

Government of India
Ministry of Commerce & Industry
Directorate General of Anti-Dumping & Allied Duties
Udyog Bhawan, New Delhi

Notification

29th June, 2012

Subject: - Sunset Review of anti-dumping duty imposed concerning imports of 'Metronidazole' originating in or exported from China PR -Final Findings.

A. BACKGROUND

No.15/18/2010--DGAD: – Whereas having regard to the Customs Tariff Act, 1975 as amended from time to time (hereinafter referred to as the Act) and the Customs Tariff (Identification, Assessment and Collection of Antidumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, as amended from time to time (herein after referred to as the AD Rules), the definitive anti-dumping duty was originally recommended vide notification No.17/1/99-DGAD dated 14th July 2000 on import of 'Metronidazole' (hereinafter referred to as the subject goods) originating in or exported from China PR (hereinafter referred to as the subject country). Whereas upon a Sunset Review undertaken by the Designated Authority (hereinafter referred to as the Authority), the Authority recommended continuation of definitive Anti-dumping duty vide its notification No.15/9/2003-DGAD dated 5th April 2006 and whereas the Central Government issued its Notification No. 61/2006 – Customs dated 15th June 2006.

2. Whereas M/s Aarti Drugs Ltd. and M/s Unichem laboratories Ltd.(India), have filed a duly substantiated application before the Authority in accordance with the Act and the AD Rules alleging dumping of 'Metronidazole' originating in or exported from China PR and requested for review and modification & continuation of the anti-dumping duties. The Applicants have claimed that they represent the domestic industry as the other domestic producers of the subject goods have already stopped their production. Thus, as per information available on record, the Applicants account for the total Indian production of the subject goods.

3. And whereupon in accordance with Section 9 A (5) of the Act, read with Rule 23 of AD Rules, the Authority issued a public notice dated 30th May 2011, published in the Gazette of India, Extraordinary, initiating the Sunset review investigation to review the need for continued imposition of duties in force and to examine whether the cessation of such duty is likely to lead to continuation or recurrence of dumping and injury.

And whereas, the antidumping duty as notified vide Notification No. 61/2006 Customs dated 15th June, 2006 was extended up to 14th June, 2012 vide notification No 48/2011-Customs dated 15th June, 2011 in terms of Section 9(A)(5) of the Act.

4. It is, however, noted that M/s. Aarti Drugs Limited has imported *** MT of the subject goods under the duty exemption schemes out of the total imports of *** MT during the POI viz. 1st January 2010 till 31st December 2010. It has been contended by them that these imports were necessitated in order to meet their export commitments.

5. Opposing interested party has filed its submissions contending, *inter alia*, that M/s. Aarti Drugs Limited should be excluded from ambit and scope of the domestic industry. The domestic industry has also filed its submission on the subject. Considering the submissions made by the interested parties regarding inclusion /exclusion of M/s. Aarti Drugs Limited, the Authority is of the view that it would be appropriate to exclude M/s. Aarti Drugs Limited from the ambit and scope of the domestic industry in terms of Rule 2(b) of the AD Rules. As a consequence thereof, M/s. Unichem Laboratories would constitute as the domestic industry, being the only remaining producer of the subject goods and thus satisfy the requirement of Rule 2(b) of the AD Rules.

B. PROCEDURE

6. In this proceeding, the procedure described herein-below has been followed:

- i. The Embassy of the subject country in India was informed about the initiation of the investigation, in accordance with Rule 6(2) of the AD Rules.
- ii. The Authority sent copies of initiation notification dated 30th May 2011 to the Embassy of the subject country, known exporters/producers from the subject country, known importers and other interested parties, and the domestic producers, as per the information available with it. Parties to this investigation were requested to file the questionnaires' responses and make their views known in writing within the prescribed time limit. Copies of the letter and questionnaires sent to the exporters/producers were also sent to the Embassy of the subject country along with a list of known exporters / producers with a request to advise the exporters/ producers from the subject country to respond to the questionnaires within the prescribed time.
- iii. Questionnaires were sent to the following known exporters/producers from the subject country in accordance with Rule 6(4) of the AD Rules to elicit relevant information:

S.N.	Company's Name
1.	M/s Great Chang Import & Export Co., Ltd. Of Shandong, China PR
2.	M/s China National Electronic Imp & Exp Ziamen Co., China PR
3.	M/s Jiangsu Guo Tai International Group Co. Ltd., China PR
4.	M/s Hubei Hongye Medical & Chemical Industry Co. Ltd., China PR
5.	M/s Huanggang Yongan Pharmaceutical Co. Ltd., China PR

6.	M/s Qingdao Dacon Trading Co. Ltd., China PR
7.	M/s Changzhou Good-Job Biochemical Co., Ltd. China PR
8.	M/s Qingdao Dacon Trading Co. Ltd. China PR
9.	M/s Seebio Biotech Inc., China PR
10.	M/s Qingdao Fraken International Trading Co., Ltd., China PR
11.	M/s Jiangxi Dongxu Chemical Technology Co., Ltd, China PR
12.	M/s Shanghai Fine Chemicals Co. Ltd., China PR
13.	M/s Shijiazhuang Vitire Import & Export Trading Co., Ltd., China PR
14.	M/s Shandong Mingyuan Imp. & Exp. Co., Ltd, China PR
15.	M/s Guangzhou Shiny Import Export Co. Ltd., China PR
16.	M/s Shijiazhuang Huikangyuan Medicine Company Ltd, China PR

In response thereto, M/s Hubei Hongyuan Pharmaceutical Co., Ltd. China PR, an exporter/producer from the subject country has filed the questionnaires' response.

- iv. Questionnaires were sent to the following known domestic producers, importers, users and associations of the subject goods in India seeking necessary information:

S.N.	Company's Name
1.	M/s Aarti Drugs Ltd., Mumbai
2.	M/s Unichem Laboratories, Mumbai
3.	M/s Unique Chemicals, Mumbai
4.	M/s Aarey Drugs & Pharmaceuticals Ltd., Thana, Mumbai
5.	M/s Advent Pharma Pvt. Ltd., Mumbai
6.	M/s Ace Laboratories Ltd., Delhi
7.	M/s Alkem Laboratories Ltd., Mumbai
8.	M/s Amoli Organics Pvt. Ltd., Mumbai
9.	M/s Concept Pharmaceuticals Ltd., Mumbai
10.	M/s Dosch Pharmaceuticals Co., Mumbai
11.	M/s DWD Pharmaceuticals Ltd., Mumbai

12.	M/s Flamingo Pharma Ltd., Mumbai
13.	M/s Indo Pharma, Mumbai
14.	M/s Lark Chemicals (P) Ltd., Mumbai
15.	M/s Litika Pharmaceuticals Ltd., Pune
16.	Maneesh Pharmaceuticals Pvt. Ltd., Mumbai
17.	M/s Medi Pharma Drug House, Mumbai
18.	M/s Mercury Laboratories Ltd., Mumbai
19.	M/s New Generic Drug House, Mumbai
20.	M/s Panacea Biotec Ltd., New Delhi
21.	M/s Shreeji Bhavan, Mumbai
22.	M/s Shubham Pharmachem (P) Ltd., Mumbai
23.	M/s Smruthi Organics Ltd., Mumbai
24.	M/s Unibios Laboratories Ltd., Mumbai
25.	M/s Unique Pharmaceuticals Labs., Mumbai

- v. In response to the initiation notification,
- vi. The imports data for the period of investigation and preceding three years was called from Directorate General of Commercial Intelligence and Statistics (DGCI&S).
- vii. The Authority made available non-confidential version of the evidence presented by the interested parties in the form of a public file kept open for inspection by the interested parties.
- viii. The Authority has examined the information furnished by the domestic producers to the extent possible on the basis of Generally Accepted Accounting Principles (GAAP) to analyze the likelihood of continuation/recurrence of injury and to work out the cost of production and the non-injurious price of the subject goods in India so as to ascertain if anti-dumping duty lower than the dumping margin would be sufficient to remove injury to the domestic industry.
- ix. In accordance with Rule 6(6) of the AD Rules, the Authority also provided opportunity to all interested parties to present their views orally in a public hearing held on 19th September, 2011. The parties which presented their views in the public hearing were requested to file written submissions of the views

expressed orally. The arguments made in the written submissions received from the interested parties have been considered, wherever found relevant, in the disclosure statement.

- x. The Period of Investigation (POI) for the purpose of the present review is 1st January 2010 to 31st December 2010 (12 months). However, injury analysis shall cover the years 2007-08, 2008-09, 2009-10 & POI. The data beyond POI may also be examined to determine the likelihood of dumping and injury.
- xi. Verification to the extent deemed necessary was carried out in respect of the information & data submitted by the domestic producers and the co-operative exporter/producer from China PR.
- xii. In accordance with the Rule 16 of the AD Rules, the essential facts under consideration before the Authority in the instant investigation were disclosed to the known interested parties. The comments received on the disclosure statement, to the extent considered relevant, have been considered in these findings.
- xiii. 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 as confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non-confidential version of the information filed on confidential basis.
- xiv. Wherever an interested party has refused access to, or has otherwise not provided necessary information during the course of the present investigation, or has significantly impeded the investigation, the Authority has recorded these findings on the basis of the 'facts available'.
- xv. *** In this statement represents information furnished by the interested parties on confidential basis and so considered by the Authority under the AD Rules.

C. Post-Disclosure statement submissions made by interested parties and the Examination thereof

M/s Hubei Hongyuan Pharmaceutical Co., Ltd. China PR,

7. The following submissions, in brief, have been made by M/s Hubei Hongyuan Pharmaceutical Co., Ltd. China PR, in response to the Disclosure statement:
 - The petitioner has claimed excessive confidentiality; even volume information has been provided on confidential basis.
 - The Authority has correctly considered DPCO ceiling price for the purpose of working out injury margin. However, such injury margin should be worked out on the basis of existing DPCO ceiling price which is Rs. 514/- per kg.

- Form of measures: Claim of the domestic industry with regard to financial losses because of benchmark form of duty is baseless. Firstly, form of measures (fixed or benchmark) cannot be a reason for such losses under benchmark form of duty because domestic industry continues to get protection up to the level of objectively determined NIP. Assuming but not admitting that the financial losses to domestic industry is on account of form of duty then the obvious question is the why domestic industry was silent for last ten years and did not approach the Authority for review. Further in this case only reference price duty based on DPCO price, be recommended as the subject product prices are controlled by the DPCO, therefore, the Authority is required to benchmark anti-dumping duty in the present case up to the level of as the maximum sales price notified under DPCO 1995.
- In view of significant increase in value of US Dollar after POI and DPCO has also fixed benchmark in INR, it is prayed that definitive duty, if at all required to be imposed, be recommended on the basis of reference price in Indian Rupees.
- Information suppressed by petitioner on account of imports made by ADL: Generally, suppression of such information could have led to the termination of the investigation itself. The obvious question is why domestic industry provided incorrect information to the interested parties in relation to imports by ADL as made under Advance License. Removing ADL data on the grounds of such imports at this stage does not appear to be done as per the rules. In this case, Authority is required to evaluate whether the domestic industry can intentionally mislead the interested parties by disclosing incorrect information.
- Injury determinations: The production of Unichem constitutes 29.36% of Indian production. This means production of Unichem was about 246 MT during the POI which includes Job work production done by ADL out of total Indian production which was 838 MT. It should be noted that ADL plant was closed for 3-4 months during POI due to temporary restrictions imposed by Gujarat Pollution Control Board (GPCB) and this would have resulted in lower Indian production during POI. Unichem is a small producer as their own production would be less than 25% of Indian production during injury period and therefore injury assessment based on Unichem data would not lead to objective analysis and fair determination. Further, domestic industry has claimed that the quantum of job work done by Unichem has steeply declined over the injury period. This means, capacity utilization of Unichem could have been less during injury period (previous years) due to job work done. Therefore, the Authority should consider 100% capacity utilization for determination of NIP to nullify injury, if any, caused to the domestic industry by inefficient utilization of production capacities due to Job work.

Domestic industry

8. The following submissions, in brief, have been made by Domestic industry in response to the Disclosure statement:

- The injury margin should be determined on the basis of non-injurious price determined by the Authority and not on the basis of DPCO price for the following reasons:
 - a) The landed price of imports is materially below DPCO and selling prices of the domestic industry and therefore the low price of imports is preventing the domestic industry from realizing even a price equal to DPCO price. Since the domestic industry is not selling at DPCO price, the domestic industry is not suffering injury because of DPCO price but because of dumped imports.
 - b) The industry has sought enhancement of DPCO price to Rs.672/Kg from the present levels in view of very steep increase in the prices of raw materials after the last fixation of the DPCO price. The request of the industry is under consideration of NPPA.
 - c) The present case is not the first case of a product whose price is notified under DPCO and where the Authority has recommended anti dumping duty. The Authority has never before considered the DPCO price as binding for anti-dumping purposes. Reference has been made to a few final findings notified by the Authority, where the non-injurious price determined by the authority is higher or lower than price notified by DPCO but the Authority has not considered DPCO price for determination of injury margin. Thus, the Authority should not determine injury margin considering DPCO price.
 - d) Under dumping law, the Authority is required to determine “injury to domestic industry”. The constitution of industry forming domestic industry might be different in anti-dumping as compared to the constitution of industry for the purpose of NPPA.
 - e) The non-injurious price and injury margin is required to be determined for the investigation period chosen by the Authority. Merely because some DPCO price was prevalent during the period, the same does not imply that this is the non injurious price for the investigation period. The Authority is required to determine injury margin based on non injurious price for the period of investigation. Consideration of any price adopted which is not for this period shall be in contravention of various provisions under dumping law. The Authority is required to follow the non injurious price law.
 - f) It is quite possible where the non injurious price determined by the Authority was lower than the DPCO price and the Authority could not have adopted the higher DPCO price in those cases. By converse, merely because DPCO price is lower, the non injurious price determined cannot be rejected. Principles of fairness and objectivity in determination demand that the Authority should apply the same rationality in the present case.
 - g) The Authority as an Investigating Authority is required to proceed based on objective examination of the data/information and should not substitute the same with subjective considerations.
- With regard to the determination of Normal value and dumping margin, the domestic industry has stated that the methodology adopted for determination of Normal value and Dumping Margin is not known to them and it appears that the constructed Normal value and dumping margin are required to be modified for the reason that the consumption factor, conversion costs, SGA expenses and the finance costs are not

based on 'domestic industry. They have further stated that the Authority should consider only the information of the domestic industry for the POI after verification and not other domestic producer.

