

No. 15/22/2008-DGAD
Government of India
Ministry of Commerce & Industry
Department of Commerce
Directorate General of Anti-Dumping & Allied Duties
Udyog Bhawan, New Delhi

NOTIFICATION

Final Finding

New Delhi, the 02nd September, 2009

Subject: Sunset Review of Anti Dumping Investigations concerning imports of Chloroquine Phosphate originating in or exported from China PR.

A BACKGROUND OF THE CASE

1. The Designated Authority, having regard to the Customs Tariff Act, 1975 as amended in 1995 and the Customs Tariff (Identification, Assessment and Collection of Anti Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, recommended imposition of provisional duty on imports of Chloroquine Phosphate (hereinafter referred to as subject goods) originating in or exported from China PR falling under Customs Tariff Subheading 29392140, vide Notification No. 14/3/2003 dated 06.11.2003 and such provisional Anti-Dumping Duty was imposed by Govt. of India vide Notification No. 177/2003-Custom dated 15.12.2003. The Authority issued its final finding recommending imposition of definitive Anti Dumping Duty vide Notification No. 14/3/2003-DGAD dated 15th July, 2004 and such definitive duty was imposed by the Govt. of India vide Customs Notification No. 84/2004 dated 30.08.2004.

2. The Designated Authority initiated the sunset review investigation of anti-dumping duty imposed on imports of Chloroquine Phosphate (CQP) originating in or exported from China PR (hereinafter also referred to as subject country) following a request to this effect by the Domestic Industry comprising of M/s Ipca Laboratories Ltd., Mumbai. The request was based on the grounds that the cessation of such duty is likely to lead to continuation or recurrence of dumping and injury to the domestic industry. The petitioner claimed that prima facie evidence exists in this regard and have requested for the continued imposition of the anti dumping duty on subject goods from the subject country.

3. Having satisfied on the basis of positive evidence submitted by the domestic industry substantiating the need for a review, the Designated Authority issued a Public Notice No. 15/22/2008-DGAD dated 3rd September, 2008 published in the Gazette of India, Extraordinary, initiating sunset Review investigation of the anti-dumping duties to review the need for continued imposition of duties in force and whether the expiry of the duty is likely to lead to continuation or recurrence of dumping and injury in accordance with Section 9A(5) of the Act, read with Rule 23 of Antidumping Rules.

B. PROCEDURE

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

(i) After initiation of the review investigation, the Authority notified the domestic industry, all known exporters/producers in the subject country and known importers, calling for questionnaire responses and necessary information in accordance with Rule 6(4);

(ii) The Embassy of China in New Delhi was informed about the initiation of the investigation in accordance with Rule 6(2), with a request to advise the exporters/ producers in their country to respond to the questionnaire within the prescribed time.

(iii) Copy of the non-confidential version of the petition filed by the domestic industry was made available to the known exporters and the Embassy of China in accordance with Rules 6(3) supra.

(iv) The period of investigation for the purpose of the present review is 1st April 2007 to 31st March, 2008 (POI). However, injury analysis covered the periods April 2004-March 2005, April 2005-March 2006, April 2006-March 2007 and the POI.

(v) A copy of initiation notification alongwith exporters' questionnaires were sent to the following known exporters from subject country in accordance with the rule 6(4) to elicit relevant information:

1. M/s. Chong Qing Kang Le Pharmaceutical Co., Ltd., China PR.
2. M/s Changzhou Winsun Pharmaceutical Co. Ltd., China PR.

None of these exporters responded to the questionnaire in response to the above notification.

(vi) Initiation notification and importers questionnaire was sent to following known importers/consumers of the subject goods in India calling for necessary information in accordance with Rule 6(4). None of the interested parties filed any questionnaire response.

	M/s South India Research
1 Medicamen Biotech Ltd	8 Institute Pvt.Ltd
86-87 Sector – 61, IIE sidcul	Sirinagar
Haridwar, Uttakhand	Vijayawada 520 007
	9 M/s Micro Labs Limited
2 Syncom Formulation(India)Ltd	No. 67/68 A, 3rd Phase
256-257, Sector –1, Industrial Area	Peenya Industrial Area
Pithampur	Bangalore 506 058
3 Aquati Remedies Pvt.Ltd	10 M/s Atra Pharmaceuticals Ltd
Sambhav Warehousing	H-19, MIDC Valuj
Godown No. 108, 109,110	Aurangabad – 431 133
Building No. F,	(A/C Merk Ltd)

Rehnal Gram Panchayat Road Rehnal Village	
Bhiwandi	11 Unimex Laboratories Plot No. 7, Sector – 24 Faridabad 121 005
4 M/s Shreya Life Sciences Pvt.Ltd	
Roorkee 13,14,15, Raipur P.O. Bhagwanpur Roorkee – 467 661 Uttarakhand	12 Concord Drugs Ltd A Pharmaceuticals Unit No. 3-11-1/1 L.B. Nagar Hyderabad
5 Nicholas Piramal India Ltd	
Plot No.67-70, Sector –2 Pithampur, Dhar M.P. 454 775	13 Cosme Pharma Ltd 38/14 Watchi Wadi(Vtadev) Savorna, Bicholim GOA 403 529
6 M/s Flamingo Pharmaceutical Ltd	
R-662, T.T.C. Industrial Area Rabale, New Mumbai 400 701	14 Bayar Cropscience Ltd Kolshet Road, thane
7 M/s Safe Parenterals Ltd	
Gollapadu –522 408 Guntur Dist. (A.P)	15 M/s Sterling Lab 57, Sipcot Industrial Complex Hosur –635 126(T.N)

