total	Rs.Cr	Share (%) of the total	Over P.Y.
1	Diabetic Medicines Sales in India	5,353	100	6,692	100	25.01
2a	Type-1 (Insulin Based)	1,248	23.31	1,526	22.80	22.28

NON-CONFIDENTIAL

2b	Type-2(Oral based)	4,105	76.69	5,166	77.20	25.85
2b(i)	Non Gliclazide based	3,777	70.56	4,788	71.55	26.77
2b(ii)	Gliclazide based	328	6.13	378	5.65	15.24
3	Gliclazide sales of Petitioner as compared to overall diabetic medicines	15-20	Less than 1%	16-21	Less than 1%	
* Source:- IMS- Health, AN INTERNATIONALLY RECOGNIZED AGENCY						

- c) The information from IMS clearly shows that the Gliclazide based diabetic formulation constituted only about 6% of the total anti diabetic medicines during the POI and sales of the petitioner has been less than 1% of the total diabetic medicines; thus the claim by the importers that the diabetic patients of India will be adversely impacted due to limited supply of subject goods is nothing but a baseless allegation adopted to camouflage the enormity of dumping on the domestic industry. Anti Dumping duties are not to stop imports per se but it is only to ensure fair competition in the Indian market. Importers/users can continue to import but at a fair price and not at dumped prices.
- d) The National Pharmaceutical Pricing Authority being satisfied that it is necessary in the public interest to do so, notified the maximum retail price, including excise duty and local taxes, vide Notification No S.O 1730 (E), on formulation pack manufactured / marketed in brand name by M/s Panacea Biotech, M/s Serdia, M/s Dr. Reddy's Labs, M/s Indoco, M/s IPCA Labs, M/s Cadila Pharm. This order was necessitated because these producers charged a price for Gliclazide medicines exceeding the limit of simple average price of the medicine plus 25% as per market based data provided by M/s IMS-Health for the month of April, 2014.
- e) It has been an argument of the opposing party that the DPCO price control along with anti dumping duty will have a huge cost impact on the price of Gliclazide based anti diabetic drugs. The relevant information in the table below gives numbers regarding the impact of 30% anti dumping duties, if imposed, and shows that such an argument is baseless and the impact would be very minimal. The below analysis is on the drug price as fixed by DPCO for certain producers. The analysis is based on price of imported Gliclazide which is self explanatory;

	Unit	30MG	40MG	60MG	80MG
Landed Price from China PR	Rs/KG	5,114	5,114	5,114	5,114
Landed Price from China PR if 30% ADD is Imposed	Rs./Tab	6,504	6,504	6,504	6,504
Increase in Cost on account of ADD	Rs./Tab	0.04	0.06	0.08	0.11
MRP as per DPCO/NPPA Order concerning Panacea, Serdia, Dr Reddy's, Indoco, IPCA and Cadila	Rs./Tab	5.77	3.26	9.90	5.00
Cost increase in relation to MRP	%	0.72	1.71	0.84	2.22

- f) It may be noted that the impact of any anti dumping duty would be very negligible which is at best @ 0.72% to 2.22%. And even if the drug manufacturers are not able to pass on

such negligible increase to the customers, then also it would only have a very trifling impact on their profits and without substantial increase in cost. Thus, the argument that the AD duties will lead to increase in price of the anti diabetic medicines in general are totally baseless.

- g) The price of Gliclazide Tablets produced by certain producers is subject to DPCO price control. However, no anti dumping duty should be based on this price since the DPCO price control is not for the subject goods and the price control is not country wide. It pertains to certain producers of Gliclazide Tablets who were found to be over charging the diabetic patients.
- h) A fair price for Gliclazide would be in the long term interest of Indian users of Gliclazide based diabetic medicines and existence of the domestic industry is highly dependent on fair price for the subject goods in the market. If dumping leads to closure of M/s Bal Pharma, the only remaining producer of this bulk drug in India, India would be solely dependent on imported subject goods which can create monopolistic pricing by China PR. Thus, imposition of anti dumping duties on Gliclazide are not against public interest as alleged by the importers/users but it is essential to protect the public interest in the long run.
- i) The contention of the interested parties that the DI does not have the capacity is therefore they cannot seek imposition of ADD is misguided. The capacity over the years remained the same when the demand increased because of the presence of dumped materials from China PR and the petitioner was suffering huge losses. Had the petitioner been in a position to sell the material at remunerative prices, it could have expanded the capacity also. Notwithstanding the above, the Gliclazide based diabetic medicines constitute only around 6% of the total diabetic medicines in India and there is no such supply gap vis-à-vis diabetic medicines and capacity to produce Gliclazide as imputed by the importer. It is a fact that the present capacity of petitioner is about 51% of the Indian demand for Gliclazide (and not diabetic medicines), but this can be increased in case of a fair market condition and is no justification for allowing dumping to continue. Moreover, the jurisprudence is clear from the decision of the Honøble Tribunal and various decisions of the Authority as mentioned below for ready reference that meeting entire demand is not a pre condition to seek protection against dumping.
- j) The claim of certain interested party that production by domestic industry does not account even for 50% of domestic demand and that they do not have dedicated capacity for the subject goods, has no legal or factual basis to say that no anti dumping duty should be imposed. It can be seen from the petition that the market share of the domestic industry in the domestic demand remained around 28% during the POI wherein it has the capacity to cater to more than 50% of the domestic demand. The jurisprudence surrounding the ability of the domestic industry to cater to the significant portion of domestic demand has been a contentious issue in several investigation and the Designated Authority and also the Honøble CESTAT has taken an unambiguous view on this aspect which clearly illustrates that the domestic producer seeking protection under anti dumping scheme is

not duty bound to meet the entire or any significant portion of the domestic demand, nor it is a prerequisite to file an application for imposition of anti dumping duties. Anti dumping duties are not against imports per se. Anti dumping duties are targeted to re-establish a level playing field in the domestic market by eliminating elements of dumping. The views taken by the Authority in certain past cases and also CESTAT in this respect are as follows;

- i) CESTAT- DSM Idemitsu Limited Versus Designated Authority (2000 (119) E.L.T. 308 (Tribunal)

” 11. As can be seen from the record not only its market share has been increased substantially but goods were dumped into India at low price compared to other countries. For instance, during 1996-97 Japanese price was Rs. 50 per Kg. as against Rs. 68 per Kg. of other exporting countries. It was submitted on behalf of the appellants that Domestic Industry was not in a position to meet the market requirements and hence, Japan came to the rescue of needy consumers in supplying the requisite material. If the exporters wanted to supply the goods to meet the requirement in Indian market that could be done by exporting the requirements at a price equivalent to normal value but not at a dumped value and to capture the market, as it was rightly pointed out by the counsel for the Designated Authority. On going through the worksheet of the Authority and the confidential information placed before us, we find that fair selling price of EPDM was determined at optimum level of capacity utilization for the period of investigation. The D.A. has clearly brought out that Domestic Industry has suffered material injury and it was compelled to sell the goods at prices below the cost of production. Balance sheets for the relevant years also substantiate this position that right from the start of commercial production, the unremunerative pricing has led to losses every year. It has not been able to charge a fair selling price which permits recovery of full cost of production and earn a reasonable profit and even it could not attain the estimated target due to dumped imports from Japan. (Italics supplied)”.

- ii) Sunset Review (SSR) anti-dumping investigation concerning imports of Acetone, originating in or exported from Korea RP- Final Findings dated 4th December, 2014.

“29. As regards the submission that domestic industry is not capable of meeting the entire demand in the country and import is inevitable, the Authority notes that it is not mandatory on the part of the domestic industry under the Anti-dumping Rules 12 to fulfil the entire demand to be eligible for a fair price in the market. Moreover, the Authority notes that imposition of anti-dumping measures do not prevent the importers/users to import, but rather ensures multiple sources of supply at fair and competitive prices”. (Italics supplied)

- iii) Anti-dumping investigation concerning imports of Phenol originating in or exported from Taiwan and USA-Final Findings dated 6th August, 2014.

“47. i. With regard to the contention that imposition of Anti Dumping Duty will be in violative of WTO Agreement especially when petitioner company meets only 12% of the demand, the Authority notes that the imposition of the 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. The consumers could still maintain all sources of supply at a fair market price. Imposition of anti dumping duties, therefore, would not affect the availability of the product to the consumers. The Indian Rules or WTO Agreement does not contain any provision with regard to minimum share that the domestic industry must command in demand/consumption of the product in the Country before the domestic industry can seek redressal against dumping under the Rules” (Italics supplied)

- iv) Anti-dumping investigation on import of PVC Suspension Resin from European Union (EU) and Mexico ó Final findings dated 4th April, 2014

“115. With regard to the contention that despite significant demand supply gap, the domestic industry has not expanded capacities, the authority notes that while it may be true that the domestic industry may not be able to meet the demand, the same does not justify existence of dumping of the product and adverse price effect on the domestic industry. It is also noted that the domestic industry has contended that continuous adverse market conditions with regard to product under consideration has prevented the domestic producers from further enhancing the capacities” (Italics supplied)

- k) Concerning the contention that the petitioner is exporting huge quantities and this is adding to the demand supply issue, it is submitted that exports by the petitioner are not by denying the subject goods to the Indian customers. In fact, export takeoff helped the petitioner to avert a complete shut down on account of injurious dumping from subject country. Also, the volume realisation in the domestic market was moderate however the petitioner got a huge loss making price as a result of availability of dumped material from China PR.
- l) It is also submitted that even though significant demand for the product remained in the Indian market, the domestic industry was put in a situation of huge financial losses as an effect of injurious dumping from subject country. In fact, continuous adverse market conditions with regard to subject goods on account of dumping from China PR prevented the domestic industry from achieving any reasonable and legitimate profits and further enhancing the capacities.
- m) It is an incorrect observation that there is unjustified increase in depreciation and interest and how fixed assets increased when capacity remained the same. In this regard, these figures as such haven't increased. The proforma IV A shows the domestic figures and the increase in figures such as depreciation, interest, NFA needs to be seen in light of significant variation in domestic sale and export sale over the years. The figure after apportionments also would undergo changes in proportionate to variations in domestic sale and export sale position and would reflect differently over the years accordingly even though the overall and per unit figures show a comparable picture. Thus, the

apprehensions of the importer are misplaced and the facts of present case and the Safeguard case cited by the importer are different. Here, the cause of injury is dumping and any injury on account of other factors not attributed to dumping.