- Duties on fixed quantum basis: The product is attracting benchmark form of duty on imports from China. The petitioner requests the authority to kindly recommend fixed form of duty in the present sunset review, expressed as duty US\$/kg for the following reasons:
 - i. Continued injury to the domestic industry – The domestic industry is suffering continued injury from dumped imports for the reason that Authority has fixed benchmark form of duty despite established fact that this form of duty is not sufficient to protect the interests of the domestic industry. The import price is being so reported that the landed price of imports is above the benchmark, consequently no anti-dumping duty is being collected on these imports – whether imports are being reported under duty free or duty paid category.
 - ii. Raw materials prices for the product under consideration keeps fluctuating and accordingly cost of production of the domestic industry and foreign producers also keeps fluctuating. However, the Authority has fixed one benchmark for five years. Thus, the domestic industry is protected with one benchmark in a situation where the raw materials price movement is quite significant. The product prices are directly governed by the input prices and import prices. These are two largest factors deciding prices. However, in view of benchmark price, the foreign producers are able to dump the material despite the anti-dumping duty imposed. The raw material prices have already increased significantly after the investigation period of the present case.
 - iii. It could be argued that the domestic industry could seek Mid Term Review of the anti-dumping duties imposed. However, it is pointed out that the review could have been sought in a situation where there have been significant increases in the raw material prices. It is not a situation where raw material prices have doubled or tripled. It is a situation where raw material prices are fluctuating within short span. Thus, a review also would not have addressed the problems of the domestic industry. The change in the form of duty alone can address the problems of the domestic industry.
 - iv. The Anti dumping legislation has been created in consonance and in conformity with the WTO Agreement on Anti Dumping, which explicitly permit Authorities to impose anti dumping duties in the form and manner requested.
 - v. Experience generated out of fairly large number of investigations (more than 300 investigations have been conducted so far spread over more than 15 years) that attempts are made to evade anti dumping duty imposed. A large number of complaints made by spectrum of industries over a long period with regard to circumvention of anti dumping duties are relevant in this regard. The Authority should not recommend a form of duty that would promote circumvention of anti dumping duty and should recommend such form of duty which is susceptible of minimum abuse/misuse.

- vi. The anti-dumping duty legislation the world over aims at protecting the domestic industry from unfair trade practices. The entire purpose for which anti dumping duty is proposed to be imposed is getting frustrated with the current form of duty. The duty should be imposed in a manner where it does not become futile.
- vii. Reference has also been made to the order of CESTAT in a few matters:–
 - in the case of NBR from Korea, the Hon’ble CESTAT modified variable anti-dumping duty recommended by the Authority to fixed duty .
 - in the case of Metcoke, the CESTAT, vide their decision 2000(116) E.L.T. 67 modified the anti-dumping duty from variable to fixed.
 - in the case of Vitriified files, the CESTAT upheld the decision of the Authority to impose fixed quantum of duty.
- Duty in US dollars: the duty should be imposed in terms of US\$ only for the following reasons:
 - a. The Authority has already expressed anti dumping duty in terms of US\$ in a number of other investigations. Rupee has depreciated significantly and therefore, the definitive duties may kindly be expressed in US\$. This is also supported by the rationality involved in the decision of the CESTAT in the matter of Metcoke from China. If the grounds for converting anti dumping duty into US\$ (from INR) has been appreciation of US\$, that too at appellate stage, the same ground cannot become a ground for imposition of anti dumping duty in INR.
 - b. The input costs of the domestic industry are directly influenced by the increase in the exchange rate. Firstly, the domestic industry has imported raw materials and therefore exchange rate impact is directly felt on the input costs. Secondly, even the domestically procured inputs are impacted by the US\$ appreciation, as those input costs are directly or indirectly impacted by US\$ appreciation. Therefore, if the domestic industry cost structures are impacted by US \$ appreciation, it is necessary to recommend anti dumping duty in US \$ form.
 - c. The Authority has recommended anti dumping duty in terms of US\$ in almost all the cases in last two years. Such being the case, there is no reason why duty should not be imposed in US\$ in the present case.

Examination by the Authority

9.

The submissions made by the interested parties have been examined as follows and in relevant sections of these findings:

- As regards the contention that the petitioner has claimed excessive confidentiality, even volume information has been provided on confidential basis; the Authority notes that it is not correct to state that volume parameters have to be necessarily disclosed, irrespective of the merits of the claims made. It is further noted that the 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 as confidential and not disclosed to other interested parties. Wherever possible, parties providing information on

confidential basis were directed to provide sufficient non-confidential version of the information filed on confidential basis.

- As regards the form of measures; the Authority recommends the form of measures as per the facts and circumstances of each case. It is further noted that the antidumping duty imposed in the instant matter for about past ten years in the form of reference price has largely remained ineffective as the domestic industry herein has continued to be in losses. Considering the facts and circumstances of this particular case, the Authority considers that it would be appropriate to recommend the AD measure in fixed form basis as against the reference price recommended earlier.
- As regards imposition of the AD measure in Indian Rupees is concerned; the Authority notes that the entire analysis of dumping has been undertaken in US Dollar terms. Besides, it is not certain whether the Indian Rupee would continue to slide downwards and would not stage a recovery in future. Therefore, the Authority considers it appropriate to recommend the measure in US Dollar terms.
- As regards the contention that the information has been suppressed by petitioner on account of imports made by ADL; the Authority notes that M/s Aarti Drugs Limited had effected significant imports of the subject goods under various duty exemption schemes of the govt. and also considering the submissions made by the interested parties regarding inclusion /exclusion of M/s. Aarti Drugs Limited, it has decided to exclude M/s. Aarti Drugs Limited from the ambit and scope of the domestic industry in terms of Rule 2(b) of the AD Rules. As a consequence thereof, M/s. Unichem Laboratories constitutes as the domestic industry, being the only remaining producer of the subject goods and thus satisfy the requirement of Rule 2(b) of the AD Rules
- As regards the contention that the production of M/s Unichem constitutes 29.36% of Indian production and that Unichem is a small producer as their own production would be less than 25% of Indian production during injury period and therefore injury assessment based on Unichem data would not lead to objective analysis and fair determination; the Authority notes that the same is not based on correct appreciation of the AD rules. AD Rules, *inter alia*, require that injury be examined and evaluated in relation to the domestic industry and the AD Rules further define the scope of domestic industry, which after the exclusion of M/s Aarti Drugs Ltd would mean that M/s Unichem constitutes the sole remaining domestic producer of the subject goods in India and hence has been correctly treated as the domestic industry.
- As regards the contention that the Authority has not determined the NIP based on the data of the domestic industry; the Authority notes that it has determined the NIP based on the verified data of the domestic industry and in terms of the principles laid down in Annexure III of the AD Rules and has accordingly determined the injury margin. Further, the Authority is also required to analyze

the reasons for the injury to the domestic industry apart from on account of dumped imports. In this connection, the Authority notes that Central Government has notified the maximum selling price of the subject goods w.e.f. 4.8.2008 at Rs.526/Kg. This in effect means that no one in India could sell the subject goods above this price irrespective of their actual cost of production/sales. The Authority, therefore, notes that the injury caused to the domestic industry on dumped imports could only be up to the DPCO notified price and it has accordingly determined the injury margin. Therefore, the contention of the domestic industry that the Authority should determine the injury margin based on the NIP only and ignore the DPCO price completely is devoid of merits. DPCO price is the ceiling price beyond which the product cannot be sold and therefore there is no bar on any one in selling the subject goods below the DPCO price and therefore in such a situation the Authority would consider only the NIP as the basis for determining injury as the same is lower than the DPCO price.

- As regards the contention that the determination of injury margin based on the current DPCO price; the Authority notes that DPCO price prevailing in POI is only relevant as the Authority is required to determine the injury margin for the POI.
- As regards the contention relating to capacity utilisation; the Authority notes that domestic industry besides manufacturing the subject goods in their plant also gets it manufactured through third party on job-work basis. The Authority has determined the NIP separately for the self manufactured goods as well as produced through job work and then considered the average NIP for determination of injury margin. The NIP has been worked out based on the principles laid down in Annexure III of the AD Rules.
- As regards the contention relating to re-determination of the constructed normal value and dumping margin; the Authority notes that it has constructed the normal value based on the information submitted by the domestic industry in their application. The Authority further notes that M/s Aarti Drug Ltd. had filed its information/data as part of the application and the same has been considered as M/s Aarti Drug Ltd, is more efficient domestic producer. The Authority further notes that it is required to construct normal value on reasonable basis and therefore it has considered best information available on record.

D. Misc Submissions made by interested parties and the Examination thereof

M/s Hubei Hongyuan Pharmaceutical Co., Ltd., China PR

10. M/s Hubei Hongyuan Pharmaceutical Co., Ltd., China PR, in brief, has submitted as follows:
 - That the domestic industry has made inopportune submissions (Non Confidential) and has not kept other interested parties in the loop by sharing the information on time. The non-confidential version of the submission filed by domestic industry is not in accordance with the Trade Notice No. 01/2012 dated 09.01.2012 and guidelines prescribed by the Authority. The domestic industry has not provided non-confidential

version of above submission in a timely manner to the interested parties. Such non-confidential version of submissions should have been forwarded simultaneously to all other participating interested parties, while forwarding the same to the Designated Authority.

- The applicant industry has kept considerable information as confidential without providing any reasons such as capacity, production volume, capacity utilization, production on job work, domestic sales volume, export sales volume, and captive volume. The applicant industry has merely stated reasons for confidentiality as none of the information relating to Unichem Laboratory's economic parameters concerning MTZ is in public domain and company's consumers are not at all aware about the capacities with the company etc and that the company has not disclosed any of this information in its Annual Report. Reference in this regard has been made to Report of the Appellate Body in European Communities-Anti-Dumping Measures on certain Iron or Steel Fasteners from China (WT/DS 397/AB/R dated 15th July, 2011).

Submissions made on behalf the Domestic industry

11. The Domestic industry in brief, has submitted as follows:

- **Inopportune submissions** – Hubei has stated that the submissions made by the domestic industry are quite late. It is submitted that the following is the sequence of events in this case:
 - a. A petition was filed jointly by Unichem and Aarti Drugs wherein Aarti Drugs pleaded its inclusion as domestic industry despite the imports made by the company.
 - b. While responding to notice of initiation, interested parties (primarily, Hubei) made submissions that Aarti Drugs should not be considered as domestic industry.
 - c. Domestic Industry at the time of hearing, reiterated its claim that Aarti should be considered as domestic industry. Domestic industry reiterated its claim in their written and rejoinder submissions.
 - d. Hubei at the time of hearing argued that Aarti Drugs should not be considered as domestic industry. Hubei reiterated its claim in their written submissions.
 - e. The rules do not provide for a decision by the Designated Authority before next stage of the proceedings i.e. disclosure document.
 - f. The prescribed proforma of the Designated Authority requires information on "*injury to the domestic industry*". This is clearly understood to mean "*domestic industry as a whole*".
 - g. The Designated Authority conducted verification in respect of Unichem but did not conduct verification of information of Aarti Drugs.
 - h. The case was initiated on 30th May, 2011 and the final findings are due on 29th May, 2012.

In view of the above, and having regard to the rules and the procedures being followed, the domestic industry on its own, even when there is no legal obligation, provided injury statement in respect of Unichem alone.

Under the law, the Authority has to decide whether to include or exclude a company from the scope of domestic industry. Further, if the Authority decides to exclude Aarti Drugs, consequences of the same shall follow.

The above position can be compared with the situation whether a number of domestic producers come before authority and provide information to the authority through different counsels. Some may even file information directly. Conflicting business interests amongst domestic producers may prevent such domestic producer from filing consolidated information. If so, it does not mean that the law will not protect such domestic industry only because they have not file consolidated injury statement. Appreciating such difficulties, in fact, an obligation has been cast on the Designated Authority to disclose all essential facts under consideration before the Designated Authority to all other interested parties before the Designated Authority takes a final decision. Further, opportunity for comments has been provided under the rules. Undisputedly, it not a case that the laid down procedure of issuance of disclosure statement shall not be followed in this case. In view of the above, there is no merit in the argument with regard to inopportune opportunity.

- As regards circulation of submissions to other interested parties; the fact is that they themselves have not served their submission to the domestic industry. In fact, the exporter must have filed several submissions during the course of the proceedings. Barring post hearing written submissions, none of the submissions made by Hubei have been served onto the domestic industry. An interested party cannot raise grievance against such non compliance, when such interested party itself has not complied with such requirement.