- n) Concerning the contention of certain interested parties that imposition of anti dumping duties will limit the availability of subject goods, it is submitted that this is a misconception. Imposition of anti dumping duties will ensure level playing field in the market for both Indian and foreign suppliers and the same will not restrict availability of subject goods. The law/WTO Agreement does not permit dumping in the commerce of another country and any beneficiary of such dumping is enjoying an illegitimate benefit which is subject to be axed by appropriate anti dumping measures. Legitimate interests of domestic industry can only be protected through imposition of anti dumping duties in the present case.
- o) Concerning the contention of certain interested parties that costlier imports and demand supply gap may push prices up and diabetic patients may suffer, moreover there is only a single producer of subject goods. It may be mentioned that imposition of anti dumping duties are not to stop imports, rather it provides a level playing field for imported as well as indigenous products. Diabetic patients would not suffer as anti dumping duties would not restrict the availability of the product. In fact, M/s Bal Pharma is the last surviving producer in India and it is in the interest of diabetic patients and India as a country at large that this company should be protected, else the price of imports of subject good will go up unchecked if no domestic producer is exists in India. Thus, duty is inevitable.
- p) Concerning the contention of certain interested parties that huge demand supply gap necessitated imports, it is submitted that demand supply gap do not permit dumping in the market. Domestic industry's share in the domestic demand remained at around 28%. Company was forced to match its prices with the dumped prices offered by the Chinese producers leading to huge financial losses. In fact, the market share of 28% maintained by the company was not so prudent in light of huge losses suffered by the company. And even such market shares can't be maintained for any prolonged time at the cost of financial losses. Thus, the issue is not of demand supply gap, the issue is the dumped prices offered by Chinese producers. Imposition of anti dumping duties will re-establish a level playing field in the market and the domestic industry would be in a position to supply more quantity at prudent prices.
- q) Concerning the contention of certain interested parties that price of Gliclazide formulations by certain producers are controlled by NPPA and Gliclazide bulk drug price is not controlled, it is submitted that anti dumping duties are not taxations which will lead to price increases per se. Anti dumping duties are determined at a level to remove the injurious effect of such dumped prices and import price of the subject goods with applicable anti dumping duties needs to be construed as the fair price of the subject goods. Hence, the contention has no meaning. Moreover, it can be reasonably assumed that NPPA would have determined the price for formulations considering fair prices of raw materials with reasonable returns and not by considering the dumped rates of key raw materials. Theoretically, if the raw material prices increase after imposition of anti dumping duties, then the producers of formulations are at liberty to approach the NPPA for a review of the prices. Thus, the NPPA price control of formulations for certain

producers is no argument or justification to deny fair price for subject goods in the Indian market produced by the domestic industry or to promote dumping of subject goods in the country. The jurisprudence is settled on this account. It is also noteworthy that life saving drugs like Metronidazole is also attracting anti dumping duty in India for more than a decade.

- r) Concerning the contention of certain interested parties that the Central Government did not impose anti dumping duty in the matter of Pencilin G and 6 APA, the contention has no nexus to the investigation under question. Prerogatives of the Central Government under Rule 18 will come into picture only after a recommendation by the Designated Authority. Any decision by the Central Government may depend upon the facts of the particular case. In fact the Central Government has imposed anti dumping duties on life saving drugs like Metronidazole, bulk drug like Cefadroxil Monohydrate, Ceftriaxone Sodium Sterile etc. Also, it can be noted that while the domestic industry in Pen G and 6APA had the capacity to meet 31% and 12%, Bal Pharma's capacity is sufficient to meet more than 50% of the domestic demand and the company was left with unutilized capacity during the POI. Notwithstanding these factual position, the most crucial fact which the Authority should take note of in this case is that at least four other Indian producers who were manufacturing the subject goods have closed their production due to unviable and injurious situation created by dumping. Fate of petitioner also would not be different if the dumping is not stopped. Having caused the closure of certain producers and putting the sole remaining producer of subject goods under severe material injury, the importers/exporters cannot now take the plea that domestic industry is not in a position to meet the Indian demand and no anti dumping duty should be imposed.

Examination by the Authority

21. The various miscellaneous issues raised by the interested parties considered relevant by the Authority are examined and addressed as follows:
- a) With regard to the argument that the Authority acted in haste to initiate the present investigation and the overall interest of the essential drug users and pharma industry and overall end impact has not been taken into consideration; it is noted that the present investigation has been initiated based on sufficient prima facie evidences showing dumping of subject goods from China PR and consequent injury suffered by the domestic industry as required in the anti dumping rules. The Authority had also called for additional information wherever required and examined the information furnished by the domestic industry. Also, upon initiation all the interested parties were given an opportunity to submit their submissions following the initiation which is a matter of consideration in this investigation. Anti-dumping investigations are based on facts and the law mandates analysis and assessment of magnitude of dumping and consequent injurious effect on the domestic industry and the lesser duty rule as accepted in Indian anti dumping rules aiming at the end impacts or no measure beyond what is essential.
- b) With regard to the submission that the petitioner is not in a position to meet the entire Indian demand and even the capacity set up by the petitioner is only at around 50% of the Indian demand, the Authority notes that the imposition of the 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. The consumers could still access all sources of supply at a fair market price. Imposition of anti dumping duties, therefore, would not affect the availability of the product to the consumers. The Indian Rules or WTO Agreement does not contain any provision with regard to minimum share that the domestic industry must command in demand/consumption of the product in the Country. The Authority further notes that the antidumping rules provide for imposition of suitable and adequate anti-dumping measure to provide a fair and level playing field to the domestic industry vis-à-vis dumping.

- c) With regard to the argument that the diabetic cases in India have shown an increase of about 123% between 1999 and 2013 as per a report in the Times of India dated 15.6.2015 and the anti dumping duties would lead to shortages of anti diabetic medicines in India, the Authority notes that Gliclazide is only one of the molecules which goes into the production of anti diabetic medicines and as per the information available on record indicates that Gliclazide based drugs are only about 6% of the total anti diabetic medicines in India. Even if duties are imposed, the quantum of duty would only be to such an extent as to establish a fair price for the product in the Indian market and not beyond that. Thus, the argument that entire population of diabetic patients will be impacted upon imposition of anti dumping duties in Gliclazide is not true.
- d) With regard to the argument that AD duties may make imports costlier and demand supply gap may push prices up and diabetic patients may suffer thus AD duty is not desirable, the Authority notes that the purpose of anti-dumping duties, in general, is to eliminate injury caused to the domestic industry by the unfair trade practices of dumping so as to re-establish a situation of open and fair competition in the Indian market, which is in the general interest of the country. Imposition of anti-dumping measures would not restrict imports from the subject country/territory in any way, and, therefore, would not affect the availability of the product to the consumers. It is recognized that the imposition of anti-dumping duties might affect the price levels of the product manufactured using the subject goods and consequently might have some influence on relative competitiveness of this product. However, fair competition in 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, and would prevent the decline in the performance of the domestic industry and help maintain availability of wider choice to the consumers of the subject goods.
- e) The submission that Gliclazide formulations are controlled by NPPA but Gliclazide bulk drug price is not controlled and imposition of anti dumping duties will affect the drug manufacturers using the subject goods as raw material was noted by the Authority. The relevant extracts of the notification are as below:

“ The National Pharmaceutical Pricing Authority monitors the prices of decontrolled (non-scheduled) formulations on regular basis and wherein, from the data obtained

from IMS-Health, it was observed that prices of Gliclazide Tablets in the strength of 30mg, 40mg, 60 mg and 80 mg manufactured / marketed in brand name by the respective company namely M/s Panacea Biotech, M/s Serdia, M/s Dr. Reddy's Labs, M/s Indoco, M/s IPCA Labs, M/s Cadila Pharma were found exceeding the limit of simple average price of the medicine plus 25% as per market based data provided by M/s IMS-Health for the month of April, 2014. In accordance with the guidelines issued by the NPPA, after approval of the Competent Authority, in respect of price fixation of non-scheduled formulations under para 19 of DPCO, 2013, prices of such formulations, as specified in the table below, manufactured / marketed by the above mentioned company(ies) were unjustified and against public interest in as much as it puts an unreasonable burden on the consumers without sufficient justification.

Now, therefore, in exercise of the powers delegated under para 19 of the Drugs (Prices Control) Order, 2013 vide S.O. No. 1394(E) dated 30th May, 2013 issued by the Government of India in the Ministry of Chemicals and Fertilizers, and thereafter, the National Pharmaceutical Pricing Authority being satisfied that it is necessary in the public interest so to do, hereby notifies the maximum retail price including excise duty and local taxes, of the following formulation pack manufactured / marketed in brand name by M/s Panacea Biotech, M/s Serdia, M/s Dr. Reddy's Labs, M/s Indoco, M/s IPCA Labs, M/s Cadila Pharma, as applicable".

- f) It is noted that the DPCO has imposed price controls for Gliclazide Tablets produced by certain drug manufactures only and it is not a country wide measure. The reason notified by NPPA for such measure was to rectify the unreasonable burden on the consumers and fix a maximum retail price for Gliclazide tablet manufactured / marketed in brand name by M/s Panacea Biotech, M/s Serdia, M/s Dr. Reddy's Labs, M/s Indoco, M/s IPCA Labs, M/s Cadila Pharma to avoid unjust prices charged by these producers. This was done in public interest. The price controls imposed by DPCO on Gliclazide based drugs produced by certain drug manufacturer has no bearing on the operation of AD Rules. Also, anti dumping duties have a limited purpose of counteracting dumping and injury caused on account of the same so as to re-establish a fair market situation in India.
- g) With regard to the argument that the Central Government did not impose anti dumping duty in the matter Pencilin G and 6 APA, which was also a bulk drug, considering the demand supply issue, the Authority notes that the role of Designated Authority in anti dumping investigation is recommendatory in nature and the decision of the Central Government to impose or not to impose duty is a matter of its discretion based on facts of each case exercised upon recommendations by the Designated Authority. While it is clear that facts of the present case are fairly different from that of the case cited by the interested parties, it is also noted that the said cases did not set any precedence for the Designated Authority to act in a particular manner while recommending duties.

- h) With regard to the contention that imposition of anti dumping duties on subject goods will be against the policy of Government to make prices of branded/generic medicines cheaper, it is noted that the antidumping rules provide for imposition of suitable and adequate anti-dumping measure to provide a fair and level playing field to the domestic industry vis-à-vis dumping.
- i) With regard to the contention that the domestic industry has not provided a hard copy and a soft copy in excel file of the raw/original import data received by it from IBIS along with the application nor it has indicated that the same has been provided to the Authority, the Authority notes that the petition, both CV and NC version, contains transaction wise import information about import of subject goods from subject countries and other. All the relevant information was made available to interested parties in the public file maintained in the Directorate and open for inspection any time.
- j) With regard to the issue raised by the exporter concerning increase of fixed assets without any corresponding increase in installed capacity, it has been observed that additions in fixed assets are towards replacement of equipments which has not resulted in any capacity enhancement. The NIP has been worked out keeping this aspect in consideration.
- k) With regard to the argument of the exporter concerning return on capital employed, it is submitted that the NIP in an antidumping investigation is determined as per Annexure III of the AD rules and the same provides for a reasonable return on capital employed as well. The Authority as a matter of consistent practice has been allowing 22% return on capital employed while determining the NIP. With regard to the CESTAT case cited by the exporter, it is submitted that the facts of the said case is different from the present case nor there is any court ruling which prohibits the Authority from adopting its consistent practice on reasonable return while determining NIP in the present case. Also, the practice of EC is not binding on the Indian Authority and what is relevant is its consistent practice.

ASSESSMENT OF DUMPING – METHODOLOGY AND PARAMETERS

F. MARKET ECONOMY TREATMENT, NORMAL VALUE, EXPORT PRICE AND DUMPING MARGIN.

a. Market Economy Treatment

- 22. It is noted that Shandong Keyuan Pharmaceutical Co Ltd and Zhejiang Jiuzhou Pharmaceutical Co Ltd from China PR have responded to the Authority by filing the EQ Response following initiation of the present investigation. It is also noted that these two responding producers/exporters from China PR, have not filed the MET questionnaire response to rebut the presumption of non market economy country as per the terms of Para 8 (2) of the Annexure I to AD rules.