Notwithstanding, the fact that the Authority has made available a copy of our submissions to the interested parties through the public file and such opportunity has in fact being availed clearly establishes that the legal requirements under the law have been duly complied. It is relevant to point out that the only legal requirement under the law is that evidence presented by one interested party to the Authority should be made available to other interested parties participating in an investigation. Such evidence can be made available to other interested parties in any manner and so long as the evidence has been made available to the other interested parties, no grievance can be raised.

- **Confidentiality** – The exporter has raised objection on claim of confidentiality made by the domestic industry. The domestic industry submits that –
 - a) Only such information has been claimed confidential, confidentiality of which is permitted under the rules.
 - b) The domestic industry has given sufficient reasons for claiming confidentiality. If further reasoning/justification is required, we may be instructed.
 - c) The Designated Authority has on past occasions permitted such information to be treated as confidential. Kind attention of the Designated Authority is requested to the final findings relating to anti-dumping investigations concerning imports of Morpholine, wherein all such similar information were claimed confidential and allowed by the Authority.
 - d) It is submitted that the company has not publically disclosed such information. Reference to annual report is also drawn where such information is not separately available in the annual report.
 - e) Information such as production, capacity and capacity utilization is indeed confidential. Even other domestic producers do not have precise information about these parameters relating to Unichem. In view of very limited production of

this production globally, disclosure of this information can significant harm business interests of the company, who is competing with other domestic and Chinese producers in domestic and global market.

- f) As regards requirement under Schedule IV of Companies Act, it is submitted that the same concerns another government authority. As far as Designated Authority is concerned, the only legal requirement can be whether such information has been disclosed in the annual report. Sufficiency of such disclosures in the annual report under some other statutory requirements is not and cannot be a subject matter of present investigation. Should the Designated Authority however require an explanation, the company may be instructed.
- g) With regard to decision of the Appellate Body in the matter of European Communities – Anti-Dumping Measures on certain Iron or Steel Fasteners from China (DS 397/AB/B dated 15th July 2011), we submit that the Authority is required to consider the reasons for claiming confidentiality. It is submitted that the reference to report is totally misplaced. In fact, the WTO Appellate Body considered and accepted that the Investigating Authority was justified in allowing confidentiality.
- h) As regards right to defence, the Authority is required to examine injury to the domestic industry by considering performance of the domestic industry in respect of a number of economic parameters. Determination by the Authority is based on the trends in various economic parameters. If the DA has to assess injury to the domestic industry based on trends, relevance of absolute numbers in any case is not understood.

Examination by the Authority

12. The Authority has taken note of the submissions made by the interested parties and the same have addressed as follows and in the relevant sections of this document:
 - As regards inopportune time issues, the Authority notes that it receives submissions at various stages from the interested parties during the course of an investigation and the Non-confidential versions thereof are duly placed in the public file maintained in terms of the AD rules. The public file is readily made available for inspection by the interested parties, which has also been done in the instant matter.
 - The Authority notes that the 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 as confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non-confidential version of the information filed on confidential basis.

E. Product under consideration and Like article

13. The product involved in the original investigation was ‘Metronidazole’. This being a Sunset review, therefore, the investigation covers the product covered in the original investigation and the previous SSR investigation. Metronidazole is anti-diarrhea and anti-microbial drug. It is used in cases of Amoebiasis, Trichomoniasis, post-operative infection after surgery, giardiasis, acute ulcerative and gingivitis, anaerobic, vaginosis

treatment of infection caused by anaerobic micro formation. It is an organic chemical falling under heading No. 29332920 in Chapter 29 of the First Schedule to the said Customs Tariff Act and ITC HS Classification. This classification however, is indicative only and in no way binding on the scope of the present investigation.

14. The domestic industry also produces Metronidazole having similar characteristics and specifications. No argument has been extended, by any interested party on the issue of product under consideration or like article and therefore, the Authority considers that the product being manufactured by the domestic industry is 'like article' to the product under consideration as per the AD Rules.

F. Scope of the Domestic Industry

Submissions made on behalf of M/s Hubei Hongyuan Pharmaceutical Co., Ltd., China PR

15. M/s Hubei Hongyuan Pharmaceutical Co., Ltd., in brief, has contended as follows:

- The domestic industry has falsely mentioned that petitioners are the only producers of the subject goods in India as M/s J. B. Chemicals is also a producer of subject goods in India.
- As per the settled practice, the name and address of known interested parties should have been supplied in the petition. In this case, petitioners had supplied incomplete list of interested parties in the petition as it is evident from the fact that exporter's names taken for likelihood parameters is missing in the list of known exporters. We believe such selective suppression of information is done with an intention to mislead the Authority of crucial information.
- M/s Aarti Drugs Ltd. has not only imported the subject goods from the China PR against advance license but has also imported significant quantities of PUC after paying duty during the period of investigation based on market intelligence. Considering these imports, M/s Aarti Drugs Ltd. should be excluded from the scope of domestic industry. Reference has been made to the findings of the Authority in the matters of *Anti-Dumping (Mid-term Review) investigations concerning imports of Phenol originating in or exported from Singapore, South Africa and European Union* and *Anti-dumping investigations involving imports of Phenol originating in or exported from USA, Korea-RP and Taiwan*. In case M/s Aarti Drugs Ltd. is included as part of domestic industry, any injury to the domestic industry would only be self-inflicted which cannot be considered sufficient to impose any anti-dumping duties.
- M/s Aarti Drugs Ltd. has submitted incorrect facts on relationship of petitioner with Exporter/Importer and justifications on imports by ADL to treat it as Domestic Industry as it has imported large quantities of the subject goods not only during the period of investigation but since 2000. Furthermore, it has a subsidiary company i.e. M/s. Suyash Laboratories Ltd which is also an importer

of the subject goods from China PR. Therefore, M/s Aarti Drugs Ltd. should be excluded from the purview of the domestic industry.

- The petitioners has incorrectly claimed that the injury to domestic industry is no way distorted because of imports made by M/s Aarti Drugs Ltd. as the capacity utilization of domestic industry would be less due to imports and cost of the domestic industry would have increased as a result of increase in the conversion costs and due to decline in the production because of imports made by M/s Aarti Drugs Ltd. Further, the total demand of the country includes consumption for the purposes of exports so whether the imports are for downstream product or not, would not make any difference.
- M/s Aarti Drugs Ltd has a related company in China PR and also has a subsidiary in India, which is the importer of subject goods.
- Contradictory statements have been made in the application filed by the Applicants and the emphasis is given to the one which is more advantageous. Moreover, it is apparent that petitioner has used pick and select option for its claim of injury. For depicting injury it has claimed that domestic industry is under-utilizing its capacity because of dumping of subject goods and not able to increase production whereas while defining domestic industry it has mentioned that M/s. ADL has been utilizing its plant capacity fully to meet the demand of subject goods and therefore importing the subject goods for downstream product. The two statements are self contradictory.
- Inadequate & Incomplete petition: The petitioners have failed to furnish injury information as per the prescribed format of DGAD. In Proforma-IVA, petitioners have mentioned installed capacity whereas in the petition they have stated effective capacity. Considering this contradictory statement, Proforma-IVA needs to be verified for installed capacity and any information on effective capacity may be treated only as additional information. Moreover, capacity utilization is not based on capacity provided in Proforma-IVA resulting capacity utilization also incorrect. Same contradictions can be further observed in relation to the volumes of opening and closing stock data given in the Proforma-IVA. Furthermore, the calculation of growth in Proforma IVA is also not correct as it has taken figure of current year in denominator. Therefore, the petitioners have misled the Authority on crucial facts which could have affected the injury parameters. The Authority should advise the domestic industry to revise their non-confidential Proforma-IVA with the correct information and provide us a copy of the same for our further comments.
- It has been contended that if the domestic Industry was not satisfied with the form of duty then they could have sought relief against the same as per provision of Section 9C of the Custom Tariff Act, instead of waiting for the sunset review. No justification has been provided by domestic industry as to

why it was silent on continued injury, if any, and form of duty for the last five years when they could have resorted to protection measures provided by law in this respect.

- All the imports for export purposes and all the imports by ADL and subsidiary company should be excluded for injury purpose as the same couldn't have contributed towards injury to the domestic industry.
- Majority of imports, almost 80%, of subject goods is against advance license and ADL and J.B. Chemicals are major importers of subject goods in India and also claim the status of producers of subject goods in India. All the imports made under advance license and the imports made by ADL and their subsidiary company ought to be excluded for analyzing injury to the domestic industry. Applying the same logic, duty-free imports must be excluded for the purpose of injury analysis.
- M/s Aarti Drugs Ltd.'s plant was closed for almost 4-5 month during investigation period due to temporary restrictions imposed by Gujarat Pollution Control Board (GPCB) and this would have resulted in increased imports during investigation period because consumers did not have any other option but to import, since the subject goods falls under the category of drugs. Therefore, non- availability of the same made imports necessary and as M/s Aarti Drugs Ltd is the major producer of subject goods and used to do job work for M/s Unichem also, the closure of plant of M/s Aarti Drugs Ltd has given rise to imports.
- The petitioners have taken effective capacity in Proforma-IVA for calculation of capacity utilization. The capacity has declined during investigation period from 1,418 MT to 899 MT as compared to the base year because of plant closure due to restrictions imposed by Gujarat Pollution control Board. Therefore, there is no effect on capacity of the domestic industry due to dumped imports but have effect from other factor which is restrictions imposed by Gujarat Pollution Control Board.
- There is no effect on the production and capacity utilization of the domestic industry over the injury period. The production has declined because of plant closure of M/s Aarti Drugs Ltd due to restrictions imposed by Gujarat Pollution Control Board and it has also mentioned in the petition that M/s. Aarti Drugs has been utilizing its plant capacity fully to meet the demand of subject goods and therefore importing the subject goods for downstream product. Moreover, in any case capacity utilization has increased from 77% to 92% during investigation period. Therefore, there is no effect on production and capacity utilization of the domestic industry due to imports.

- The domestic industry has taken effective capacity utilization in order to get benefit of optimization. The rules for determination of NIP (Annexure-III) say that Authority has to take optimum capacity utilization during injury period so for getting higher duty it has done so.
- If the Authority takes effective capacity utilization for determination of NIP, then the expenses of the period when the plant remains closed should be excluded from the cost and same cost should be used for injury analysis as well.
- The domestic industry was in losses since 2000-01 and losses of domestic industry has increased from 100 in 2007-08 to 220 in investigation period while selling price of domestic industry was above the reference price duty during injury period. However, reference price duty was calculated on the non injurious price in the sunset review case. This shows performance of domestic industry has not improved due to inefficiencies.
- The domestic industry was in losses because of 2 MNI cost and which is higher as compared to the international price. Further, the cost of the domestic industry has increased as a result of increase in the conversion costs and due to decline in the production because of plant closure of M/s Aarti Drugs Ltd which has been admitted by the domestic industry in the petition that partly injury from conversion cost. So, increase in conversion cost should not be considered for injury analysis purpose which is due to other factor (plant closure) after considering other factor domestic industry would be in above than reasonable profit. Thus, the decline in these factors if any cannot be said to be on account of alleged dumped imports. Therefore, we submit that injury to the domestic industry is due to 2 MNI cost and conversion cost.
- It is not true that cost of sales increased significantly during the proposed period of investigation as compared to the previous year partly due to increase in raw material cost and partly due to increase in conversion cost as the international price of 2 MNI was Rs. 182.05 per Kg in 2009-10 which has declined to Rs. 181.84 per Kg in investigation period. In fact cost of subject goods should have declined during investigation period as compared to previous year. This means raw material cost (2 MNI) of domestic industry was high as compared to international price. Therefore, cost of 2 MNI and increase in conversion cost due to other factors should not be considered for cost computing of subject goods for injury as well NIP purpose as petitioner's cost is high due to inefficiencies.
- It has been contended that adjustment for closure of plant of M/s Aarti Drugs Ltd is to be made not only with respect to capacity but with respect to all the factors of injury. The analysis after making the adjustment would be appropriate and give fair results. All figures ought to have been adjusted, particularly, sales, inventories, wages, costs, profitability, extra-ordinary costs like re-start costs, material losses, etc.

- The inventory analysis should also be made with respect to closing stock which would indicate that there is no injury with respect to inventories. It is also submitted that closing stock of subject goods was 133 MT as on 31.12.2009 whereas this figure has reduced to 49 MT as on 31.03.2010. Therefore, monthly stocks should be checked.
- The market share of the domestic industry has declined during investigation period because of plant closure due to restrictions imposed by Gujarat Pollution Control Board resulting in increase in imports. Authority must consider that the consumers did not have any other option but to import the material, since the subject goods falls under the category of drugs. Therefore, non-availability of the same makes imports necessary and as M/s Aarti Drugs Ltd is the major producer of subject goods and used to do job work for M/s Unichem also, the closure of plant of ADL has given rise to imports.
- Likelihood of continuation or recurrence of dumping and Injury: The domestic industry has given the information for normal value, export price and dumping margin with a view to show that there is a dumping from the subject country. The Authority should take into consideration only the actual figures made available to them by the cooperating producer and exporter while calculating the dumping margin.
- The domestic industry has miserably failed to make out a case of current injury or any likelihood of future injury. The domestic industry has merely mentioned about excess capacities in China PR but no evidence has been placed on record in support of their claim. Thus, there is no likelihood of continuance or recurrence of injury to the domestic industry nor any evidence placed on record in support of their claim of continuance or recurrence of dumping and injury to the domestic industry.
- Causal Link: It is submitted that the domestic industry has not made any analysis with respect to effects of imports by M/s Aarti Drugs Ltd and their subsidiary company and plant closure of M/s Aarti Drugs Ltd. We would, therefore, submit that the analysis for these factors may also be made which would indicate that injury, if any, to the domestic industry is not caused by imports from subject country but due to other factors as stated above.
- In view of the fact that neither there is any injury to the domestic industry from imports nor has the domestic industry been able to prove the likelihood of injury, no case has been made out for extension of the period of duties which must be allowed to be terminated in terms of Section 9A(5).