Submissions made by the Opposing Interested Parties

- 23. Submissions made by the producers/exporters/importers/other interested parties are as follows;

- i. Normal value cannot be determined on the basis suggested by the applicant as it depends upon the nature of technology, consumption norms of raw materials and the plant capacity.
- ii. The method of computing dumping margin is not correct and illusory, as situation and plant conditions are different. Not even minimum disclosure on these aspects has been made.
- iii. The petitioner has determined Net Export Price and Landed Value incorrectly. No evidences of determination of Normal value, export price dumping margin etc been provided.

Submissions made by the Domestic Industry

24. The submissions made by the domestic industry are as follows;
- i. China PR should be treated as Non Market Economy country for the purpose of present investigation and Normal Value in case of Chinese producers should be determined as per the provisions of Annexure I Para 7.
 - ii. Chinese producers have been denied MET status in several investigations including recently concluded investigations by both Indian Authority and other countries like EU, USA, Australia etc as a part of various anti dumping investigations by treating China PR an NME country.
 - iii. MET status can be given only in the event of fulfilment of all the MET conditions by the responding producers/exporters and not otherwise. Thus, requirements of para 8 (3) of Annexure I of AD rules has to be fulfilled holistically to obtain MET status.
 - iv. Market economy status cannot be given in a situation where one of the major shareholders is a State owned/controlled entity. Market economy status cannot be granted unless the responding Chinese exporters pass the test in respect of each and every parameter laid down under the rules
 - v. Market economy status cannot be given unless the responding Chinese exporters establish that the prices of major inputs substantially reflect market values. The expression "substantially reflect market values" has been widely interpreted to mean that the price of these inputs must be comparable to the prices prevailing in the international market. The fact that such prices are comparable to the price prevailing in China is grossly insufficient.
 - vi. Market economy status cannot be given unless the responding exporter establishes that their books are audited in line with international accounting standards. Market economy treatment must be rejected in such situations where Chinese exporters are unable to establish that their books are consistent with International Accounting Standards (IAS).

NON-CONFIDENTIAL

- vii. The onus is on the responding Chinese exporters to establish that they are operating under market economy conditions after satisfying all the conditions mentioned in AD Rules.
- viii. Market economy status cannot be granted unless the responding company and its group as a whole make the claim. If one or more companies forming part of the group have not filed the response, market economy status must be rejected, irrespective of the fact that the other companies of the group involved in production or sale of the product under consideration have filed the response.
- ix. In a situation where the current shareholders have not set up their production facilities themselves but have acquired the same from some other party, market economy status cannot be granted unless process of transformation has been fully transparent and completely established through documentary evidence.
- x. The cooperating producers/exporters in the present investigation have not rebutted the presumption of NME status by filing all relevant information as per MET Questionnaire. China PR should be treated as Non Market Economy country based on this fact alone.
- xi. The EQ Response filed by Shandong Keyuan Pharmaceutical Co., Ltd appears incomplete and certain material facts apparently have not been disclosed to the Authority. As per the information available, the principal share holders of this exporter are Shandong LinuoKefeng Pharmaceutical Co., Ltd., and Linuo Group Co., Ltd. The information also shows that Linuo Group is the main holding company/group and both Shandong Keyuan Pharmaceutical Co., Ltd and Shandong LinuoKefeng Pharmaceutical Co., Ltd. are part of Linuo Group. However, it has been submitted by the exporter that its share holders/related companies are not engaged in the production or sale of the subject goods. On the contrary, available information shows that Shandong LinuoKefeng Pharmaceutical Co., Ltd was the first company to get government license to produce Gliclazide in China PR. The non disclosure of this information and non participation of the said company have material impact on any determination of individual margin for the responding exporter. The EQ Response also says that Shandong LinuoKefeng Pharmaceutical Co. Ltd, purchases Gliclazide as a raw material from the responding exporter. The nondisclosure about production by Shandong LinuoKefeng Pharmaceutical Co. Ltd also puts serious doubts on the submission that this company has not exported the subject goods to India. Thus, Shandong Keyuan Pharmaceutical Co., Ltd should not be granted individual margin.
- xii. Zhejiang Jiuzhou Pharmaceutical Co., Ltd has resorted to excessive confidentiality in its response and very basic information which ought to have been disclosed such as name of share holder have been held confidential without any logical reasoning. In view of the above, we request the Authority to subject the EQ Response by this also exporter to strict scrutiny and call for information from DG Systems/Customs to ascertain the factual position of exports by this exporter. Until the factual position is gauged by the Authority, this exporter also should not be granted individual margin.

Provisions relating to Non- Market Economy countries

25. The Authority notes that the relevant provisions laid down under Annexure I to the Antidumping Rules with regard to "Market Economy Treatment" are as follows;

[8. (1) The term "non-market economy country" means any country which the designated authority determines as not operating on market principles of cost or pricing structures, so that sales of merchandise in such country do not reflect the fair value of the merchandise, in accordance with the criteria specified in sub-paragraph (3).

(2) There shall be a presumption that any country that has been determined to be, or has been treated as, a non-market economy country for purposes of an anti-dumping investigation by the designated authority or by the competent authority of any WTO member country during the three year period preceding the investigation is a nonmarket economy country.

Provided, however, that the non-market economy country or the concerned firms from such country may rebut such a presumption by providing information and evidence to the designated authority that establishes that such country is not a non-market economy country on the basis of the criteria specified in sub-paragraph (3).

(3) The designated authority shall consider in each case the following criteria as to whether:

(a) the decisions of the concerned firms in such country regarding prices, costs and inputs, including raw materials, cost of technology and labour, output, sales and investment, are made in response to market signals reflecting supply and demand and without significant State interference in this regard, and whether costs of major inputs substantially reflect market values;

(b) the production costs and financial situation of such firms are subject to significant distortions carried over from the former non-market economy system, in particular in relation to depreciation of assets, other write-offs, barter trade and payment via compensation of debts;

(c) such firms are subject to bankruptcy and property laws which guarantee legal certainty and stability for the operation of the firms, and

(d) the exchange rate conversions are carried out at the market rate:

Provided, however, that where it is shown by sufficient evidence in writing on the basis of the criteria specified in this paragraph that market conditions prevail for one or more such firms subject to anti-dumping investigations, the designated authority may apply the principles set out in paragraphs 1 to 6 instead of the principles set out in paragraph 7 and in this paragraph]".

[(4) Notwithstanding, anything contained in sub-paragraph (2), the designated authority may treat such country as market economy country which, on the basis of the latest detailed evaluation of relevant criteria, which includes the criteria specified in sub paragraph (3), has been, by publication of such evaluation in a public document, treated or determined to be treated as a market economy country for the purposes of anti dumping investigations, by a country which is a member of the World Trade Organization].”

Examination by the Authority

26. The Authority notes that in the past many years China PR has been treated as a non-market economy country in anti-dumping investigations by India and other WTO Members. China PR has been treated as a non-market economy country subject to rebuttal of the presumption by the exporting country or individual exporters in terms of the Rules.
27. The Authority notes that none of the producers/exporters of the subject goods from China PR who responded to the Authority in the present investigation has submitted the Market Economy Treatment questionnaire consequent upon the Initiation Notification issued by the Authority or has sought to rebut the non-market economy presumption.
28. It is also noted that the responding producer/exporter namely Shandong Keyuan Pharmaceutical Co Ltd and Zhejiang Jiuzhou Pharmaceutical Co Ltd, China PR have not claimed MET status by filing all the relevant information as per the MET questionnaire or has sought to rebut the non-market economy presumption. This shows, the firms from China PR may not be able to rebut such a presumption by providing information and evidence to the Authority that establishes that such country is not a non-market economy country on the basis of the criteria specified in sub-paragraph (3) of Para 8 to the Annexure I.
29. In view of the same, the Authority finds it appropriate not to grant MET status to these responding producers/exporters i.e. Shandong Keyuan Pharmaceutical Co Ltd, China PR and Zhejiang Jiuzhou Pharmaceutical Co Ltd, China PR and also to all other producers/exporters from China PR in the present investigation.

b) Determination of Normal Value

Submissions made by the Opposing Interested Parties

30. The application does not contain relevant information sufficient to determine normal value, export price and dumping margin to justify an initiation of anti dumping investigation against China PR.
31. The petitioner has determined Net Export Price and Landed Value incorrectly and no evidences of determination of Normal value, export price dumping margin etc has been provided.
32. It has been submitted by Zhejiang Jiuzhou Pharmaceutical Co Ltd from China PR that the subject goods i.e. Gliclazide are manufactured as per the norms prescribed under Indian Pharmacopeia (IP), British Pharmacopeia (BP) and European Pharmacopeia (EP). The

manufacturing norms are stricter for EP as compared to IP/BP. There is not much difference in IP/BP grades and therefore these two grades can be taken under one category. With the stricter norms of EP, the EP grade cost of production is significantly higher as compared to IP/BP grades and thus EP grade is sold at a higher price. They have requested for making a fair comparison for the two sets of grades of Gliclazide i.e. EP and IP/BP separately for the determination of dumping margin in accordance with the provisions of Article 2.4 of the WTO ADA and Rule 10 read with Para 6 of Annexure I of the Indian Anti-dumping Rules.

Submissions made by the Domestic Industry

33. In relation to certain contentions raised by some interested parties on determination of normal value and dumping margin, it is submitted that the applicant submitted normal value and dumping margin as per the available information and methods permissible specified in the AD Rule and relevant annexure to the rule. Details of such calculations are provided in the NCV application which is elaborate and contains all essential specifics. Thus, the misapprehensions and contentions of the interested parties have no basis.
34. The argument of the exporter that a fair comparison should be made by classifying the PUC into IP/BP grades and EP grades is without any merit. The exporter is making certain unsubstantiated claims in this respect for the first time whereas in the EQR itself the exporter admitted that "There is only one type of the product concerned". Even the information in EQR is provided on this basis and no claim whatsoever about grades have been made by the exporter. In fact, certain claims of the exporter by way of this written submission casts serious doubts on the credibility of the EQ Response itself as the Appendix 8A and 8B submitted by the exporter does not differentiate between such grades and the said appendixes were provided for Gliclazide or the PUC as defined. In view of this alone, it is submitted that the attempt of the exporter is to create doubts in the mind of the Authority and is trying to delay the investigation by introducing new and unsubstantiated arguments. Interestingly, the exporter did not claim or substantiate the current argument that the cost of EP grade is significantly higher as compared to IP/BP grade in any of its earlier submission and a mere statement is made to misguide the Authority. As per the claim itself of the exporter the only difference between IP/BP and EP is in terms of one of the purity test condition and rest everything remained the same as per Annexure 1 to their written submission. It is our humble submission that until and unless the exporter establishes "significant" differences in cost and price of EP grade vis-à-vis IP/BP grade, the Authority should not consider this argument at all. As far as the petitioner is concerned, the petitioner is manufacturing and supplying all three grades and similar is the case of imports into India. Thus, a comparison of PUC with the like article produced by the domestic industry which is Gliclazide as defined in the initiation notification at an average level is the best comparison and there is no need or any substantiated need to compare cost and price by classifying the PUC into IP/BP and EP grades is brought before the Authority by the exporter making the entire claim untenable and rejectable by the Authority.

Examination by the Authority

35. The application contained relevant information sufficient to determine normal value, export price and dumping margin to justify an initiation of anti dumping investigation against China PR. Also, the basis of determination of normal value, export price and dumping margin for the purpose of this final finding statement as per the AD Rule and relevant annexure is elaborated at appropriate places in this final finding statement and the same is self explanatory.