Submissions made on behalf of the Domestic industry

16. The Domestic industry has, in brief, contended as follows:

- Metronidazole has a long history of continued dumping in the country for more than a decade. Despite imposition of the anti-dumping duty and further extension thereof post the Sunset review investigation by the Authority, there have been continued imports in significant volumes from China PR at dumped prices.

Particulars	Unit	2007-08	2008-09	2009-10	POI.	Post-POI*
Imports Volume						
Subject Country-China PR	MT	522	506	740	1,133	1,049
Other Countries	MT	12	26	28	-	92
Total Imports	MT	535	532	769	1,133	1,141
Import price from China PR	Rs./Kg	324.41	435.67	401.39	412.20	420.83

**Post-POI means Jan-Jun 2011(annualized)*

- i. The significance and purpose of imposition of anti-dumping duties is that domestic industry gets increased market opportunity to sell its material at fair prices. However, in the present case, volume of dumped import is hardly affected by the imposition of the anti dumping duty. In fact, the volume of dumped imports has substantially increased.
- ii. Revocation of anti-dumping duty in force is bound to result in intensified dumping of product from China PR. Further, there is a likelihood of injury to the domestic industry.
- iii. The form of measure in place has made the entire anti-dumping duty imposed before a redundant exercise. The Chinese producers are able to continue to dump the material and the imported product does not attract anti-dumping duty. Resultantly, the domestic industry is gradually getting reduced to minority.
- iv. Such continued/increasing dumped imports of the product clearly imply that:
 - (a) Despite levy of anti-dumping duty, the dumped imports from the subject country have been increasing over the injury period. This volume would definitely surge, if the current anti-dumping duty is allowed to cease, and
 - (b) Present anti-dumping duty form is required to be modified to fixed quantum of anti dumping duty.
- v. China PR is a major exporter of Metronidazole and is exporting the product to many countries and that these producers hold significant exporting capacities of the product under consideration.

- vi. There has been a significant increase and then decline in import prices on month by month basis. It would be seen that:
- (a) Metronidazole prices were significantly high during June-September 2008, dipped sharply in October 2008 to Rs. 260 per Kg and then increased in January 2009 to peak at Rs. 584 per Kg.
 - (b) The import prices, however, declined thereafter to remain at Rs. 400 per Kg from February 2009 to December 2010, except in November 2009 when the import price increased to Rs. 529 per Kg.
 - (c) Whereas the weighted average cost of sales of the domestic industry has increased by Rs. 97 per Kg during 2009-10 and the POI; the landed price of imports has increased by only Rs. 16 per Kg in the same period. This shows that the import prices have not increased in tandem with the increase in the cost. Further the selling price of the domestic industry has dropped by Rs. 8.43 per Kg in this period, in spite of significant increase in the cost.
- vii. Even with the ADD, the price of the imports is significantly undercutting the domestic price. Thus, rendering the ineffectiveness of the reference price recommended by the Authority in the previous investigation.
- viii. Price attractiveness of the Indian market - Petitioner submits that the landed value of imports is at a price which is lower than the selling price of Domestic Industry.
- ix. It is evident that the landed price of Chinese imports is lower than the present and potential selling price of domestic industry. The Chinese producers would therefore aggressively target Indian market in the event of cessation of duty. Thus, the Chinese product is likely to become cheaper, should the domestic industry charge fair price from the market.
- x. The petitioners have noticed that they have inadvertently mentioned name of M/s Unichem Ltd. in the list of importers. M/s Unichem Ltd. is not an importer of the subject product.
- xi. Volume of imports by M/s Aarti Drugs Ltd. has already been disclosed. On review of information earlier provided with regard to quantum of imports, it is found that there were some double accounting of imports and the actual import volume in period of investigation is only *** MT.
- xii. Relationship and ineligibility of M/s Aarti Drugs Ltd. has already been disclosed to the Authority. As regards imports made by the related company or relationship with the exporter, followings are relevant.
- xiii. Meaning of relationship as defined by the Designated Authority: In the matter of Anti-Dumping investigations relating to imports of circular weaving machines, the Authority has held that the sole domestic producer was not related to the foreign producer despite admitted 35% shareholding by the foreign producer. It would thus been seen that the Authority has considered that a party is not related even when it has

35% shareholding. In the instant case, the holding is only 33.11 %. It cannot be said that M/s Aarti Drugs Ltd. is related to the foreign producer.

xiv. Whether facts of the case justify exclusion of M/s Aarti Drugs Ltd.:

- (a) M/s Aarti Drugs Ltd. is a domestic manufacturer of the product. As stated earlier, the company was directed by the Pollution Control Board to restrict its production to certain levels. In view of this restriction on production and considering the requirement of material for its exports and requirement of material with its consumer, the need to provide material to its customers, M/s Aarti Drugs Ltd. imported the material utilizing its exports of Metronidazole.
- (b) M/s Aarti Drugs Ltd. has a related company namely M/s Suyash Laboratories Ltd. The company is related because it has three common directors and an investment of more than Rs.*** crores in *** shares. This company is engaged in manufacturing of API (Active Pharmaceutical Ingredient). In view of financial issues involved, M/s Aarti Drugs Ltd. has imported some material through M/s Suyash. The material in these cases were arranged by M/s Suyash and sold to M/s Aarti Drugs Ltd., on high sea sale basis. It is clarified that M/s Suyash has not filed bill of entries for clearance of the material.
- (c) M/s Aarti Drugs Ltd. has an investment of ***% in M/s Huanggang Yinhe Aarti Pharmaceutical Co. Ltd. (Yinhe). This company is engaged in manufacturing of, *inter-alia*, Metronidazole. However, petitioners submit that the Authority should hold that this investment does not tantamount to relationship. The final findings of the Authority in the matter of circular weaving machines are referred to and relied upon.
- (d) Details of imports made by M/s Aarti Drugs Ltd. have already been disclosed to the Authority. These imports included imports made by M/s Aarti Drugs Ltd. through M/s Suyash as well. On review of the imports, it is found that the company has inadvertently reported some imports more than once. The revised import statement has been provided to the Authority.
- (e) M/s Yinhe has not exported the product directly to the Indian parties. It would be seen that –
- M/s Aarti Drugs Ltd. is an importer of the product under consideration and is related to M/s Suyash.
 - M/s Suyash has arranged some imports. However, M/s Suyash is not an importer of the product under consideration. M/s Suyash has only arranged these imports and has not filed bills of entries.
 - M/s Yinhe is not related to M/s Aarti Drugs Ltd., as the shareholding is only *** % and is not a majority shareholding. Notwithstanding, M/s Yinhe has not exported the product. Notwithstanding further, these imports have already been disclosed as imports made by M/s Aarti Drugs Ltd.
 - The imports by M/s Aarti Drugs Ltd. are under duty exemption schemes;
 - The company was importing the product even at the time of original investigation as also previous Sunset Review investigations. After due consideration, the Authority has considered M/s Aarti Drugs Ltd. as an eligible domestic industry in the Sunset Review investigations;

- M/s Aarti Drugs Ltd. has a related company, M/s Suyash, who has imported the product only on behalf of M/s Aarti Drugs Ltd., and who has not filed any bill of entry for clearance of material. M./s Suyash should not therefore be considered as an importer of the product;
 - M/s Aarti Drugs Ltd. had production restrictions during this period and therefore some imports by the company were made to meet requirement of its customers.
- xv. In view of the above, it is submitted that the Authority should continue to treat M/s Aarti Drugs Ltd. as an eligible domestic industry. Notwithstanding, the Authority may treat M/s Aarti Drugs Ltd. as ineligible domestic industry within the meaning of Rule 2(b) and hold that M/s Unichem Ltd. constitutes domestic industry within the meaning of the Rules.
- xvi. Petitioner submits that in view of arguments by the interested parties with regard to relationship and imports made by M/s Aarti Drugs Ltd., the Authority may kindly consider excluding M/s Aarti Drugs Ltd. from the scope of domestic industry. Resultantly, M/s Unichem Ltd. shall form the domestic industry and the Authority is requested to kindly consider injury to the domestic industry by adopting data of M/s Unichem Ltd.

Examination by the authority

17. Rule 2(b) under the AD Rules provides as follows:-
- “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 related 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.*
18. M/s Aarti Drugs Ltd. and M/s Unichem laboratories Ltd. (India), had filed the application in the instant matter alleging dumping of ‘Metronidazole’ originating in or exported from China PR and requested for review and continuation of the anti-dumping duties. It was stated that they represent the domestic industry as the other domestic producers of the subject goods have already stopped their production. Thus, as per information available on record, the Applicants account for the total Indian production of the subject goods. The Authority had requested the domestic producers of the subject goods to provide requisite information. In response thereto, only M/s Unique chemicals (a division of M/s J.B. Chemicals and pharmaceuticals limited) filed its reply stating that they were earlier manufacturing Metronidazole. However, they are no longer manufacturing this product and they have closed production of Metronidazole since December 2010 and they have been buying Metronidazole from M/s Hubei Hongyuan Pharmaceutical Co., Ltd. Hubei, China.
19. It is, however, noted that M/s. Aarti Drugs Limited has imported *** MT of the subject goods under the duty exemption schemes out of the total imports of *** MT

during the POI viz. 1st January 2010 till 31st December 2010. It has been contended by them that these imports were necessitated in order to meet their commitments.

20. Opposing interested party has filed its submissions, as mentioned above, contending, *inter alia*, that M/s. Aarti Drugs Limited should be excluded from ambit and scope of the domestic industry. The domestic industry has also filed its submissions on the subject contending, *inter alia*, that it should be included as a part of the domestic industry. Considering the submissions made by the interested parties regarding inclusion /exclusion of M/s. Aarti Drugs Limited and the quantum of imports of the subject goods made by M/s Aarti Drugs Limited, the Authority is of the view that it would be appropriate to exclude M/s. Aarti Drugs Limited from the ambit and scope of the domestic industry in terms of Rule 2(b) of the AD Rules. As a consequence thereof, M/s. Unichem Laboratories constitutes as the domestic industry, being the only remaining producer of the subject goods and thus satisfy the requirement of Rule 2(b) of the AD Rules.

G. Dumping Determination

Submissions made by M/s Hubei Hongyuan Pharmaceutical Co., Ltd., China PR

18. M/s Hubei Hongyuan Pharmaceutical Co., Ltd., China PR, in brief, has submitted as follows:
- M/s Hubei Hongyuan Pharmaceutical Co., Ltd has submitted that dumping determination should be done as per the co-operative respondent's data.
 - Constructed Normal Value: If the authority constructs the normal value for Chinese Metronidazole producers/exporters taking into account the international prices of major inputs, consumption norms of the responding Chinese producers/exporters, conversion costs and SGA expenses of the Indian domestic industry and a reasonable profit margin of 5%, it is requested that the Authority may consider the following elements and make appropriate adjustments when constructing the normal value to ensure a fair comparison between the normal value and export price:
 - a. The purpose of the constructed normal value is to construct an ex-factory domestic selling price of Metronidazole for Chinese producers/exporters.
 - b. M/s Unichem's production cost of subject goods of may be very high due to their inefficiencies or due to higher 2 MNI cost; and thus should not be considered for constructed normal value.
 - c. the Authority should use the consumption norms of raw material as provided by the cooperating Chinese producers/exporters to determine the Constructed Normal Value instead of the consumption norms of domestic industry which is suffering from inefficiencies.
 - d. in the present case the Authority should not consider the Finance Cost as part of cost for determination of constructed normal value as the domestic price of Chinese producer might get disregarded due to non-market economy status. However, the credit cost related to credit days has been deducted from export

price for arriving at net export price. Therefore, in case domestic price of Chinese producer/exporter is disregarded, the finance cost should not be considered in constructed normal value vis-à-vis export price.

Submissions made on behalf the Domestic industry

19. The Domestic industry in brief, has submitted as follows:

- **Constructed normal value** – The following submissions have been made:
 - (a) **Import price** – the import price of inputs from China cannot become international prices, particularly in the present case, as the Chinese producers have not been granted market economy status. Once Chinese producers are considered as non market economy companies for MTZ, they are non market economy companies for its raw materials as well. It is pointed out that the raw materials and finished products both are normally being produced by the same set up of companies in China. Thus, if Chinese companies are non market economy companies for MTZ, they are non market economy for 2MNI and MI as well. The authority may kindly construct normal value by considering the international prices of these inputs after excluding imports from China.
 - (b) As regards consumption norms, we submit that the same cannot be accepted if the company has been given non market economy treatment.
 - (c) As regards legal basis submitted by Hubei, we submit that the legal understanding of Hubei is that the purpose of normal value is to construct ex-factory domestic price of Chinese producers/exporters and not to construct ex-factory domestic price for Indian domestic industry. Referring to para 7 of Annexure 1 of the AD Rules, it has been contended that the normal value in case of non market economy companies shall not be based on domestic selling prices in such country. In fact, it shall be based on cost or price in market economic third countries, including India.
 - (d) With regard to the contention that the cost of production of Unichem may be high due to their inefficiencies, the domestic industry submit that (i) the argument is mere conjuncture and is without evidence, (ii) Unichem is an efficient manufacturer of the product and various commodities in the Country. There is no legal basis for dubbing Unichem as an inefficient producer. In fact, the exporter should not be allowed to make such kind of wild statements which are not substantiated with evidence.
 - (e) Import price of 2MNI from China, in any case, cannot be adopted for the reason that if the Chinese producers are being given non market economy treatment for MTZ, the same producers are producers for 2MNI and MI as well. The authority can consider 2MNI import price from China only when it is found that the same is representative of international prices
 - (f) As regards reference to carbon black case, the same is without any legal and factual basis. It is quite possible that the Designated Authority found in that investigation that the consumption factors reported by the exporters were credible enough despite the non market economy treatment given. Since the issue concerns a highly disputed question of fact, the authority may not kindly refer to any other

investigation and may kindly come to an independent judgment considering facts and circumstances of present case.

- (g) As regards finance cost, the argument deserves to be rejected. Hubei appears to be considering that cost of production for the purpose of normal value includes finance cost only on account of credit allowed on sales. The finance costs included in determination of normal value are actually the cost towards the finances deployed by manufacturing organization in fixed assets and working capital. Further, the Designated Authority may kindly follow established practice in this regard.

Examination by the Authority

Normal value

20. The Authority sent questionnaires to the known exporters/producers from the subject country, advising them to provide information in the form and manner prescribed. In response thereto, only M/s Hubei Hongyuan Pharmaceutical Co., Ltd, a producer & exporter from China PR has co-operated in this investigation by filing their questionnaires' response.
21. The Authority notes that in the past three 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/producers in terms of the AD Rules.
22. As per Paragraph 8 of Annexure I of the AD Rules, the presumption of a non-market economy may be rebutted, if the exporter(s) /producer(s) from China PR provide information and sufficient evidence on the basis of the criteria specified in sub paragraph (3) of Paragraph 8 and establish the facts to the contrary. The co-operating exporters/producers of the subject goods from People's Republic of China are required to furnish necessary information/sufficient evidence as mentioned in sub-paragraph (3) of paragraph 8 in response to the Market Economy Treatment questionnaire to enable the Authority to consider the following criteria as to whether:
- the decisions of concerned firms in China PR regarding prices, costs and inputs, including raw materials, cost of technology and labour, output, sales and investment are made in response to market signals reflecting supply and demand and without significant State interference in this regard, and whether costs of major inputs substantially reflect market values;
 - 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;
 - such firms are subject to bankruptcy and property laws which guarantee legal certainty and stability for the operation of the firms and

- the exchange rate conversions are carried out at the market rate.
23. The Authority notes that consequent upon the initiation notice issued by the Authority; M/s Hubei Hongyuan Pharmaceutical Co., Ltd. a Chinese producer/exporter has submitted the questionnaires' response including the market economy questionnaire's response and sought to rebut the non-market economy presumption. However, during the course of on-the spot investigation at the premises of the Chinese company, the company was not able to substantiate its MET claim and hence it decided to forego the same. The questionnaires' response was perused, wherein it has been, *inter alia*, stated that the goods sold in domestic market and goods exported to India are identical.

Determination of Normal value in respect of Exporters/Producers from China PR

24. As the only co-operative exporter/producer from China PR has not been able to rebut the MET presumption and instead has chosen to forego its MET claim and no other Chinese producer/exporter has submitted the questionnaires' responses and sought to rebut the MET presumption; the Authority has determined the Normal value in China PR on the basis of Para-7 to Annexure-I to the AD Rules.

25. Para 7 of Annexure I of the AD Rules provides that

“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”.

26. As the presumption of non-market economy as enshrined in para 8(2) of Annexure 1 of the AD Rules remains un-rebutted; the Authority, therefore, has determined the Normal value in accordance with para 7 Annexure I of the AD Rules. In absence of sufficient information on record regarding the other methods as are stipulated in para 7 of Annexure I of the AD Rules, the Authority has determined the Normal value by adopting the method “any other reasonable basis”.

27. In view of the above, the Authority has constructed the Normal value for China PR. It is noted that to manufacture the subject goods, major raw materials are Acetic Acid, 2-MNI, Sulphuric Acid, Ethylene Oxide and Caustic Soda. For construction of the Normal value the international prices of 2MNI, Acetic Acid and Sulphuric acid has been considered; whereas for other major raw materials- Ethylene Oxide and Caustic Soda, the Authority has relied upon efficient domestic producer's procurement price as their international prices are quite abnormal. Besides, the consumption factor, conversion costs, SGA expenses and the finance cost of efficient domestic producer have been considered. A reasonable profit margin of 5% has been added thereto. The Normal value so determined works out as *** USD/Kg.

Export Price

M/s Hubei Hongyuan Pharmaceutical Co., Ltd.

28. The Authority notes that only one Chinese producer/exporter, namely M/s Hubei Hongyuan Pharmaceutical Co., Ltd., has submitted the questionnaires' response. On a perusal of the response. It has been noted that the company has exported *** MT of the subject goods to India during the POI. The adjustments claimed and as verified during the on-the-spot verification have been accepted on account of inland transportation, overseas freight, overseas insurance, handling expenses, Commission, Credit costs and bank charges. During the course of on-the-spot verification, it was further noted that no adjustment for VAT were made by the company, despite the fact that the company was paying VAT @ 17%. During the verification, the company claimed that they are getting VAT refund @ ***. Hence, the differential of the VAT amount has also been adjusted. The net export price so worked out has been determined as *** US\$/Kg.

Non-co-operative exporters/producers

29. As no other exporter/producer has provided any information that can be used for determination of the export price, the Authority has determined the 'Export Price' on the basis of 'facts available' on record, based on least representative transactions, which works out as *** US\$/Kg.

H. Dumping Margin

30. On the basis of the Normal value and Export price so determined at ex-factory level; the dumping margin during the POI for all exporters/producers from China PR has been determined as follows:

Exporter/producer	Country	Dumping Margin (USD/Kg.)	Dumping Margin	Dumping Margin range
M/s Hubei Hongyuan Pharmaceutical Co., Ltd	China PR	***	***	30 - 40

Any other	China PR	***	***	50 - 60
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I. Continuation or recurrence of dumping:

Submissions made by the domestic industry:

31. The domestic industry has, in brief, contended as follows:

- In a situation where there are continued exports, the Authority must examine whether the same were at dumped prices. In case exports to India are not at dumped prices, it must be examined whether the exports to third country are at dumped prices and whether it appears that the export prices are reasonable and reliable to establish that there is no likelihood of dumping. In case exports to India are at dumped prices, it should be held that the exporters would continue to export the subject goods at dumped prices, in case of revocation of anti dumping duties. In case the current exports are at un-dumped prices, it must be examined whether the exporter is likely to maintain these prices in the event of revocation of anti-dumping duties. If the exporter is unlikely to maintain these prices in the event of revocation of anti-dumping duties, the Authority must determine the price at which the exporter is likely to export in the event of revocation of anti-dumping duties and thereafter determine whether those exports are at dumped prices. It is to be noted that landed value of China PR is far lower than even the benchmark price leave aside the selling price of the domestic industry and once the anti-dumping duty is revoked; the imports are likely to enter at a significantly lower price.
- In the present case, the exporters and producers from the subject country have continued to export the material at dumped prices, even after imposition of the dumping duty as may be seen from the table below:

Nature of Investigation	Dumping Margin (%)
Original	47.85%
Sun Set Review-1	68.67%
Present Investigation	29.08%

- Petitioner submits that the above-mentioned data would establish the likelihood of dumping in case of subject country.

A. Dumping margins determined in all previous investigations relating to the product concerned

- The Authority has conducted two anti-dumping investigations concerning imports of Metronidazole from China PR. Both, previous investigations i.e. original

investigations as well as sunset review investigation have established existence of significant dumping.

- In the current Period of Investigation also, the Dumping Margin is quite significant. Further, there is likelihood that once the duty is revoked, the dumping would intensify. Conclusion can be drawn on the basis of increased volumes of dumped imports in injury period from the subject country. This clearly establishes that the dumping is likely to continue and indeed intensify in the event of revocation of present anti dumping duty.
- Sufficient information has been provided in respect of the dumping margins that continue to be significant. In the previously concluded investigation also, the Authority had found significant dumping margin and concluded the investigation with the imposition of the anti-dumping duty on the imports of the subject goods from the subject country.

B. Excess Production Capacities in the subject country

- Exporters in the subject country have capacities far in excess of Indian demand, considering that there are significant exports from subject country to various countries. The table below, shows production capacities of some of the Chinese producers:

S.N.	Producers In China	Capacity/ Supply Ability (MT per annum)
1	Hubei Hongyuan Pharmaceuticals Co. Ltd.	5,000
2	Hefei TNJ Chemical Industry Co. Ltd.	5,000
3	Hangzhou Tiankai Import and Export Co. Ltd.	5,000
4	Hangzhou Ruijiang Chemical Co. Ltd.	1,000
5	China Foodpharm Group Co. Ltd.	7,200
6	Shijiazhuang Viture Import Export Trading Co. Ltd.	500

- There is continued dumping from the producers and exporters from subject country, which would become more aggressive once the duty in force expires. The intensity of dumping is likely to increase in the event of revocation of the anti-dumping duties. Thus, dumping is likely to continue at increased level in the event of revocation of anti-dumping duties.

C. Price attractiveness of the Indian market

- Landed value of imports are at a price which is lower than the selling price of Domestic Industry.

Particulars	Unit	POI
Landed Value of imports	Rs./Kg	449.68
Net Sales Realization of Domestic Industry*	Rs./Kg	***
Cost of sales of the domestic industry*	Rs./Kg	***
Target selling price of the domestic industry (DPCO notified price)	Rs./Kg	526.00

**Assuming that only Unichem represents Domestic industry*

- It is evident from the table above that the landed price of Chinese imports is lower than the present and potential selling price of Domestic Industry. The Chinese producers would therefore aggressively target Indian market in the event of cessation of duty. Thus, the Chinese product is likely to become cheaper, should the domestic industry charge fair price from the market.

D. Increase in market share of imports held by the subject country in the Indian market

Market Share in demand	Unit	2007-08	2008-09	2009-10	POI	Post-POI
Subject country	%	34.09	35.93	41.08	60.68	58.88
Other Countries	%	0.82	1.86	1.57	-	5.16
Domestic industry	%	14.81	16.66	15.35	14.38	9.82
Other Indian Producer	%	50.28	45.54	42.00	24.94	26.14

- It is submitted that the market share held by China PR, during the injury period has not only been significant but also very high. In fact, significant share in the Indian market is being held by China PR. In spite of duty in force, the share held by China has not declined. On the contrary, the market share of dumped imports has increased.

E. Significant increase in the value and volume of import from Subject Country

- It can be seen that there has been a significant increase in the volume and value of import of the subject goods from the subject country. This increasing trend signifies that once the duty is revoked, the dumping would intensify.

Particulars	Unit	2007-08	2008-09	2009-10	POI	Post-POI
Imports –Volume						
China PR	MT	522	506	740	1,133	1,049
Other Countries	MT	12	26	28	-	92
Total Imports	MT	535	532	769	1,133	1,141
Imports- Value						
China PR	Rs. Lacs	1,694	2,203	2,972	4,670	4,415
Other Countries	Rs. Lacs	46	106	146	0	503
Total Imports Value	Rs. Lacs	1,740	2,309	3,118	4,670	4,918

- It can also be seen that the rate at which the import from China is increasing is much higher than that of other countries. In fact, import from other countries in the period of investigation is nil. Thus, it can be concluded that, revocation of Anti Dumping Duty will make the condition more vulnerable for the Domestic Industry.

F. Export orientation of producers and exporters in subject country

- It is submitted that the exporters from China PR have very high export orientation worldwide. The export percentage of the Chinese companies varies from 30%-100%. Hence, the dumping and injury is likely to recur at aggravated level in case the existing anti-dumping duties are terminated at this stage.

G. Price undercutting without anti dumping duty in force

- On a comparison of the landed price of imports without anti dumping duty with that of the selling price of the domestic industry, it would be seen that significant price undercutting exists. Hence, it can be concluded that, once the anti-dumping duty is revoked, there exists a very strong likelihood of recurrence of dumping. It may be seen from the data that the benchmark anti dumping duty is far lower than the current selling price of the domestic industry.

H. Even if one of the condition is satisfied, duty cannot be revoked

- Out of the above conditions discussed, it is not necessary that all conditions should exist for continuation of duty. There are numerous cases wherein the duty has been continued, if one or more parameters were satisfied.
- Given the facts of the instant case, and considering the above mentioned parameters, it is submitted that the dumping is likely to continue and consequent injury to the domestic industry is likely to be caused in the event of revocation of anti-dumping duty.

Submissions made by M/s Hubei Hongyuan Pharmaceutical Co., Ltd

32. M/s Hubei Hongyuan Pharmaceutical Co., Ltd, in brief, has contended as follows:
- a) The claim of likelihood of dumping and injury to the responding industry is based on mere conjectures.
 - b) Dumping in third country is not a valid ground in law.
 - c) Mere surplus capacity of exporter cannot lead to a conclusion that there is imminent danger of material injury.

Examination by the Authority

33. In terms of relevant provisions, the following aspects need to be examined in a Sunset review investigation:
- Whether the dumping is continuing; and if so, whether it is likely to continue in the event of cessation of the anti-dumping duties;
 - In case where dumping did not continue, whether the dumping would recur in the event of cessation of the anti dumping duties;

34. The AD Rules do not prescribe any specific methodology to examine the likelihood of dumping in a Sunset review investigation. However, in case there is a significantly positive dumping margin in respect of exports of the subject goods during the POI; then it is likely that dumping would continue in case of cessation of anti-dumping duty in force, unless the facts state otherwise. However, in case there have been no exports of the subject goods during the POI; then it would not mean that there is no likelihood of recurrence of dumping in case of cessation of anti-dumping duty in force. In such cases, other relevant factors are required to be examined, for instance, evidence, if any, regarding propensity of dumping, that may be determined by considering the exports of the subject goods in third country markets.