36. With regard to determination Net Export Price and Landed Value, the Authority has followed regular procedure as prescribed in the Rules.
37. The Authority notes that none of the producers/exporters from China PR have been found to be operating under market economy condition for determination of normal value in case of China PR in terms of Para-6 of Annexure-1 to the Rules. Under this circumstance, the Authority is not in a position to apply Para 8 of Annexure 1 to the Rules to the Chinese producers/exporters and the Authority has to proceed in accordance with Para 7 of Annexure - I to the Rules.
38. Paragraph-7 of the Annexure-1 to the Anti-dumping Rules provides as follows:
- “In case of imports from non-market economy countries, normal value shall be determined on the basis of the price or constructed value in the market economy third country, or the price from such a third country to other countries, including India or where it is not possible, or on any other reasonable basis, including the price actually paid or payable in India for the like product, duly adjusted if necessary, to include a reasonable profit margin. An appropriate market economy third country shall be selected by the designated authority in a reasonable manner, keeping in view the level of development of the country concerned and the product in question, and due account shall be taken of any reliable information made available at the time of selection. Accounts shall be taken within time limits, where appropriate, of the investigation made in any similar matter in respect of any other market economy third country. The parties to the investigation shall be informed without any unreasonable delay the aforesaid selection of the market economy third country and shall be given a reasonable period of time to offer their comments”.*
39. According to these Rules, the normal value in China can be determined on any of the following basis:
- a) On the basis of the price in a market economy third country, or
 - b) The constructed value in a market economy third country, or
 - c) The price from such a third country to other countries, including India.
 - d) If the normal value cannot be determined on the basis of the alternatives mentioned above, the Designated Authority may determine the normal value on any other reasonable basis including the price actually paid or payable in India for the like product duly adjusted to include reasonable profit margin.
40. The Authority notes that for determination of normal value based on third country cost and prices, the complete and exhaustive data on domestic sales or third country export sales, as well as cost of production and cooperation of such producers in third country is required. No such information with regard to prices and costs prevalent in these markets have been provided either by the applicant or by the responding exporters, nor any publicly available information could be accessed, nor the responding Chinese companies have made any claim with regard to an appropriate market economy third country. In view of the same, the Authority proceeds to construct the normal value based on any other reasonable basis.

41. The Authority proceeds to determine the Normal value for China PR on available facts basis in terms of second proviso of Para 7 of Annexure 1 to the AD Rules. Accordingly, In terms of Para 7 of Annexure 1 to the Rules, the Authority has constructed the Normal value for the Chinese producers on the following basis ó
- a) International prices of raw materials i.e. N Amino and PTS Urea have been considered.
 - b) Consumption of raw materials and conversion costs have been adopted on the basis of information/ data of most efficient producer of the domestic industry.
 - c) Selling, general & administrative costs have been taken on the basis of information/data of most efficient producer of the domestic industry.
 - d) Profit has been taken @ 5% of ex-factory cost excluding interest.

The normal value so determined is as mentioned in the dumping margin table below.

42. A comparison of the imported goods with the PUC and the like article, produced by the domestic industry which is Gliclazide as defined in the initiation notification, is the best comparison and there is no need or any substantiated need to compare cost and price by classifying the PUC into IP/BP and EP grades as pointed out by the exporter. The request for classifying the PUC into various IP/BP/ EP grades for analysis and comparison is rejected by the Authority.

c) Determination of Export Price

Shandong Keyuan Pharmaceutical Co Ltd, China PR

43. In the EQR, Shandong Keyuan Pharmaceutical Co Ltd, China PR has given details of the exports made to India. The Authority made adjustments as claimed by the exporter in their EQ response in order to arrive at the net export price at ex-factory level. Price adjustments have been made on account of overseas freight, inland freight, insurance, clearing charges, credit costs, bank charges & VAT etc. on the basis of the questionnaire response filed by the exporter and the related producers. After making the acceptable adjustments, the Authority determined the weighted average net export price as mentioned in the dumping margin table below.

Zhejiang Jiuzhou Pharmaceutical Co Ltd, China PR

44. In the EQR, Zhejiang Jiuzhou Pharmaceutical Co Ltd, China PR has given details of the exports made to India. The Authority made adjustments as claimed by the exporter in their EQ response in order to arrive at the net export price at ex-factory level. Price adjustments have been made on account of overseas freight, inland freight, insurance, clearing charges, credit costs, commission, bank charges & VAT etc. on the basis of the questionnaire response filed by the exporter and the related producers. After making the acceptable adjustments, the Authority determined the weighted average net export price as mentioned in the dumping margin table below

All other Producers/Exporter from China PR

45. In respect of non-cooperating producer/exporters from China PR, the Authority has determined their net export price as per facts available in terms of Rule 6(8) of the Rules. Accordingly, the

net export in respect of the non-cooperating exporters from China PR so determined is as mentioned in the dumping margin table below.

d) Determination Of Dumping Margin

46. Based on normal value and export price, the dumping margin for co-operative producers/exporters and others from China PR is as follows:

Particulars	Normal Value US\$/Kg	Export price US\$/Kg	Dumping Margin US\$/Kg	Dumping Margin %	Range
Shandong Keyuan Pharmaceutical Co Ltd	***	***	***	***	45-55
Zhejiang Jiuzhou Pharmaceutical Co Ltd	***	***	***	***	45-55
All other Producers/Exporters	***	***	***	***	70-80

G. INJURY DETERMINATION AND CAUSAL LINK

Methodology For Injury Determination And Examination Of Injury And Causal Link

Injury Examination

Submissions made by the Opposing Interested Parties

47. The following are the injury related submissions made by the producers/exporters/importers/other interested parties;
- a) Domestic industry's problems are associated with introduction of any new drug initially and the performance of the domestic industry is yet to be settled. Thus, the present case does not merit any imposition of anti dumping duties.
 - b) There is no price undercutting in the present case, imports are steady and there is absence of causal link in the present case. Import price has come down and domestic price has gone up.
 - c) Costs and expenses on multiple plants and basis of allocation need to be properly studied.
 - d) There are supply problems with the Indian producers of subject goods and the users look at importing from China at economical costing.
 - e) There is a huge demand supply gap for the subject goods in India which necessitated imports.
 - f) The injury to the domestic industry is not realistic. The low domestic sale is due to the exports of domestic industry.

- g) There is no volume injury to the domestic industry as admittedly its production, capacity utilization, sales, market share, productivity, number of employees etc. all have shown significant improvement during the injury investigation period.
- h) It may be seen that the total sales of the domestic industry are more than their production indicating that their inventory in the period of investigation has declined and therefore, with regard to inventory also there is no injury to the domestic industry.
- i) The domestic industry has projected that there is price injury to the domestic industry in terms of various parameters like price undercutting, price depression etc. It is submitted that the positive price undercutting in the current investigation is the result of incorrect determination of landed value. Once the landed value is corrected, there will not be any price undercutting.
- j) With regard to price suppression and price depression, it is submitted that their linkage to alleged dumped imports from China is imaginary and not real.
- k) It may be seen that the NFA of the domestic industry have increased by more than 300% over the injury investigation period. However, interestingly there is no increase in the capacity of the subject goods of the domestic industry.
- l) It may also be seen that the consequent effect of such a significant increase in NFA has resulted into a significant increase in depreciation cost by 235% and interest cost by 174% over the injury investigation period. The increase in investment in NFA also resulted into increase in number of employees engaged by the company and the wage bill also increased by more than 53%.
- m) Increase in cost of the domestic industry is as a result of its own business decisions to increase NFA but not due to any external factors including alleged dumping. Therefore, the claim of the domestic industry that the imports from subject country have not allowed to fully recover its costs is not justified under the facts and circumstance of the case. Rather, it is a case of self-inflicted injury to the domestic industry.
- n) There is no causal link between the alleged dumped imports and injury to the domestic industry. The domestic prices and the import prices are moving in different directions. It clearly indicates that the import prices have no bearing in the domestic prices.
- o) It may be seen that there is a significant decline in the export sales of the domestic industry as the same have come down from its peak sales of 35327 MT in 2011-12 to 22620 in the POI. Thus, the domestic industry has reduced its prices significantly under compulsions due to reduction in its exports but not due to decline in the import prices which is negligible.

- p) The Authority failed to consider that the data provided by the applicant includes imports by traders rather than imports by actual end users and imports by end users is what needs to be considered.
- q) It is the domestic cost which regulates the price of imports. The importers were unable to match the price of domestic industry.
- r) Petitioner is the sole producer and earns monopolistic profits and wants to stop any imports to expand the profits.
- s) There is no underselling at the price at which the petitioner supplied to a particular end user and average selling price of the petitioner for a particular period would show a wrong price effect.
- t) Potential decline in factors not examined.
- u) There is unjustified increase in cost of interest and depreciation. These are the main causes of Injury to the petitioner.
- v) It is the price war started by the petitioner itself, which is the main cause of the alleged price injury and not subject imports.
- w) There is absence of falling profits of the petitioner and subject imports. The imports from China PR remained constant with an increase in landed price to the tune of 14% and the petitioner increased its price by 4%. It could have increased its prices more.
- x) Facts of the present application shows there is an incorrect non injurious price (NIP) determination.

Submissions made by the Domestic Industry

48. The following are the injury related submissions made by the domestic industry in brief
- a) An objective and holistic evaluation of various economic parameters would clearly demonstrate that dumped imports from subject country have caused material injury to the domestic industry.
 - b) The domestic industry has faced huge financial losses on account of aggressive dumping adopted by producers/exporter from China PR.
 - c) Although some injury indicators such as production volumes and capacity utilization followed a positive trend, a number of other indicators relating to the financial situation of the domestic industry, namely profitability, return on investment, cash profit etc remained negative.
 - d) The price effect of the dumped imports has been significant as a result of which profitability of the domestic industry has deteriorated and situation of the domestic industry turned into losses.
 - e) The increase in certain volume parameters however remained irrelevant and not of any material positive effect on the overall situation of the domestic industry as the domestic industry was forced to reduce its price consistently and below profitable

NON-CONFIDENTIAL

levels to maintain its capacity utilization to reduce the effect of fixed costs and resultant production and sales at the cost of financial losses and negative returns.

- f) The price at which the product under consideration is imported into India is below its normal value resulting in significant dumping margin.
- g) The price undercutting throughout the injury period is significant as there is significant difference between the prices offered by the Domestic Industry and producers/ exporters from subject country. Thus, the low landed price of imports from subject country had a direct consequential impact on the price and performance of the domestic industry.
- h) The domestic industry has been compelled to offer sub-optimal prices lowering profitability to a negative level and to the level which is unviable and continuity of operation is hugely impacted.
- i) Presence of import at very low and dumped price preventing domestic industry to increase their price to the extent of increase in input cost, thus imports are suppressing the selling prices of the domestic industry and also causing depressing effect.
- j) Reduction in profits directly resulted in deterioration in return on capital employed and cash profits. The domestic industry has not been able to cover the cost of capital. Thus, losses, negative return on capital employed and also cash profit is directly due to dumped imports.
- k) The injury caused to the domestic industry is on account of dumped imports from subject country only.
- l) Concerning the contention of certain interested parties that the domestic industry's problems are the once associated with any new drug initially, it is submitted that the petitioner has been in operation for several years now. In fact, certain other producers who were engaged in the production of subject goods have closed their plants primarily owing to dumping as per our information. Fate of petitioner also would not be different if anti dumping duties are not imposed. The financial losses faced by the company owing to dumped prices offered by the exporters from China PR have very seriously affected the financial strength of the company and its viabilities are in serious question. It is a bogus argument that performance of the domestic industry are yet to be settled whereas the fact of the matter is immediate protection is required to help the domestic industry to survive further. Petitioner's case is clearly of material injury and not of material retardation by any figment of imagination.
- m) Concerning the contention of certain interested parties that the unit may be producing from intermediate stage, wrong plant capacity is quoted etc it is submitted that these comments have no persuasive value and needs to be rejected.
- n) Concerning the contention of certain interested parties that disclosure of export price of the petitioner should be made, it is submitted that the petitioner has claimed such information as confidential as permissible in the rule by providing adequate justification which should be treated so by the Authority.
- o) Concerning the contention of certain interested parties that there is no price undercutting, imports are steady and there is absence of causal link it is submitted that the contentions have no nexus with the reality and are denied. There is significantly positive price undercutting from China PR. Imports from China PR has increased by the POI and was at significant levels considering domestic demand and production. Domestic industry was forced to reduce its prices so as to match the landed price of dumped imports.