35. In the instant matter, the subject goods have been imported from the subject country during the period of investigation in significant volumes. In fact, the volumes of the subject goods from the subject country have been increasing over the injury period. It is noted that these goods have been exported at dumped prices and are significantly undercutting the prices of the domestic industry. In case, the anti-dumping duties are allowed to expire, the volume of the subject goods at dumped prices is likely to increase. This view is further buttressed, considering the unutilised capacities to produce the subject goods in China PR, which has not been disputed by any interested party.

36. In view of the above, the Authority notes that the subject goods are likely to continue to be dumped, if the present anti dumping duties is allowed to cease. Besides, cessation of the anti-dumping duty is likely to lead to increased volumes of imports of the subject goods from the subject country at dumped prices.

Injury

Submissions made by interested parties and the Examination thereof

M/s Hubei Hongyuan Pharmaceutical Co., Ltd., China PR

37. M/s Hubei Hongyuan Pharmaceutical Co., Ltd., China PR, in brief, has submitted as follows:

- Job work got done by Unichem Laboratories Ltd.- M/s Unichem is a small producer of subject goods in India and some production activity is carried out by M/s Aarti also on job work basis and that possibly the company has shown separate capacities for both these production. Therefore, the Authority should look into the same.
- Capacity Utilization – the applicant industry has claimed capacity as confidential information in their submission dated 23.04.2012. Therefore, it is requested that the Authority should segregate and examine the injury caused by job work if M/s Unichem has not fully utilized their plant capacity of subject goods during the injury period.
- Cost of Production – M/s Unichem were carrying out two types of production of subject goods during the injury period (i.e. job work and own production). Therefore, the Authority is required to compare the cost between own production and cost of job work production of M/s Unichem during POI. This is important to ensure injury to the applicant industry is not because of their small capacity or inefficiencies. If there is higher cost of own production due to small capacity or their inefficiencies, the Authority should set aside the higher cost of production caused by inefficiencies while conducting injury examination.
- Price Effect: The landed price from China PR has declined from Rs.470 per Kg in 2008-09 to Rs. 433 per Kg in 2009-10 whereas selling price of applicant are showing increasing trend in the same period. Thus, the selling prices of applicant industry have increased in a situation when landed prices have declined. This reflects an inverse relationship and shows no correlation between landed prices vis-à-vis domestic selling prices. Thus, the imports from China PR have not affected the domestic prices.

Particulars	Unit	2007-08	2008-09	2009-10	POI
Landed Price	Rs./Kg	358	470	433	445
Change	Rs./Kg	-	112	-37	12
Selling Price of Unichem	Rs./Kg	***	***	***	***
Change	Rs./Kg	-	59	17	-

- Causal Link: while landed prices have declined during 2009-10, the selling prices of domestic industry have increased clearly shows inverse relationship not to speak of causal link.

Submissions made on behalf of the domestic industry

38. The domestic industry, in brief, has submitted as follows:

Preliminary Submissions: Rule 2(b) of the AD Rules defines ‘Domestic Industry’ as *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 related 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 only....*

Production of the participating companies constitutes a major share in Indian production. Hence, the participating company constitutes “Domestic Industry” pursuant to Rule 2 (b) of the AD Rules. The opposing parties have argued that M/s Aarti Drugs Ltd should not be considered as a part of the domestic industry. While there is no import made by Unichem, M/s Aarti Drugs Ltd has provided detailed information with regard to imports made by it.

The Designated Authority may, as an alternative, consider M/s Unichem as eligible domestic industry and determine injury to the domestic industry based on M/s Unichem data alone and has also presented the injury information assuming that only M/s Unichem Laboratories is considered as domestic industry.

Segregation of Injury Information

Referring to Annexure II (iv) to the AD Rules, it has been submitted that M/s Unichem is a multi product company and has provided relevant information in respect of like article to the extent feasible and separately available. However, in those situations where the information is not separately available in respect of the like article, because separate identification of that information is not reasonably available, information has been provided in respect of narrowest group/range of products, which includes the like article and for which the necessary information is available and can be provided.

It has been contended that while conducting review investigation, the Authority is required to consider the extent to which any improvement in the performance of the domestic industry is related to the anti-dumping duty in force and whether the domestic industry is vulnerable to the injury if the existing duties are allowed to expire. In a sunset review investigation, injury analysis consists of the consideration of the economic situation of the domestic industry at the time of the original investigation vis-à-vis the post investigation developments in the economic situation of the domestic industry.

Further, in order to determine the current situation of the domestic industry; the domestic production, production capacity and capacity utilization, sales, stocks, employment, consumption, market share, price trends, profitability, investments and other factors are required to be considered. And if, as a result of this analysis, it is found that the imports are continuing to cause injury to the domestic industry, it can be concluded that the expiry of the duty in force would only lead to a further deterioration of an already weakened domestic industry. In a situation where there have been no imports, an examination with regards to the likelihood of recurrence of injury to the domestic industry in the event of expiry of the anti dumping duty in force is required to be conducted.

It has been contended that the Authority had conducted original and sunset review investigations, wherein it concluded that the domestic industry has suffered continued material injury. This may kindly be considered with regard to injury to the domestic industry in the current period.

- a) The demand of the product under consideration has increased throughout the injury period;
- b) Imports of the product under consideration have increased throughout the injury period with a significant increase during 2009-10 and thereafter in POI. However the imports from third countries have declined to the extent that there were no imports from third countries during POI.
- c) Imports increased significantly in absolute terms despite imposition of anti dumping duties.
- d) Imports increased significantly in relation to production and consumption of the product in India.
- e) Share of imports has remained very significant in relation to demand/ consumption in India.
- f) Domestic Industry has claimed that they have been prevented from utilizing its capacities to the fullest extent
- g) The market share of China in total imports has significantly increased throughout the injury period and accounts for 83% of total imports during POI whereas that of other countries declined throughout the injury period.
- h) Even after the existence of the current anti-dumping duty, imports from the subject country are undercutting the domestic prices.
- i) The production of the domestic industry declined throughout the injury period with a significant decline during POI.
- j) The capacity utilization of the domestic industry also showed the same trend as that of production.
- k) The sales of the domestic industry declined throughout the injury period.
- l) Market share held by Chinese producers in demand kept on increasing throughout the injury period, whereas the share of the Domestic Industry declined constantly in the injury period.
- m) Despite anti dumping duty being in force, the Domestic Industry has not been able to earn profits. Should the current anti dumping duties cease, the domestic industry would be forced to sell its product at a price comparable to import prices.

This would mean significant financial losses, negative return on investment and significant cash losses.

- n) Return on investment and cash profits have followed the same trend as that of profitability..
 - o) The employment levels have remained constant throughout the injury period. Wages paid have, however, declined during POI. The productivity per day declined in 2008-09, increased in 2009-10 and then remained constant during POI.
 - p) The level of inventories have declined till 2008-09 but thereafter significantly increased during POI clearly showing the inability of domestic industry to sell its products in the market owing to low priced imports from subject country.
 - q) Growth of the domestic industry in terms of sales, production, capacity utilization, profits, return on investment and cash profits all are adverse.
 - r) The present situation clearly establishes that the imports would further increase from the subject country which will further intensify dumping of the subject goods in the Indian market in the event of revocation of anti-dumping duties.
 - s) The reason for increase in imports is Benchmark form of duty becoming ineffective.
 - t) Net Fixed Assets as a basis for determination of capital employed is incorrect and the Authority should consider net present value of the plants or at least gross fixed assets.
 - u) The amount of return on capital employed should be considered having regard to the age of the plant.
 - v) The fixed expenses should not be optimized based on production in some other year. The production of the product over the years is directly dependent on the product mix and therefore it would not be appropriate to conclude that the company has inefficiently utilized production capacities. The petitioner requests Authority to consider the actual level of plant utilization in the period of investigation
- **Job work got done by Unichem** – There is no basis for the argument that Unichem is a small producer of the subject goods. Production of Unichem constitutes 29.36% of Indian production. In fact, on several occasions, it has been held that those domestic producers whose collective output is more than 25%, they constitute a major proportion. Such being the case, labelling Unichem as a small producer is without any legal and factual basis. On the contrary, production by Unichem constitutes a major proportion in Indian production. The quantum of job work were done by Unichem has steeply declined over the injury period. Hubei has argued that the company may have separate capacities for own production and job work production. It is clarified that the company has not installed capacities for getting production on job work basis. The question of capacity utilization for job work got done shall not arise. The domestic industry has provided separate information on job work.
 - As regards cost of production, it is submitted that the Authority is required to consider actual costs incurred. No inference can be drawn by comparing cost of production in the job work and cost of production on own manufacturing, as the per unit cost of production during the relevant period directly influences the actual operations. If own production was not there, the fixed expense being incurred by the company and at present charged to own production would have been borne by job work; and vice-

versa. Therefore, no interference can be drawn by inter-se comparison of job word production and own production.

- As regards possible inefficiencies or possible higher cost due to small capacities, the argument is without basis. There is no evidence that there are inefficiencies. The Authority may not kindly proceed based on conjecture and surmise. Since the statement is unsubstantiated with evidence, the same may be rejected on this ground itself.
- The capacity utilization of the company is not so low, nor is the cost of production abnormally high due to lower capacity utilization. Reference in this regard has been made to the decisions of the CESTAT in *Virchow laboratories ltd. vs Ministry of Finance*, 2002 (141) E.L.T. 60 (Tri. - Del.); *M/s. Nippon Zeon Co. Ltd., Japan & Others v. Designated Authority* [1997 (96) [E.L.T.](#) 126 (T)] ; *Rishirop Polymers Pvt. Ltd. versus Designated Authority* 2000 (119) E.L.T. 157 (Tribunal)
- The price effect – The claim made by Hubei with regard to no price effect deserves to be rejected. Firstly, the domestic industry is already suffering significantly financial losses (because of benchmark form of duty). Should the present anti dumping duty be withdrawn, the financial losses suffered by the domestic industry would increase further. The selling price of the domestic industry is below the DPCO levels. Since the landed price of imports is below (a) cost of production, (b) selling price of the domestic industry, (c) DPCO price, (d) non injurious price; it follows that the cessation of the anti dumping duty shall have adverse price effect on the domestic industry.

It is also pointed out that landed price of imports increased in 2008-09 and the import volumes declined (it is reiterated that significant imports are under advance licence and therefore in any case there imports were made against export orders of the domestic industry). Further, the landed price of imports declined in 2009-10 and the import volumes increased. Import price increase in the POI is only marginal and the same were still lower than the prices prevailing in the POI. The increase in selling price of the domestic industry in 2009-10 is only reflective of the impact of increase in import price in 2008-09. Even when the import price in 2009-10 declined vis-à-vis preceding year, the same is still higher than the selling price in 2007-08.

Examination by the Authority

39. As regards contentions relating to improvement in all injury factors; the same have been appropriately dealt with in herein below:
40. The Authority notes that it has adopted its consistent practice to examine and evaluate the injury data over the injury period. However, in a SSR investigation, the Authority assesses whether the cessation of the duties is likely to lead to continuation or recurrence of dumping and consequent injury.
41. The Authority has examined the injury parameters objectively taking into account the facts and the submissions made by the interested parties as follows:

42. 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 articles; and (b) the consequent impact of these imports on domestic producers of such articles. 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 article 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.
43. For the purpose of current injury analysis the Authority has examined the volume and prices effects of imports of the subject goods from the subject country on the domestic industry and its effect on the prices and profitability to examine the existence of injury and causal link between dumping and injury, if any.

Volume Effect

Assessment of Demand

44. The apparent consumption of the subject goods in India may be defined as the sum of domestic sales of Indian producers and imports from all countries. The relevant details in this regard are as follows:

Particulars	Unit	2007-08	2008-09	2009-10	POI	Post-POI *
Assessed Demand	MT	1,531	1,407	1,802	1,867	1,782
Sales of Domestic industry including captive	MT	227	234	277	268	175
Sales of other Indian Producer	MT	770	641	757	466	466
Imports – China PR	MT	522	506	740	1,133	1,049
Imports – Other countries	MT	12	26	28	-	92
Market share in Demand						

Domestic Industry	%	14.81	16.66	15.35	14.38	9.82
Other Indian Producers	%	50.28	45.54	42.00	24.94	26.14
China PR	%	34.09	35.93	41.08	60.68	58.88
Other Countries	%	0.82	1.86	1.57	-	5.16

**Post-POI means Jan-Jun, 2011(annualized)*

45. Apparently, the consumption of the subject goods has increased over the injury period, with a slight decline in 2008-09 (claimed to have occurred due to recession). It is seen that the sales of domestic industry declined in 2008-09 and then increased in 2009-10; but the sales volume declined once again in the period of investigation. Whereas the volume of dumped imports of the subject goods from the subject country increased significantly during the period of investigation. While no significant change in the trend in respect of Demand and imports is noticed in the post-POI period, there has been sharp decline in the domestic sales volume of the domestic industry during post-POI.