- p) Concerning the contention of certain interested parties that they face supply problems with the Indian producers of subject goods and they look at importing from China at economical costing, it is submitted that it is an unsubstantiated argument that they face supply problems from the Indian producer. In fact, the importers do bargain based on dumped prices offered by the Chinese producers and the price offered by the users at times may not even meet the conversion cost of subject goods. Imports from China PR are not on account of inability of Indian producer to supply but solely on account of dumped prices offered by them.
- q) Concerning the claim that here is no volume injury to the domestic industry as admittedly its production, capacity utilization, sales, market share, productivity, number of employees etc. all have shown significant improvement over the injury investigation period, the Authority may note that such positive volume trends did not yield any good end results in terms of price as well since the dumped imports were prevalent in the Indian market. The overall situation was that of material injury.
- r) There is no basis to the argument of opposing interested parties that there is no price injury. In fact, the cut throat competition offered by the dumped prices left the domestic industry at huge financial losses.
- s) Concerning the claim of the opposing interested parties that NFA of the domestic industry have increased by more than 300% over the injury investigation period when there is no increase in the capacity of the subject goods of the domestic industry, the Authority may note that the contention is misleading. NFA per KG would show a consistent picture. Also the trend in total NFA value is also consistent with the change in domestic and export sales over the years. NFA concerning domestic sales alone should be looked at along with the change in domestic sales over the years. Domestic sale which was 9 MT in the base year increased to about 36 MT in the POI and a similar increase trend is visible in the domestic NFA figures also.
- t) Concerning the contention that significant increase in NFA has resulted into a significant increase in depreciation cost by 235% and interest cost by 174% over the injury investigation period and the increase in investment in NFA also resulted into increase in number of employees engaged by the company and the wage bill also increased by more than 53%, the Authority may note that these factors on Per KG basis showed a consistent trend. Increase in total wage needs to be seen light of the increase in employment however it can be seen that the increase in wages showed minimal increases taking into consideration the labour laws of the country also.
- u) Concerning the contention that increase in cost of the domestic industry is as a result of its own business decisions to increase NFA but not due to any external factors including alleged dumping and the Authority may note that there hasn't been any huge increase in the NFA for the subject goods as whole as alleged by the interested parties. NFA per KG remained very consistent over the period.
- v) Concerning the argument that there is no causal link between the alleged dumped imports and injury to the domestic industry, the Authority may note that this contention is wrong and injury has been on account of dumping of subject goods from China PR alone.
- w) Concerning the argument that that there is a significant decline in the export sales of the domestic industry as the same have come down from its peak sales of 35327 MT in 2011-12 to 22620 in the POI, it may noted that the injury claimed in the petition are on account of domestic operation alone. Also, the petitioner has been achieving a better realisation for its exports.

- x) Concerning the argument that Authority failed to consider that the data provided by the applicant includes imports by traders rather than imports on actual by end users and imports by end users is what needs to be considered, this argument has no legal basis and average price is what relevant.
 - y) Concerning the argument that the domestic cost which regulates the price of imports and the importers were unable to match the price of domestic industry, this is a self serving and frivolous argument brought in to downplay the enormity of dumping faced by the domestic industry.
 - z) Concerning the claim that Petitioner has not suffered any injury as there is no volume effect, the Authority may note that the present case is all about serious price injury when volume parameters showed positive trend. It is clear that dumping prevented better price realisation in a growing market for the subject goods.
- aa) The price war by adopting dumping strategy was started by the Chinese exporters to penetrate into the Indian market, which otherwise remains a fair market place to the domestic industry. The customers are engaged in a direct price bargain based on the dumped prices offered from China PR and the petitioner was forced to reduce its prices to non remunerative levels, the other option only was to shutdown the plant completely. Also, the claim of no injury margin determination has no basis. The petitioner claimed price undercutting as well as underselling. In any case, the injury margin is determined by the Authority based on principles enshrined in Annexure III. There is significant injury margin in the present case.
- bb) Larger public interest is taken care in the AD rule itself since India follows lesser duty rule. The importer who is talking about reasonable price to diabetic patients has been found making exorbitant profits and NPPA had to step in to control the prices of Gliclazide Tablets sold by them. Imposition of duties will create only a negligible increase in price of imported product and no impacts on their product as such claimed by the importer. Nor the importer could quantify the impact on them or rebut the claims of the petitioner on facts. AD duties will provide a level playing field in the Indian market that is the larger public interest and not the closure of petitioner's plant as wished by the parties engaged in dumping. Accordingly, the prayer of Panacea also should be found as misleading and should be rejected by the Authority.
- cc) The argument that DI wants to sell at loss is absurd. There are no compelling reasons for the domestic industry to sell at loss making prices other than the stiff price competition on account of dumped imports. Further, increase in sales alone does not suggest absence of any material injury as envisaged in the AD rule. Also, being sole producer doesn't vitiate Bal Pharma's rights to fair price and protection against dumping.
- dd) The profitability of the company as a whole is not relevant for the present investigation and the injury data pertaining to the subject goods shows severe material injury suffered by the domestic industry. On the contrary, it's a fact emerging out of the NPPA notification that drug manufactures like Dr Reddy's were making supernormal profits (more than 25%) from the sale of Gliclazide Tablets and NPPA had to step into regulate the prices. In the same period, petitioner faced huge financial losses in subject goods business. It is clear that the importers took the benefit of dumping practiced by Chinese producers and they want the situation to

continue to earn unethical profits at the cost of an established industry in India. This shows the importer hasn't come with clean hands and AD duties are essential to counter act dumping from China PR.

- ee) Petitioner has relied upon IBIS data and has also requested the Authority to provide us import data as per DGCI&S. However, since the PUC is imported under around 20 customs subheadings, DGCI&S data which is available product subheading wise may not show the real picture of import

Examination by the Authority

- 49. The Authority has taken note of submissions made by the interested parties. The Authority has examined the injury to the domestic industry in accordance with the Anti-dumping Rules and considering the submissions made by the interested parties.
- 50. Article 3.1 of the WTO Agreement 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 Authority is required to examine whether there has been a significant increase in dumped imports, either in absolute term or relative to production or consumption in India. With regard to the price effect of the dumped imports, the Authority is required to examine whether there has been significant price undercutting by the dumped imports as compared to the price of the like product in India, or whether the effect of such imports is otherwise to depress the prices to a significant degree, or prevent price increases, which would have otherwise occurred to a significant degree.
- 51. As regards the impact of the dumped imports on the domestic industry para (iv) of Annexure-II of the AD Rules states as follows.

“The examination of the impact of the dumped imports on the domestic industry concerned, shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the Industry, including natural and potential decline in sales, profits, output, market share, productivity, return on investments or utilization of capacity; factors affecting domestic prices, the magnitude of margin of dumping actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital investments.”

- 52. The Authority has examined the injury parameters objectively taking into account the facts and submissions made by various interested parties.

Volume Effect Of Imports on the Domestic Industry

Assessment of Demand

53. Authority has defined, for the purpose of the present investigation, demand or apparent consumption of the product in India as the sum of domestic sales of the Indian Producers and imports from all sources. The demand so assessed is given in the table below.

i. **Demand and Market Share**

Particulars	Unit	2010-11	2011-12	2012-13	POI
Imports from Subject Country	KG	76,411	72,480	68,247	85,600
Indexed	Trend	100	95	89	112
Imports from Other Countries	KG	4,151	5,850	4,240	8,146
Total imports	KG	80,562	78,330	72,487	93,746
Share of Subject Country in imports	%	94.85	92.53	94.15	91.31
Sales of Domestic Industry	KG	9,891	13,753	20,545	36,895
Indexed	Trend	100	139	208	373
Sales of other Indian Producers	KG	NA	NA	NA	NA
Demand	KG	90,453	92,083	93,032	1,30,641
Indexed	Trend	100	102	103	144
Imports from Subject Country	%	80.48	78.71	73.36	65.52
Imports from Other Countries	%	4.59	6.35	4.56	6.24
Sales of Domestic Industry	%	10.94	14.93	22.08	28.24

54. The Authority has examined the volume of imports of the subject goods as per the transaction wise import data provided by DGCIS. On the basis of import data on record, the import volume from subject country is found to be above the de-minimis levels.
55. It is observed that imports from subject country increased in absolute terms and was all along more than 90% of the total imports into India throughout the injury period including the POI. It is also noted that imports from other countries showed an increase from 5% in the base year to 8% in the POI which is negligible. Thus, the volume of imports from the subject country increased in absolute terms and subject country imports accounted for the substantial part of total imports into India.
56. It is seen from the above table that demand of the product in the country has shown a positive trend and significant growth over the injury period particularly in POI.
57. The Authority also noted that the sale of the domestic industry in the base year was very low and the same constituted about 13% of the domestic demand. It is also noted that the share of the domestic industry even though showed an increase to 30% by the POI, the actual sales

volume remained far below dumped imports in overall demand. The domestic demand is dominated by the imports and the market share of domestic industry is only 30%.

58. It is also observed that imports from subject country have been higher than total Indian production throughout the injury period and imports from subject country remained at a very significant level vis-à-vis demand for the product in the country. Thus, imports from subject country have increased significantly in relation to production and consumption in India and remained at a noteworthy level throughout the injury period. Dumped imports in relation to production have significantly increased over the years and through the POI.
59. It is observed that sales of the domestic industry showed increasing trend. Domestic industry claimed that even though the above volume parameters shows an increasing trend, the associated price parameters showed sharp decline and financial losses have been suffered by the domestic industry. Thus, even though sales volumes were increased, it was at the best achieved by adjusting the price to match the landed price of imports but the enormity of price adversities persists. The Authority notes that substantial share of the domestic demand is held by imports and such imports are creating significant price effects on the domestic industry.

ii. Production, Capacity & Capacity Utilization

60. Capacity and capacity utilization of the domestic industry over the injury period is given in the following table:-

Particulars	Unit	2010-11	2011-12	2012-13	POI
Capacity MT	KG	60,000	60,000	60,000	60,000
Production of DI	KG	***	***	***	***
Capacity utilization	%	***	***	***	***
Trend	Indexed	100	122	103	137
Production in relation to Demand	%	***	***	***	***

61. It is observed that capacity utilization of the domestic industry increased up to 2011-12, but declined in 2012-13 and increased again in the POI. However, the capacity remained stagnant. Domestic industry claimed that even though the above volume parameters show an increasing trend, the associated price parameters show sharp declines and financial losses have been suffered by the domestic industry. Any expansion in the present capacity would highly depend on a favourable and fair market situation for the subject goods.
62. It is also noted that the domestic industry has contended that continuous adverse market conditions with regard to the subject goods has prevented the domestic producer from further enhancing the capacities and they are in fact incurring huge losses when there exists significant demand for the product.

63. Production showed increasing trend throughout the injury period. The Authority, however, notes that production in relation to demand has shown a decline in POI as compared to the base year 2010-11.

iii. **Inventories**

64. The Inventories with the domestic industry increased significantly in the POI, as follows:

	Units	2010-11	2011-12	2012-13	POI
Average Stock	KG	101	100	847	1,386
Index	Trend	100	100	838	1372
Stock as no. of days sale	Days	1	1	8	9

PRICE EFFECT OF THE DUMPED IMPORTS ON THE DOMESTIC INDUSTRY

65. With regard to the effect of the dumped imports on prices, the Designated Authority is required to consider whether there has been a significant price undercutting by the dumped imports as compared with the price of the like product 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. For the purpose of this analysis, the weighted average cost of production (COP), weighted average Net Sales Realization (NSR) and the Non-Injurious Price (NIP) of the domestic industry have been compared with the landed cost of imports from the subject country.

a) **Price Undercutting**

66. The net sales realization was arrived after deducting all rebates and taxes. Landed value of imports has been calculated by adding 1% handling charge and applicable basic customs duty to the CIF value of subject imports. The landed value of imports was compared with net sales realization of the domestic industry and analysis is as below:

Particulars	Unit	2010-11	2011-12	2012-13	POI
Net Sales realization	Rs./KG	***	***	***	***
Landed Value	Rs./KG	5,127	5,884	5,209	5,018
Price Undercutting	Rs./KG	***	***	***	***
Price Undercutting	%	***	***	***	***
Price Undercutting	Range	15 - 25	5- 15	10 - 20	5- 15

67. It is observed that landed price of imports from subject country has been significantly lower than the net sales realization of the domestic industry resulting in significant price undercutting. Landed price of import from subject country shows decreasing trend after some increases between base year and 2011-12. Domestic industry claimed that they have been clearly

prevented from increasing prices to a remunerative level which would have been possible if dumping had not been taking place from China PR.

b) Price Underselling

68. Non injurious price has been worked out for the domestic producer by appropriately considering the cost of production for the PUC during the POI, in accordance with Annexure III of the AD Rules, and compared with the landed value of the subject goods to arrive at the extent of price underselling, as follows:

Particulars	Unit	China PR
Non-injurious price	Rs/KG	***
Landed Value	Rs/KG	5,018
Price underselling	Rs/KG	***
Underselling	%	***
Underselling	%Range	25-35

69. The analysis of the price underselling, which is an important indicator of assessment of injury, shows that the landed value of subject imports was significantly below the non-injurious price.

c) Price suppression/depression

70. The Authority examined whether the effect of the dumped imports was to depress the prices of the like article in India, or prevent price increases which would have otherwise occurred.

Particulars	Unit	2010-11	2011-12	2012-13	2013-14
Cost of production	Rs./KG	***	***	***	***
Trend	Indexed	100	118	107	102
Selling Price	Rs./KG	***	***	***	***
Trend	Indexed	100	104	98	88
Landed Value	Rs./KG	***	***	***	***
Trend	Indexed	100	115	102	98

71. It can be seen from the table above that while the cost increased from 100 to 102 from 2010-11 to POI, the selling price declined from 100 to 88 during the same period meaning thereby the prices were suppressed on account of dumped imports as the domestic industry was not able to increase its prices in proportion to increase in costs. It is evident that the landed price of imports was causing price suppression of a significant magnitude showing serious price effects on the sales realization of the domestic industry apart from serious price undercutting. Thus, the dumped imports were creating price suppression effect on the domestic industry.

d. Profit/Loss

72. The profitability of the domestic industry is given in the following table;

Particulars	Unit	2010-11	2011-12	2012-13	2013-14
-------------	------	---------	---------	---------	---------

Profit	Rs./lakhs	***	***	***	***
Profits	Rs./Kg	***	***	***	***
Trend	Indexed	100	(391)	(254)	(417)

73. It is noted that profitability of the domestic industry declined significantly during the POI. The adverse impact and injury are visible on the profitability position of the domestic industry during the entire injury period.

e. Return on capital employed

74. Information regarding return on capital employed is given in the table below:

Particulars	Unit	2010-11	2011-12	2012-13	POI
NFA- Domestic	Rs./Kg	***	***	***	***
Trend	Indexed	100	85	96	111
Working Capital- Domestic	Rs./Kg	***	***	***	***
Trend	Indexed	100	87	81	66
Capital Employed- Domestic	Rs./Kg	***	***	***	***
Trend	Indexed	100	86	88	86
Capital Employed Domestic-NFA	Rs. Lakh	***	***	***	***
Trend	Indexed	100	120	182	319
Return on Capital Employed	%	***	***	***	***
Trend	Indexed	100	(79)	(40)	(121)

75. The Authority notes that return on capital employed for domestic industry has deteriorated significantly over the injury period and continued to be significantly negative in the POI. It is also noted that the capacity over the years remained same and the capital employed for the production of PUC as a whole showed downward trend with deteriorated working capital position. Adverse impacts and injury are visible on the ROCE position of the domestic industry during the POI.

f. Cash Flow

76. Information regarding cash profit of the domestic industry is given in the following table:

	Unit	2010-11	2011-12	2012-13	2013-14
Cash profits	Rs. Lakh	***	***	***	***
Trend	Indexed	100	-221	-198	-687

77. It is seen that the cash profits of the domestic industry declined steeply over the injury period and became negative. It is also noted that the cash profit and cash flow situation of the domestic industry recorded adverse situation.

g. Factors affecting domestic prices

78. Change in cost structure, competition in the domestic market and prices of competing substitutes, if any have been examined for analyzing the factors other than dumped imports that

might be affecting the prices in the domestic industry. As the petitioner is the only producer of the PUC there is no domestic competition which could have led to the decline in prices. The landed value of subject imports is below the selling price of the domestic industry which may be the reason for decline in selling price of PUC.

h. Productivity

79. Authority notes that productivity of the domestic industry shows same trend as that of production. Productivity shows an increasing trend and it cannot be presumed that the domestic industry suffered because of any under performance in productivity.

Particulars	Unit	2010-11	2011-12	2012-13	2013-14
Productivity/ employee	KG/Nos.	***	***	***	***
Productivity/Day	KG/day	122	148	126	168

i. Employment and Wages

80. The employment level has increased throughout the injury period and POI but at very marginal levels. Overall wages per kg showed an increase of about 12% over the base year which appears to be a normal increase coincided with a decline in POI vis-à-vis immediate previous year. It is noted that normal wage increases coupled with improved productivity shows the domestic industry was not under any adverse situation on these parameters. Thus, it cannot be said that the cause of injury to the domestic industry has been adverse impacts of wages and employment.

Particulars	Unit	2010-11	2011-12	2012-13	2013-14
Employment	Nos.	***	***	***	***
Trend	Indexed	100	103	108	119
Wages	Rs/Kg	***	***	***	***
Trend	Indexed	100	98	133	112
Wages	Rs Lacs	***	***	***	***
Trend	Indexed	100	119	138	153

Growth

81. The Authority notes that growth of the domestic industry was negative in a number of parameters.

Particulars	Unit	2010-11	2011-12	2012-13	2013-14
Cost of Sales	%		17.98	(8.93)	(5.15)
Domestic Sales-Price(NSR)	%		4.13	(6.28)	(10.05)
Profit/ (Loss) per KG	%		(291)	35	(64)
PBIT	%		(195)	23	(430)

Cash Profit	%		(321.34)	10.62	(247.23)
ROI	%		(18.42)	4.04	(8.29)
Demand	%		5.71	27.52	16.34
Average Stock	%		-0.50	746.83	63.71
Particulars	Unit	2010-11	2011-12	2012-13	2013-14
Cost of Sales	%		***	***	***
Domestic Sales-Price(NSR)	%		***	***	***
Profit/ (Loss) per KG	%		***	***	(64)
PBIT	%		***	***	(430)
Cash Profit	%		***	***	(247.23)
ROI	%		***	***	(8.29)
Demand	%		***	***	16.34
Average Stock	%		***	***	63.71

j. Ability to raise capital investment

82. It is noted that the domestic industry's ability to pump in any additional investments in the product depends upon the market situation for the product concerned. It is seen that the profitability of the domestic industry has marked sharp decline and the domestic industry has been suffering financial losses. The situation has been seemingly not viable to raise additional capital investment when the ROI from the existing investments were suffering. Hence, dumping of the product might have created adverse impact on the ability of the domestic industry to raise capital investment for the PUC.

k. Conclusions On Injury

83. An examination of the various parameters of injury along with the volume and price effects of imports clearly reveals that material injury has been caused to the Domestic Industry during the period of investigation. There is an increase in the volume of imports of subject goods from the subject country during the injury investigation period in absolute terms as well as in relation to the total imports, domestic production and total demand in the country.
84. With regard to price effect on account of dumped imports of subject goods from subject Country, it is noted that imports are significantly undercutting the prices of domestic industry. Further, the domestic industry has suffered price suppression on account of dumped imports. The sale price of subject goods has not increased in proportion to increase in cost of production of subject goods during the injury period and in turn declined over the base year. Comparison of the landed value with the non-injurious prices of the Domestic Industry also reveals significant price underselling. In view of the above, it is concluded that even though the performance of the domestic industry has marginally improved in respect of production, capacity utilization and domestic sales, the performance has deteriorated in respect of profit, cash flow, return on investment and inventories. The decline in profits, return on investment and cash flows is quite significant and material. Thus, the Authority concludes that the domestic industry has suffered material injury during the period of investigation.
85. Negative growth of domestic industry in many parameters when the market demand for the product showed consistent growth inter alia shows that the domestic industry was prohibited from taking benefits of such positive market situation due to significant presence of dumped imports with significant price undercutting and underselling. Apparently, the adverse price effects on account of dumped material vitiated the momentum achieved in terms of volume parameters and the petitioner could not convert such volume growths into an overall growth story and instead faced negative growth in terms of all most every price parameter.
86. The claim of demand supply gap has no relevance de-jure or de-facto. Gliclazide based anti diabetic medicines constitute only about 7% of the total anti diabetic medicines market in India. Petitioner is the only company existent in India producing this bulk drug which is one of the molecules for anti diabetic medicines but is on the verge of closure if anti dumping duties are not imposed. After any closure of the petitioner, India would be dependent on Chinese market for this important product which will be against the larger public interest in India, thus, the protection of petitioner against dumping is important. The manufacturers of Gliclazide formulation were getting the material at dumped prices and they were overcharging the consumers leading to NPPA to step in and impose price control over certain Gliclazide based anti diabetic medicine manufactures. Thus, locus of drug manufacturers after unfairly charging the customers to argue for the public interest is highly questionable. Even if duties to the tune of 30% are imposed, it can only have about 0.72% to 2.70% increase in cost of Gliclazide based diabetic formulations which are very negligible. Thus, the claims of demand supply gap and cost increase raised by the opposing interested parties are untenable.
87. Anti dumping duties are required to be imposed to curb dumping and to establish fair competition in the Indian market for Gliclazide.