Import Volume and Market Share

46. With regard to volume of the dumped imports, the Authority is required to consider whether there has been a significant increase in dumped imports either in absolute terms or relative to production or consumption in India. In this regard, Annexure II (ii) of the AD Rules provides as under:

“While examining the volume of dumped imports, the said authority shall consider whether there has been significant increase in the dumped imports either in absolute terms or relative in production or consumption in India”

47. The information regarding imports and market share is indicated in the table given below.

Particulars	Unit	2007-08	2008-09	2009-10	POI	Post-POI*
Imports- China PR	MT	522	506	740	1,133	1,049
Imports- Other	MT	12	26	28	-	92

Countries						
Total	MT	535	532	769	1,133	1,141
Market Share in Imports-China PR	%	97.66	95.07	96.31	100.00	91.94
Market Share in Imports-Other Countries	%	2.34	4.93	3.69	-	8.06

**Post-POI means Jan-Jun., 2011(annualized)*

48. It may be seen from the above Table that the volume of dumped imports both in terms of absolute and relative figures increased significantly during POI as compared to the base year. The same trend has been noticed in the case of volume of imports in the post-POI period.
49. The above mentioned situation exists, despite the existence of anti-dumping duty. The domestic industry has contended that if the market of Metronidazole would have been fair, it should have recovered from the past ill-effects of dumping. However, continued presence of the dumped imports has prevented it from gaining the market share to the extent it could have gained in the normal circumstances. Besides, inability of the domestic industry to produce to the extent of its installed capacities also shows the adverse effect of the dumped imports on the performance of the domestic industry. In case the anti-dumping duty in force is allowed to cease, the volume of dumped imports are likely to increase further.

Price Effect

Price Undercutting

50. With regard to the effect of dumped imports on prices, the Authority is required to consider whether there has been a significant price undercutting by the dumped imports when compared with the price of 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. The following Table indicates the Net Selling price of the domestic industry, Landed price of the dumped imports and the price undercutting.

Particulars	Unit	2007-08	2008-09	2009-10	POI	Post-POI*
Reference	Rs./Kg	405.06	455.25	480.10	461.61	452.44

price						
Net Sales Realization	Rs/KG	***	***	***	***	***
Landed price of imports	Rs/KG	357.83	469.32	432.40	444.05	453.34
Price undercutting	Rs./Kg	***	***	***	***	***
Price undercutting	Range %	10-20	0-10	10-20	5-15	5-15

**Post-POI means Jan-Jun, 2011*

51. It is seen that the landed price of the imports of the subject goods even with anti-dumping duties in force, is below the net selling prices of the domestic industry, thereby signifying significant price undercutting. In this case, the anti dumping duty in place is in the form of reference price, which is significantly lower than the net selling price of the domestic industry. Thus, the imports are likely to further undercut the domestic prices, in case the anti-dumping duties are allowed to cease. It is further seen that the landed price of the subject goods from the subject country is significantly below the non-injurious price of the domestic industry thereby implying significant price under selling.

Economic Parameters affecting Domestic Industry

52. As per Annexure II to the AD Rules, the Authority is required to examine the impact of the dumped imports on the domestic industry concerned, which includes 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 the margin of dumping; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital investments. Accordingly, various economic parameters of the domestic industry have been analyzed as follows:

Sales, Capacity, Production, and Capacity Utilization

53. The performance of the domestic industry in respect of sales, capacity, production, and capacity utilization has been as follows:

	Unit	2007-08	2008-09	2009-10	POI	Post-POI*
Gross Demand	MT	1,531	1,407	1,802	1,867	1,782

Capacity	MT	***	***	***	***	***
Trend	Index	100	100	100	100	100
Own Production	MT	***	***	***	***	***
Production under loan	MT	***	***	***	***	***
Total production	MT	***	***	***	***	***
Trend	Index	100	105	114	85	113
Capacity Utilization (Own production)	%	***	***	***	***	***
Trend	Index	100	78	116	116	161
Domestic Sales including captive consumption	MT	227	234	277	268	175

**Post-POI means Jan-Jun., 2011(annualized)*

54. It is seen that despite an overall increase in the demand over the injury period, the sales of the domestic industry declined in the period of investigation. Even the production of the domestic industry declined in the POI, despite that it had the capacity to produce more. The domestic industry has contended that its performance should have improved considering a) that the Government had earlier imposed anti dumping duty on the subject goods and (b) the demand for subject goods has been increasing. In such a scenario, the domestic industry should have increased its production by leaps and bounds; but it could not increase its production in spite of the increase in demand due to continued presence of the dumped subject goods offered by the producer/exporters from the subject country. It is thus seen that in spite of imposition of anti dumping duty and overall rising demand of the subject goods in India, the domestic industry has not been able to improve its production and sales and utilize its capacity to the fullest extent. It is further seen that in the post-POI period, though the capacity utilisation has improved, the domestic sales has declined.

Market Share

55. It is seen that the market Share of China PR has remained significantly high throughout the injury period. There has been an increase of nearly 30% in the market share of China PR from the base year to the POI. Further, while the market share of China PR has increased, but the share of the domestic industry has declined during the injury period, as would be evident from the following:

Market share in Demand	Unit	2007-08	2008-09	2009-10	POI	Post-POI*
China PR	%	34.09	35.93	41.08	60.68	58.88
Other	%	0.82	1.86	1.57	-	5.16

Countries						
Domestic Industry	%	14.81	16.66	15.35	14.38	9.82
Other Indian Producer	%	50.28	45.54	42.00	24.94	26.14

**Post-POI means Jan-Jun., 2011*

Profit/Loss, Cash Flow, Return on Capital Employed

56. Information with regards to profits, selling price, return on capital employed of the domestic industry is as follows:

Particulars	Unit	2007-	2008-	2009-10	POI
Selling price	Rs./Kg	***	***	***	***
Trend	Index	100	113	117	117
Cost of Sales	Rs./Kg	***	***	***	***
Trend	Index	100	100	114	105
Profit on domestic sales	Rs Lacs	***	***	***	***
Trend	Index	-100	-86	-143	-111
Profit before interest & tax	Rs Lacs	***	***	***	***
Trend	Index	-100	-86	-143	-112
Cash Profit	Rs Lacs	***	***	***	***
Trend	Index	-100	-85	-143	-111
Return on Capital employed	%	***	***	***	***
Trend	Index	-100	-66	-75	-60

57. The Authority notes that while the cost of sales increased by 5% in POI as compared to base year, the selling price has increased by 17% in POI as compared to base year. However, the domestic industry continued to remain in losses and in fact the losses have increased in the POI as compared to the base year.

58. The following table shows the details of cost of sales, selling price, landed value, profit/loss for the PUC in POI and post POI.

Particulars	Unit	POI	Post-POI*

Cost of Sales	Rs/KG	***	***
Selling price	Rs/KG	***	***
Landed price of imports	Rs/KG	444.05	453.34
Profit/loss	Rs/KG	***	***
	Rs. Lacs	***	***
Profit/loss if the domestic industry were to match its selling price with the landed price of imports	Rs/KG	***	***
	Rs. Lacs	***	***

**Post-POI means Jan-Jun., 2011*

59. A perusal of the above data shows that the domestic industry has not been able to realize its costs of sales and if it were to sell the subject goods at prices matching the landed value of the imported goods due to cessation of duty, the Domestic Industry would suffer further significant financial losses. If the above situation occurs, the return on investment and cash profit would further worsen. Thus, cessation of anti-dumping duty is likely to cause significant adverse effect on the prices of the domestic industry.

Inventories

60. The following Table gives the details of inventory of the domestic industry during the injury period.

Particulars	Unit	2007-08	2008-09	2009-10	POI
Average Stock	MT	12	12	15	53

61. It may be seen from the above table that while the inventory level during initial two years remained constant, it had increased sharply in POI indicating that domestic industry was not in a position to liquidate its stock due to dumped imports.

Employment, Wages and Productivity

62. The following Table shows the details of employment, wages and productivity per employee of the domestic industry during the injury period.

Particulars	Unit	2007-08	2008-09	2009-10	POI
Employment	Nos.	***	***	***	***

Trend	Index	100	100	102	102
Wages	Rs. Lacs	***	***	***	***
Trend	Index	100	107	160	89
Productivity per employee	MT	***	***	***	***
Trend	Index	100	77	115	114

63. It is seen that the domestic industry is a multi-product company. The number of employees has almost remained constant throughout the injury period. While the Wage cost had increased in 2009-10, it had declined in the POI. Similarly, while Productivity per employee had increased in 2009-10, it had marginally declined in the POI.

64. The following Table shows the growth of the domestic industry during the injury period:

Particulars	Unit	2007-08	2008-09	2009-10	POI
Growth Compared to Previous Year					
Production (MT)	%	-	5	9	-25
Sales Volume (MT)	%	-	10	20	-2
Selling price (Rs./KG)	%	-	13	4	-1
Cost of sales (Rs./KG)	%	-	-0.13	14	-7
Average stock (MT)	%	-	1	27	243
Return on Capital employed (% in negative)	%	-	54	-14	24

65. The domestic industry has registered a significantly negative growth both in terms of volume and price parameters. While the growth in most of the parameters, such as sales volume, production volume and profitability was positive in 2009-10, it had declined significantly in the period of investigation.

Magnitude of Dumping Margin

66. It is seen that the dumping margins are not only more than de-minimis but also significant. The cessation of the duties is likely to lead to continuation of dumping.

Conclusion on Injury

67. In view of the above, it is noted that:
- i. Imports from China PR have increased over the injury period and continue to command a majority share;
 - ii. Volume of dumped imports is quite significant in relation to production and consumption in India;
 - iii. There has been continued dumping of the subject goods from China PR and the dumping is likely to continue and increase if the anti dumping-duty is allowed to cease.
 - iv. The domestic industry has not been able to utilize its capacity to the fullest extent and also increase its domestic sales in POI, despite increase in the demand.
 - v. The selling price of the domestic industry increased up to 2009-10 and then declined in the period of investigation. Price undercutting has been significantly positive during the entire injury period;
 - vi. The performance of the domestic industry in terms of production, domestic sales, market share, profits, return on investments, cash flow, etc. has deteriorated, whereas the same should have normally improved after imposition of anti dumping duties;

Likelihood of Continuation or Recurrence of Injury

Submissions made by the domestic industry

68. The domestic industry has stated that in a review investigation, the Authority is required to examine the probable consequence of the expiry of the duty in force. There might be a situation where improvement in the present performance of the Domestic Industry post imposition of anti dumping duty is due to anti dumping duty being in force. In such a case, the Authority is required to examine likelihood of recurrence of injury to the Domestic Industry apart from examination regarding improvements in the performance of the Domestic Industry. Further, in a case where the Domestic Industry might already be suffering injury, the Authority is required to examine whether likely dumping from subject country is likely to cause or intensify injury to the Domestic Industry. The domestic industry has further referred to the decision of the CESTAT in the matter of *Thai Acrylic Fibre Co. Ltd. v. Designated Authority* (Final Order No. AD/5/2010(PB), dated 30-4-2010 in Appeal No. AD/4/2009), wherein the Hon'ble Tribunal, *inter alia*, held the view "With respect to the injury determination, if the anti-dumping duty has had the desired effect, the condition of the Domestic Industry would be expected to have improved during the period the anti-dumping duty was in effect. Therefore, the assessment whether injury will continue, or recur, would entail a counter-factual analysis of future events, based on projected levels of dumped imports, prices, and impact on domestic producers.

Thus the Designated Authority has to address the question as to whether the Domestic Industry is likely to be materially injured again, if duties are lifted.”

69. With regard to the likelihood of continuation of Injury, the domestic industry has drawn the attention of the Authority to Section 9 (A) 5 of Customs Tariff Act and to Article 11.3 of the WTO agreement in this regard. It has been submitted that the purpose of sunset review is to determine whether or not the expiry of the measures would likely to lead to continuation or recurrence of dumping and Injury. In a review investigation, the Authority is required to examine what would be the consequence of the expiry of the duty in force. This is a potential examination. Therefore, present performance of the Domestic Industry is relevant only to the extent that the same shows the existence or otherwise of continued injury. Improvement in the present performance may be due to anti dumping duty in force and in such a case, the Designated Authority is required to examine likelihood of recurrence of injury to the domestic industry. In a situation where the Authority holds that there is no continued injury to the Domestic Industry, the Authority should examine likelihood of recurrence of injury to the domestic industry in the event of expiry of the anti dumping duty in force and that in spite of the anti dumping duty being in force, the domestic industry has registered adverse performance in the period of investigation; there is a great likelihood of the injury to the Domestic industry in the event the anti dumping duty is revoked.
70. While the foregoing establishes that the present anti dumping duties should be extended further, it is submitted that the responding exporters must establish that dumping is unlikely to continue or recur in the event of revocation of anti dumping duties. Information that the exporter must provide to the Authority in order to establish no likelihood of continuation of dumping in the event of revocation of duty has earlier been provided with the petition. Unless the exporters establish on the basis of this information that dumping is unlikely to continue, intensify or recur in the event of revocation of anti dumping duties, it must be held that the dumping and consequent injury would continue or recur or intensify in the event of revocation of anti dumping duties. Reference in this regard has been made to a few decisions of the CESTAT relating to review investigations. It is evident from these decisions that in following situations, the inescapable conclusion would be that the dumping would cause injury to the domestic industry in the event of revocation of anti dumping duties.
- (a) the price undercutting without prevailing anti dumping duties is positive;
 - (b) if the price undercutting from a particular country is negative, the Authority is required to consider whether the imports are likely to have price suppressing or depressing effect on the domestic industry.
 - (c) the landed price of imports is below not only selling price of the domestic industry but also non injurious price of the domestic industry.

The domestic industry has contended that the conditions stated above prevail in the instant case and therefore, the revocation of antidumping duties shall lead to likelihood of continuation or recurrence of dumping and injury.

71. The domestic industry has stated the following to establish that there is a strong likelihood of continuation of injury in case of revocation of anti dumping duty.
72. Volume of imports between original period and subsequent periods has significantly increased. Besides there are excess production Capacities in the subject country as would be evident from the table below that production capacities of some of the Chinese producers are quite significant:

S.N.	Producers in China PR	Capacity/Supply Ability (MT per annum)
1	Hubei Hongyuan Pharmaceuticals Co. Ltd.	5,000
2	Hefei TNJ Chemical Industry Co. Ltd.	5,000
3	Hangzhou Tiankai Import and Export Co. Ltd	5,000
4	Hangzhou Ruijiang Chemical Co. Ltd	1,000
5	China Foodpharm Group Co. Ltd	7,200
6	Shijiazhuang Viture Import Export Trading Co. Ltd	500

73. Considering the known capacities available with some of the Chinese producers (nearly 24,000 MT), the Indian demand of less than 2,000 MT can be easily met entirely by dumped imports. Once the anti dumping duty is revoked there is a strong likelihood that the entire Indian demand may be catered by the Chinese producers. There is continued dumping from the producers and exporters from subject country, which would become more aggressive once the duty in force expires. The intensity of dumping is likely to at best increase in the event of revocation of anti dumping duties. Thus, dumping is likely to continue at increased level in the event of revocation of anti dumping duties.
74. **Price attractiveness of the Indian market:** Landed value of imports are at a price which is lower than the selling price of Domestic Industry. It may be mentioned that the landed price of Chinese imports is lower than the present and potential selling price of the Domestic Industry. The Chinese producers would therefore aggressively target Indian market in the event of cessation of duty. Thus, the Chinese product is likely to become cheaper, should the domestic industry charge fair price from the market. In the event of revocation of anti dumping duty, the Chinese producers will be able to increase their profitability and at the same time offer attractive lower prices to Indian importers and consumers. to switch over from Indian producers to Chinese exporters.

Actual state of affairs of the domestic industry during the period under review

75. The actual state of injury is evident from the submissions on injury above. The existing form of anti dumping duty has remained ineffective. Further there is a likelihood of continuation of injury in case no relief is granted.
76. The domestic industry has stated that the market share held by China PR, during the injury period has not only been significant but also very high. In spite of duty in force, the share held by China has not declined. On the contrary, the share of dumped imports has increased in the POI and continues to remain at the same level in the post-POI also.
77. It has been further stated that there has been a significant increase in the volume and value of import of the subject goods from the subject country and this increasing trend shows that once the duty is revoked, the dumping would intensify further.
78. It can also be seen that the rate at which the import from China is increasing is much higher than that of other countries. In fact, import from other countries in the period of investigation is nil. Further, the imports from China PR have continued in the post POI period at the same level and at dumped prices. Thus, it can be concluded that, revocation of Anti Dumping Duty will make the condition extremely vulnerable for the Domestic Industry.
79. **Export orientation of producers and exporters in subject country:** The domestic industry has stated that the exporters from China PR have very high export orientation worldwide. The export percentage of the Chinese companies varies from 30%-100%. Hence, the dumping and injury is likely to recur at aggravated level in case the existing anti-dumping duties are terminated at this stage.
80. **Price undercutting without anti dumping duty in force:** On comparison of the landed price of imports without antidumping duty with that of the selling price of the Domestic Industry, it would be seen that significant price undercutting exists. Hence, it can be concluded that, once the anti dumping duty is revoked, there exists a very strong likelihood of recurrence of dumping. It may be seen from the data that the benchmark anti dumping duty is far lower than the current selling price of the domestic industry.
81. **Vulnerability of the Domestic Industry:** The Domestic Industry has further mentioned that it continued to suffer injury from the dumped imports for quite some time as confirmed at the time of original investigation as well as previous sunset review investigation. It has been further submitted that Domestic Industry is vulnerable to injury from dumped imports. Current levels of import volumes and dumping margins from the subject country creates great possibility that expiry of duty will result in intensified dumping of subject goods from the subject country in the Indian market given the fact that subject country holds excessive capacities.
82. With regard to causal link, the domestic industry has drawn reference to Article 3.5 of the Anti-dumping Agreement and to Paragraph (v) of Annexure II of the Anti-dumping Rules. It has been contended that the causal link has already been established in the original investigation. In the present review investigations, the

Authority has to examine whether revocation of anti dumping duty would lead to continuance or recurrence of dumping and injury. Thus an examination of whether cessation of anti dumping duties would lead to continuation or recurrence of injury involves such an analysis that a positive finding would be recorded only if cessation of anti dumping duties would lead to continuation or recurrence of injury. This clearly establishes that a positive finding of injury would be recorded only in case there is a relationship between cessation of anti dumping duties and recurrence or continuation of injury. There exists a causal relationship between the likelihood of continuation or recurrence of dumping and likelihood of continuation or recurrence of injury, as would be seen from the submissions below.

- A. Volume and value of imports not sold at dumping prices:** - The domestic industry is facing injury from dumped imports entering into the country from China PR. There have been insignificant imports in the injury period and no imports in the period of investigation from other countries.
- B. Contraction in demand:** - The injury statement enclosed with these submissions contains information with regard to demand of the product under consideration over the entire injury period. It would be seen that the demand of the product under consideration has shown a positive growth throughout the injury period except 2008-09. Hence, contraction in demand is not a possible reason, which could have contributed to injury to the domestic industry.
- C. Changes in the patterns of consumption:** - The pattern of consumption with regard to the product under consideration has not undergone any change. Change in the pattern of consumption is unlikely to contribute to the injury to the domestic industry.
- D. Trade restrictive practices of and competition between the foreign and domestic producers:** - There is no trade restrictive practice, which could have contributed to the injury to the domestic industry.
- E. Developments in technology:** - Technology for production of the product has not undergone any change nor there are any likely changes in coming future. Developments in technology are, therefore, not a factor of injury.
- F. Export performance:** - The petitioner exports the product under consideration. However, information relating to domestic sales only has been taken into consideration for assessment of injury to the extent possible.
- G. Performance of other products produced and sold by the domestic industry:** - Petitioner is a multi product company. However, information has been provided with respect to the product under consideration.

83. The domestic industry has further submitted that once it is shown that (a) there is a volume and price effect from dumped imports and (b) the effects of injury caused by dumped imports, the only basis on which to conclude that the injury is not caused by the dumped imports are through non-attribution analysis. As the listed known other factors do not establish that injury has been caused by those other factors, the only inescapable conclusion is that the injury to the domestic industry has been caused by the dumped imports from the subject country.

Examination by the Authority

84. It is seen that the subject goods continue to be dumped from the subject country and the same continues to cause material injury to the domestic industry. It is further noted that despite the anti-dumping duty being in force, the domestic industry has not been able to earn profits. There is significant undercutting and underselling and should the current anti dumping duties are allowed to cease, the domestic industry might be forced to sell its product at a price comparable to import prices, which would mean significant financial losses and further decline in the return on investment to the domestic industry. Besides, there are significant capacities in the subject country to produce the subject goods. Thus, the Authority notes that there is likelihood of continued dumping from the subject country and the consequent injury to the domestic industry, should the anti-dumping duty is allowed to cease.

J. Causal Link

85. The Authority has examined the submissions with regard to the significance and relevance of causal link in a Sunset review investigation. It is important to note that under Section 9A(5) of the Act, the Authority is required to examine the likelihood of dumping and injury and the need for continuation of duties. Accordingly, as indicated in Para 67 and 84, the Authority has concluded that the dumped imports are causing injury to domestic industry and they are likely to continue and cause injury if antidumping duty were to be revoked. Notwithstanding this, the Authority has examined whether other parameters listed under the AD Rules have caused injury to the Domestic Industry.
- (a) **Volume and value of imports not sold at dumped prices:** - The domestic industry is facing injury from dumped imports entering into the country from China PR. There have been insignificant imports in the injury period and no imports in the period of investigation from other countries.
 - (b) **Contraction in demand:** - The Authority notes that the demand of the product under consideration has shown a positive growth throughout the injury period except 2008-09. Hence, contraction in demand is not a possible reason, which could have contributed to injury to the domestic industry.
 - (c) **Changes in the patterns of consumption:** - The pattern of consumption with regard to the product under consideration has not undergone any change. Change in the pattern of consumption is therefore could not have contributed to the injury to the domestic industry.
 - (d) **Trade restrictive practices of and competition between the foreign and domestic producers:** - There is no trade restrictive practice, which could have contributed to the injury to the domestic industry.
 - (e) **Developments in technology:** - Technology for production of the product has not undergone any change. Developments in technology are, therefore, not a factor of injury.
 - (f) **Export performance:-** The domestic industry exports the product under consideration. However, information relating to domestic sales only has been taken into consideration for assessment of injury.

- (g) **Performance of other products produced and sold by the domestic industry:** - The domestic industry is a multi-product company. However, injury analysis has been made with respect to the product under consideration.
- (h) **Productivity:-** It is observed that the productivity of the domestic industry per day has increased during the injury period and therefore is a not a factor for the injury to the domestic industry.
- (i) **DPCO Price:** - The Authority notes that the Central Government vide notification No. S.O. 1944(E) dated 4.8.2008 has fixed the maximum sales price of Metronidazole at Rs.526/ per Kg. Therefore, the Authority holds that the injury caused to the domestic industry is partly due to the maximum sales price notified by the Government.

Magnitude of Injury and Injury margin:

86. The non-injurious price of the subject goods produced by the domestic industry as determined by the Authority has been compared with the landed value of the exports from the subject country for determination of injury margin during the POI. Thus compared, the injury margin is worked out as under:

Particulars	Unit	M/s Hubei Hongyuan Pharmaceutical Co., Ltd	China PR - Others
NIP	Rs./Kg	***	***
Landed Price	Rs./Kg	***	***
Injury Margin	Rs./Kg	***	***
Injury Margin	%	***	***
Injury Margin	Range %	60 - 70	80 - 90

87. The Authority notes that the Central Government vide notification No. S.O. 1944(E) dated 4.8.2008 has fixed the maximum sales price of Metronidazole at Rs.526/ per Kg. Since the injury caused to the domestic industry is partly due to the maximum selling price notified by the Government, the Authority has considered this price for the purpose of working out injury margin that may be attributed to the dumped imports.

Particulars	Unit	M/s Hubei Hongyuan Pharmaceutical Co., Ltd	China PR – Non-co-operative exporters/producers
DPCO Price	Rs./Kg	526.00	526.00

Landed Price	Rs./Kg	***	***
Injury Margin	Rs./Kg	***	***
Injury Margin	%	***	***
Injury Margin	% Range	10 - 20	25 - 35

K. CONCLUSIONS

88. Having regard to the contentions raised, information provided and submissions made by the interested parties and facts available before the Authority as recorded in the above findings and on the basis of the above analysis of the state of continuation of dumping and consequent injury and likelihood of continuation/recurrence of dumping and injury, the Authority concludes that: the subject goods are entering the Indian market from the subject country at dumped prices and dumping margin is significant. It is seen that the subject goods continue to be exported to India at dumped prices inspite of the existing anti-dumping duty. It is noted that even at present, that is, when the anti-dumping duties are in force, the price undercutting and price underselling are significant. Should the domestic industry attempt to match the same, it would have a significant adverse impact on the price parameters. Alternatively, it would have injury on volume parameters. Hence, injury to the domestic industry is likely to recur, in case the present anti-dumping duty is allowed to cease. It is further noted that as per information available on record, the anti-dumping duty is required to be extended and modified.

L. RECOMMENDATIONS

89. Having concluded as above, the Authority is of the opinion that the anti-dumping measure is required to be extended and the quantum of anti-dumping duty is required to be modified and extended in respect of imports of the subject goods from the subject country as specified in the duty table below.
90. Having regard to the lesser duty rule followed by the Authority, the Authority recommends imposition of anti-dumping duty equal to the lesser of the margin of dumping and the margin of injury, so as to remove the injury to the domestic industry. The Authority notes that for the last 10 years the AD duty for this product has been on reference price basis but the situation of the domestic industry remains highly fragile and it continues to be in losses. Apparently, the reference form of the duty has not been effective. Therefore, considering the facts and circumstances of this case, the Authority is of the view that it would be appropriate to recommend imposition of anti-dumping measure in fixed form basis. Accordingly, the antidumping duty equal to the amount indicated in Col 8 of the table below is recommended to be imposed concerning all imports of the subject goods originating in or exported from the subject country from the date of notification to be issued in this regard by the Central Government.

Duty Table

Sl. No	Heading/ Sub-heading	Description of goods	Country of Origin	Country of Exports	Producer	Exporter	Duty Amount US\$/Kg
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
1.	29332920	Metronidazole	China PR	China PR	M/s Hubei Hongyuan Pharmaceutical Co., Ltd	M/s Hubei Hongyuan Pharmaceutical Co., Ltd	1.49
2.	29332920	Metronidazole	China PR	China PR	Any	Any	2.57
3.	29332920	Metronidazole	China PR	Any	Any	Any	2.57
4.	29332920	Metronidazole	Any	China PR	Any	Any	2.57

91. Landed value of imports for the purpose shall be the assessable value as determined by the Customs under the Customs Act, 1962 and all duties of customs except duties under sections 3, 3A, 8B, 9 and 9A of the Customs Tariff Act, 1975.
92. An appeal against this order shall lie before the Customs, Excise and Service Tax Appellate Tribunal in accordance with the Customs Tariff Act.

Vijaylaxmi Joshi
The Designated Authority