H. CAUSAL LINK AND OTHER FACTORS

88. Having examined the existence of material injury, volume and price effects of dumped imports on the prices of the domestic industry, in terms of its price underselling and price suppression, and depression effects, other indicative parameters listed under the Indian Rules and Agreement on Anti-Dumping, the Authority has examined whether other factors listed under the AD Rules could have contributed to injury to the domestic industry. The examination of causal link has been done as follows;

(a) Volume and prices of imports from third countries

89. During POI, imports of the subject goods from countries other than the subject country have been insignificant in volume and were reported at high prices. Therefore, the imports from other countries cannot be considered to have caused injury to the domestic industry.

(b) Trade restrictive practices of and competition between the foreign and domestic producers

90. It is noted that there is a single market for the subject goods where dumped imports from the subject country compete directly with the subject goods supplied by the domestic industry. It is also noted that the imported subject goods and domestically produced goods are like articles and are used for similar applications/end uses. There is no evidence of trade restrictive practices of and competition between the foreign producers and domestic producers causing injury to the domestic industry.

(c) Contraction of demand or Changes in the pattern of consumption

91. The Authority notes that demand for the product showed significant increases during the injury period and also during POI, thus, it is concluded that injury to the domestic industry was not due to contraction in demand.

(d) Development in Technology

92. None of the interested parties have furnished any evidence to demonstrate significant changes in technology that could have caused injury to the domestic industry.

(e) Export performance of Domestic Industry

93. The details of exports by the petitioner are as follows:

Period	2010-11	2011-12	2012-13	2013-14
Volume in KG	***	***	***	***
Indexed	100	114	65	64
Price in KG	***	***	***	***
Indexed	100	114	123	119

94. The injury analysis has been done by the Authority taking into consideration their domestic operations only. Therefore, performance in the export market has not affected the present injury analysis. Notwithstanding this, the Authority notes that the export price has increased significantly over the base year whereas the domestic prices declined significantly. The Authority also takes note of the submission of the applicant that the decline in export volume is not real volume loss but the same is a reflection in the domestic sales since certain MNC drug manufactures started their operations in India and the material was supplied to them herein in India itself.

(f) Productivity of the Domestic Industry

95. Productivity of the domestic industry increased consistently. However, regardless of changes in productivity levels, the profitability of the domestic industry showed continued decline. Thus, decline in productivity is not the cause of injury to the domestic industry.
96. From the foregoing, it is thus noted that listed known other factors do not show that the domestic industry could have suffered injury on account of them. None of the interested parties has also provided any evidence to suggest that the material injury caused to the Domestic Industry is attributable to other known factors.

I. FACTORS ESTABLISHING CAUSAL LINK

97. Analysis of the performance of the domestic industry over the injury period shows that the performance of the domestic industry has materially injured over the injury period and through the POI. The causal link between dumped imports and the injury to the domestic industry is established on the following grounds:
- a) Subject goods are imported into India at dumped prices. The dumped imports from subject country have significantly increased over the injury period. Significant increase in imports from subject country coincided with significant share in the domestic market adversely affected the ability of domestic industry to increase its market share to a significant level along with a fair and profitable price;
 - b) The imports of subject goods from subject countries were significantly undercutting the prices of the domestic industry in the market. Resultantly, the domestic industry was not able to increase its prices commensurate with the increasing costs. Further, there is significant price underselling.
 - c) The pressure on the domestic prices of the domestic industry led to significant loss of profitability and return on investment during the POI. The reduction in the prices coupled with the increase in costs has adversely affected the financial performance of the Domestic Industry and the domestic industry was incurring huge financial losses.

- d) Performance of the Domestic Industry was also affected adversely in terms of poor cash flow and rising inventories. Deterioration in profits, return on capital employed and cash profits are direct result of dumped imports;
- e) The growth of the domestic industry became negative in terms of a number of parameters.

98. The Authority is of the view that the above grounds clearly establish existence of causal link between dumped imports from subject country and injury to the domestic industry.

J. MAGNITUDE OF INJURY AND INJURY MARGIN

99. The Authority has determined non-injurious price for the domestic industry on the basis of principles laid down in the Rules, as amended. The non-injurious price so determined has been compared with the landed prices of imports from the subject country. The injury margin so determined is significant.

Sl.No.	Producer/ Exporter	Non Injurious Price - US\$/Kg	Landed value - US\$/Kg	Injury Margin - US\$/Kg	Injury Margin - %	Injury Margin Range - %
1	Shandong Keyuan Pharmaceutical Co. Ltd.	***	***	***	***	20-30
2	Zhejiang Jiuzhou Pharmaceutical Co. Ltd.	***	***	***	***	15-25
3	Any other from China PR	***	***	***	***	40-50

H. Post disclosure Statements/Submissions

100. The submissions made and points raised are the same as raised earlier and dealt with above in this finding. However, they are being summed up again hereunder:

A. Submissions by the Importer

- i. Rule 17(1) of the Anti-Dumping Rules requires the Designated Authority to issue final finding within a period of one year from the date of initiation. The only exception is provided under proviso to Rule 17(1), which can be invoked only where existence of "special circumstances" can be demonstrated. Since there existed no special circumstances in the present case, the investigation could not have continued beyond one year.
- ii. Import statistics have not been provided as received from Directorate General of Commercial Intelligence and Statistics (DGCI&S). The respondent feels that Designated Authority has not provided the complete details and in absence of complete information, no meaningful submissions can be made on import data.
- iii. The Designated Authority has neither disclosed the source nor the international raw material prices in arriving at the Normal Value for Chinese exporters. The basis for arriving at the net

NON-CONFIDENTIAL

export price for non-cooperating exporters has not been disclosed. Therefore, the correctness of the dumping margin arrived at cannot be commended upon. The Designated Authority has kept the indexed figures of cost of sales and selling price as confidential. The Designated Authority has treated the Landed Value as confidential. As the Designated Authority has not disclosed the landed value of imports, the Respondent submits that the injury determination by the Designated Authority is doubtful. It is not known what adjustments have been made by the Authority. Unless the same is provided, the determination of price undercutting and price underselling cannot be examined by the interested parties.

- iv. There is a demand supply gap to the extent of 72% and is unlikely to be bridged by the Petitioner since it is operating at near optimal capacity utilization. The petitioner will not be in a position to meet the entire demand in India. Imposition of anti-dumping duty in such a scenario will only increase the burden on the ultimate patients.
- v. The companies on which DPCO is applicable have a limited profit margin because of the upper price limit fixed for selling the final product. If anti-dumping duty is imposed, the respondent will have to incur deep losses and stop the production altogether because it cannot pass on the increased cost of manufacture as a result of costlier raw material-Gliclazide. This will result in shortage of anti-diabetic medicines for Indian citizens and will ultimately affect the health of Indian citizens at large.
- vi. Consideration of 22% return on capital employed for determination of Non-Injurious Price incorrect: In view of the decisions of Hon'ble CESTAT, the Respondent has submitted that consideration of 22% ROCE is incorrect. The Designated Authority has not provided any reasoning for differentiating the case of Indian Spinners Association vs. Designated Authority in 2004 (170) ELT 144 (tri-del) from the present case.
- vii. The comparison of the disclosure statement with the petition filed by the domestic industry, shows that there is a huge variation in the economic parameters of the Petitioner as well as other factors. Variations have been noticed in parameters such as sales, demand, average stock, selling price per unit, capital employed, profits etc. Interestingly, all the revised figures are to the advantage of the domestic industry.
- viii. The Respondent and other interested parties have been commenting upon the data as submitted in the Petition and the Designated Authority has, on the other hand proceeded with different data altogether. No disclosure has been made for adopting different data altogether.
- ix. Sales and production of the Petitioner has increased considerably during the injury period. Sales of the domestic industry have increased considerably and in fact, the growth in sales is more than the growth in demand. Domestic sales have grown from 10.94% to 28.24% during 2010-11 to POI, an increase of almost 250%.
- x. Designated Authority has held that the domestic demand is dominated by the imports and market share of the domestic industry is only 30%. In this regard, Respondent submits that

NON-CONFIDENTIAL

the Petitioner is already operating at full capacity and cannot increase its market share beyond a certain extent as their capacity is limited. The capacity utilization has also increased from 71% to almost optimal capacity utilization level.

- x. Designated Authority has not at all examined the potential decline in sales, profits, output and other parameters aspect in its disclosure statement. As per Article 3.4 not only it is must that actual decline in the relevant factors be demonstrated, but the effect of such decline on potential decline must also be proved for a positive determination of injury.
- xii. The increase in market share of the Petitioner in domestic market is due to the fact that its exports has declined during the POI and had the Petitioner got export orders as it did for previous years, the demand-supply gap would have worsened even further. Moreover, Designated Authority has kept the export volume as confidential which was previously disclosed by the Petitioner itself.
- xiii. The petition filed by the Petitioner indicated increase in interest cost during the injury period, that is, 2010-11 to 2013-14. Interest cost almost tripled during this period without increase in capacity of subject goods. The Designated Authority has completely ignored the submission in this regard and did not examine the effect of interest cost. This will impact non-injurious price and resultantly the injury margin.
- xiv. Since the subject product is the Petitionersømajor product and the Annual Report 2013-14 is showing a decline in depreciation cost and interest cost, it was highly doubtful for Petitioner to project increasing depreciation and interest cost in its petition. Cash profit trend provided by the Petitioner in its petition and cash profit provided in disclosure statement seems doubtful. There is a decline in PBIT and a corresponding increase in depreciation expense during the injury period. By adding such steep increase in depreciation to the PBIT, the cash losses should have declined. However, same has continued to increase during the injury period, which defies logic. Profitability of the Petitioner as a whole improved every year whereas performance of the domestic industry in respect of the main product declined consistently. Respondent fails to understand as to how the Petitioner can continue to make profits as a company as a whole when the main product is suffering significant injury.
- xv. The injury to the domestic industry is also due to the DPCO pricing. The formulators will not purchase the subject goods at a price, which will make the cost of production itself more than the price limit stated in the DPCO. Thus, non-injurious price has to be determined by considering DPCO determined prices for the final products and making the necessary adjustments. The Designated Authority should not attribute the injury suffered by the Domestic Industry due to DPCO pricing to the imports of subject goods. This has been the consistent practice of the Authority in the past. For example the Authority can refer to the final findings in the anti-dumping investigation against Cefadroxil Monohydrate originating in or exported from EU.
- xvi. Designated Authority has stated that after closure of the petitioner, India would be dependent on Chinese market for this important product which will be against the larger public interest in India. The demand-supply gap is substantial even now as an Indian domestic producer is unable to cater to the domestic demand. If anti-dumping duty is

imposed, prices of the subject goods will not only increase, the demand-supply gap will further aggravate.

B. Submissions by the Exporter

- xvii. The request for making a fair comparison has not been addressed. We request the Honøble Authority for addressing our concerns for making fair comparison for the determination of dumping margin. It is also reiterated that the subject goods i.e. Gliclazide are manufactured as per the norms prescribed under Indian Pharmacopeia (IP), British Pharmacopeia (BP) and European Pharmacopeia (EP). It may be seen that the manufacturing norms are stricter for EP as compared to IP/BP. There is not much difference in IP/BP grades and therefore these two grades can be taken under one category. With the stricter norms of EP, the cost of production of EP grade is significantly higher as compared to IP/BP grades. It is due to this reason there is a difference between the prices of the said grades and EP is sold at a higher price. We would, therefore, request the Honøble Authority for making a fair comparison for the two sets of grades of Gliclazide i.e. EP and IP/BP separately for the determination of dumping margin in accordance with the provisions of Article 2.4 of the WTO ADA and Rule 10 read with Para 6 of Annexure I of the Indian Anti-dumping Rules. With regard to our justification for the fair comparison of the two grades EP and IP/BP grades, the production and technical standards of EP and IP/BP grades have already been provided to the Authority. The comparative analysis is summarized below:
- xviii. With regard to determination of normal value under Para 7 of the Annexure I, it has been observed in the para 39 of the disclosure statement that normal value for NME country can be determined on the basis of any of the methods prescribed in para 7. The normal value finally has been proposed to be determined on the basis of the basis of facts available. It is submitted that there is a hierarchy of methods to be followed as prescribed in Para 7 and the determination of normal value by relying upon the facts available is the last method and that it is to be followed only in the event it is not possible to construct the normal value on the basis of other alternatives prescribed in the opening sentence of Para 7. In terms of the provisions of paragraph 7 of the Annexure I of the Anti-dumping Rules, the Designated Authority is required to first identify the market economy third country for determination of normal value and only where it is not possible to obtain necessary data from such third country, the normal value is to be determined on any other reasonable basis, including the price actually paid or payable in India for the like product, duly adjusted if necessary, to include a reasonable profit margin. It is submitted that the domestic industry is under an obligation to inform, without unreasonable delay, the selection of market economy third country so as to give the parties concerned an opportunity to respond to the same. However, the mandatory procedure prescribed by law in the present case has not been followed as the interested parties have not been put to notice about selection of the third country nor the interested parties have been requested to suggest and make necessary information available about the third country. Thus, in the absence of following the mandatory procedure, the present proceedings cannot continue and have become incurable in view of the decision of the Honøble Supreme Court in the case of Shenyang Matsushita 2005 (181) ELT 320 (SC) which is directly on the issue.

C. Post Disclosure Statement submissions by the Domestic Industry

- xix. The detailed submissions have previously been made before the Designated Authority with regard to PUC, Like Article, standing, injury and causal link. All such submissions may kindly be treated as an integral part of these comments as well.
- xx. It is noted from the Disclosure statement that the Authority has proposed to grant individual margins to Shandong Keyuan Pharmaceutical Co., Ltd and Zhejiang Jiuzhou Pharmaceutical Co., Ltd. We have following objection to granting individual margins to these exporters and our reasons behind the same argument is provided as follows;
- a. **Shandong Keyuan Pharmaceutical Co., Ltd:** It has been our submission that the principal share holders Shandong Keyuan are Shandong LinuoKefeng Pharmaceutical Co., Ltd., and Linuo Group Co., Ltd. The information also shows that Linuo Group is the main holding company/group and both Shandong Keyuan Pharmaceutical Co., Ltd and Shandong LinuoKefeng Pharmaceutical Co., Ltd. are part of Linuo Group. However, it has been submitted by the exporter that its share holders/related companies are not engaged in the production or sale of the subject goods. On the contrary, available information shows that Shandong LinuoKefeng Pharmaceutical Co., Ltd was the first company to get government license to produce Gliclazide in China PR. The non disclosure of this information and non participation of the said company have material impact on any determination of individual margin for the responding exporter. The EQ Response also says that Shandong LinuoKefeng Pharmaceutical Co. Ltd, purchases Gliclazide as a raw material from the responding exporter. The nondisclosure about production by Shandong LinuoKefeng Pharmaceutical Co. Ltd also puts serious doubts on the submission that this company has not exported the subject goods to India. We made these submissions repeatedly in our written submissions however it appears that the said exporter failed to provide any meaningful clarification to this issue to the Authority. Under such circumstances, if the one responding exporter from a large group of producers is given individual margin, the chances of other producers within the group who has not come before the Authority taking undue benefits of individual margin to the responding exporter within the group while exporting the material to India which otherwise comes in the residual category is not ruled out. Thus, Shandong Keyuan Pharmaceutical Co., Ltd should not be granted individual margin.
- b. **Zhejiang Jiuzhou Pharmaceutical Co., Ltd:** With regard to Zhejiang Jiuzhou Pharmaceutical Co., Ltd, we reiterate our submission that this exporter resorted to excessive confidentiality and not even the name of share holders are given to other interested parties which has shortened our ability to corroborate the submissions of this exporter based on publicly available fact. However, it has been a postscript submission of Zhejiang Jiuzhou Pharmaceutical Co., Ltd that PUC contains two main grades i.e IP/BP and EP and any comparison should be made based on these grades. We request the Authority to confirm its view disclosed in the Disclosure statement at para 42 for the purpose of final finding also. In any case, the exporter did not substantiate its argument to show that there is 'significant' cost and price difference between the grades by way its EQ Response based on this alone the argument is rejectable.
- c. Zhejiang Jiuzhou Pharmaceutical Co., Ltd is apparently an unreliable producer and have allegedly engaged in certain malpractices concerning another API (Gabapentin) as pointed

out by US FDA, which is available in the public domain. Thus, we dispute the exporter's behavior which is indicative of malpractices in PUC, which is also a pharma ingredient. In the above circumstances, we request the Authority to seek clarifications from Zhejiang Jiuzhou Pharmaceutical Co., Ltd with regard to its alleged misbranding of API exported to US and its relation with Zhejiang Zonebanner Jiuzhou Imp. & Exp. Co., Ltd as far as it relates to Gliclazide before proceeding to grant individual margin to Zhejiang Jiuzhou Pharmaceutical Co., Ltd. In case the exporter fails to provide meaningful clarification, then the balance of convenience should lie in not granting individual margin to this exporter.

- xxi. Anti dumping duties are required to be imposed to curb dumping and to establish fair competition in the Indian market as envisaged in the AD Agreement/Law. The form of duty is required to be kept as fixed quantum in terms of USD.

D. Examination by the Authority

- xxii. The issues raised by the importers, exporters and DI have already been addressed in preceding paragraphs. However, for sake of clarity some of the issues are being addressed here in below in brief:
- a. The information and data from secondary source namely IBIS furnished by Petitioner was part of the NCV petition and available for reference of all the interested parties.
 - b. For the purpose of analysis during the investigations DA has relied on DGCIS data, which has been made available to all the interested parties. The data was also sent to all participating interested parties via mail. There have been no specific comments on the data by any interested party. Therefore, the authority is of the view that analysis has been properly carried out.
 - c. The extension of time for completion of investigation was availed in terms of Rule 17(1) of AD Rules. This has been held valid in the case of Mahindra & Mahindra vs. U.O.I. & Ors (W.P. (C) 3022/2014); and Volkswagen India Pvt. Ltd. vs. U.O.I. & Ors (W.P. (C) 3023/2014) by Honøble High Court of Delhi.
 - d. On the point of variation of data, it is seen that petitioner claims to have earlier given details in the petition and analysis was based on unaudited financial data for the POI as the accounts were not audited while filing the petition. But the same were revised subsequently upon finalization of audited account and verified by the Authority accordingly.
 - e. The point regarding the pricing mechanism of the API and the final formulation has already been addressed in detail hereinabove and the same are not being repeated.
 - f. The issue pertaining to public interest including shortage of drug and price increase has already been addressed and explained in detail in above paragraphs and does not require further analysis.
 - g. The point wherein the exporter has raised an issue regarding the different grades of PUC such as IP/EP/BP, the Authority has decided, as also mentioned above, that comparison of the imported goods with the PUC and the like article, produced by the domestic industry which is Gliclazide as defined in the initiation notification, is the best comparison and there

is no need or any substantiated need to compare cost and price by classifying the PUC into IP/BP and EP grades as pointed out by the exporter. Further, the exporter did not substantiate its argument to show that there is "significant" cost and/or price difference between the grades in any way in its EQ Response or during the verification at their site.

- h. The allegation of DI regarding malpractices by one of the exporter was examined and found that the same has no relevance to the PUC or the investigation under reference. The Authority has relied on the verified data of the exporter for the instant case.

I. CONCLUSION

101. The Authority has, after considering the foregoing, come to the conclusion that:

- a. The subject goods have been exported to India from the subject countries below its normal value;
- b. The domestic industry has suffered material injury;
- c. The material injury has been caused by the dumped imports of the subject goods from subject countries.
- d. The injury has been caused cumulatively by the imports from the subject countries.

J. INDIAN INDUSTRY'S INTEREST AND OTHER ISSUES

102. The Authority recognizes that imposition of antidumping duties might affect the price level of product in India. However, fair competition in Indian market will not be reduced by the anti-dumping measures. On the contrary, imposition of anti-dumping measures would remove the unfair advantage gained by dumping practices, would arrest the decline of the domestic industry and help maintain availability of wider choice to the consumers of subject goods. Consumers could still maintain two or more sources of supply.

103. The Authority notes that the purpose of antidumping duties, in general, is to eliminate injury caused to the Domestic Industry by unfair trade practices of dumping so as to re-establish a situation of open and fair competition in Indian market, which is in the general interest of the country. 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 products to the consumers.

K. RECOMMENDATIONS

104. The Authority notes that the investigation was initiated and notified to all interested parties and adequate opportunity was given to the exporters, importers and other interested parties to provide positive information on the aspects of dumping, injury and causal link. Having initiated and conducted the investigation into dumping, injury and the causal link thereof in terms of the AD Rules and having established positive dumping margins as well as material injury to the domestic industry caused by such dumped imports, the Authority is of the view that imposition of antidumping duty is required to offset dumping and injury. Therefore, the Authority considers it necessary to recommend imposition of definitive anti-dumping duty on imports of subject goods from the subject countries in the form and manner described hereunder.

NON-CONFIDENTIAL

105. Having regard to the lesser duty rule followed by the Authority, the Authority recommends imposition of definitive anti-dumping duty equal to the lesser of margin of dumping and margin of injury, so as to remove the injury to the domestic industry. Accordingly, the antidumping duty equal to the amount indicated in Col No.9 of the table below is recommended to be imposed on all imports of the subject goods originating in or exported from the subject countries/territory.

Duty Table									
Sl. No	Tariff Item	Description of Goods	Specification	Country of Origin	Country of Export	Producer	Exporter	Amount (in USD)	Unit of Measurement
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
1.	2942 00 90	Gliclazide	Any specification	China PR	China PR	Shandong Keyuan Pharmaceutical Co. Ltd	Shandong Keyuan Pharmaceutical Co. Ltd	20.86	KG
2.	2942 00 90	Gliclazide	Any specification	China PR	China PR	Zhejiang Jiuzhou Pharmaceutical Co. Ltd.	Any Zhejiang Jiuzhou Pharmaceutical Co. Ltd.	18.26	KG
3.	2942 00 90	Gliclazide	Any specification	China PR	China PR	Any combination other than Sr No.3		31.22	KG
4.	2942 00 90	Gliclazide	Any specification	China PR	Any country other than China PR	Any	Any	31.22	KG
5.	2942 00 90	Gliclazide	Any specification	Any country other than subject countries	China PR	Any	Any	31.22	KG

106. Landed value of imports for the purpose of this Notification shall be the assessable value as determined by the Customs under the Customs Act, 1962 (52 of 1962) and includes all duties of customs except duties under sections 3, 3A, 8B, 9 and 9A of the said Act.

107. An appeal against the order of the Central Government arising out of this final finding shall lie before the Customs, Excise and Service Tax Appellate Tribunal in accordance with the Customs Tariff Act.

(A.K.Bhalla)
Designated Authority