(vii) Transaction-wise data of imports for the period of investigation and preceding three years were called from Directorate General of Commercial Intelligence and Statistics (DGCI&S) in addition to the IBIS data provided by the domestic industry. The product under consideration is classified under Chapter 29 under Sub-heading 29392140. The classification is however indicative only and in no way binding on the scope of the present investigations.

(viii) The Authority made available non-confidential version of the evidence presented by various interested parties in the form of a public file maintained by the Authority and kept open for inspection by the interested parties.

(ix) M/s. Ipca Laboratories Ltd., Mumbai, being constituent of domestic industry, submitted the injury information/data. The Authority verified the information furnished by the domestic industry to the extent possible/necessary to examine the likelihood of continuation or recurrence of dumping and injury and to workout optimum cost of production and cost to make and sell the subject goods in India on the basis of Generally Accepted Accounting Principles (GAAP) and the information furnished by the applicant so as to ascertain if Anti-Dumping duty lower than the dumping margin would be sufficient to remove injury to Domestic Industry;

(x) In accordance with Rule 6(6), the Authority also provided opportunity to all interested parties to present their views orally in a public hearing held on 5th August 2009. The parties, which presented their views in the public hearing, were requested to file written submissions of the views expressed orally. The written submissions received from interested parties have been considered in this finding;

(xi) The Authority has considered all views expressed and submissions made by various interested parties to the extent they are relevant for the present investigation.

(xii) In accordance with Rule 16 of the anti-dumping Rules, the essential facts/basis considered for these findings are being disclosed to the known interested parties and comments received on the same would be duly examined in the final 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 granted confidentiality, wherever warranted, and such information has been considered confidential and not disclosed to other interested parties. Wherever necessary, 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 investigations, 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 Rules.

C. PRODUCT UNDER CONSIDERATION AND ‘LIKE ARTICLE’

C.1. VIEWS OF THE DOMESTIC INDUSTRY

5. Following issues are raised by the domestic industry with regard to product under consideration and like article:

(i) Present review investigation is a sunset review investigation, product under consideration remains the same as has been defined in the previous investigations.

(ii) There is no material change or development in the product characteristics between the original investigation and product being produced and sold world-over at present.

(iii) The goods produced by the domestic industry are like article to the imported product. The Issue of product under consideration and like article was examined in detail by the Designated Authority in the original investigations and is required to be confirmed.

(iv) EMME and Novaldiamine are the major raw materials required for production of the product under consideration. While EMME has application in other products as well, the only application of Novaldiamine is in a production of the product under consideration. In other words, Novaldiamine will not be produced if there is no production of Chloroquine Phosphate. The petitioner was importing Novaldiamine from China over the entire injury period. In fact, officials from the petitioner company keeps visiting China and are in close contact with the Novaldiamine producer. They are fully aware of the Chinese market for Novaldiamine and are aware that Novaldiamine is being produced in China in significant quantities for domestic sales. The petitioner is aware that the production of Novaldiamine by the Chinese company is far higher than Indian requirement for the product. This clearly establishes continued production of Chloroquine Phosphate in China.

C.2 Views of the importers, consumers, exporters and other interested parties

6. None of the exporters, importers, consumers and other interested parties has filed any comment or submissions with regard to product under consideration and like articles.

C.3 EXAMINATION BY THE AUTHORITY

7. The product under consideration in the original investigation as also in the present investigations is Chloroquine Phosphate (also referred to as subject goods). The product was defined in the original investigations as follows:

“The product under consideration in the present petition is Chloroquine Phosphate. Chloroquine Phosphate is an organic chemical and primarily used as drug for Malaria. It is a white or almost white crystalline powder, hygroscopic, freely soluble in water, slightly soluble in alcohol, ether and methanol. It contains not less than 98.5% and not more than equivalent to 101.0% N4 (7-chloroquinolin-4-yl)-N1,N1-diethylpentane-1,4-diaminebis(di-hydrogen phosphate), calculated with reference to the anhydrous substance. For production of Chloroquine Phosphate intermediate 4:7 Dichloroquinoline is prepared by the reaction of Meta Chloro Aniline with Ethoxy Methylene Ester (EMME) followed by Alkaline Hydrolysis and Chlorination. This Intermediate is further condensed with Novaldiamine and Chloroquine obtained is treated with Phosphoric Acid to obtain Chloroquine Phosphate.”

In view of no argument from any interested party with regard to product under consideration, the Authority proposes to confirm the scope of the product under consideration as was considered above and as has been stated herein.

8. The product under consideration, *Chloroquine Phosphate*, is classified under Chapter 29 under Sub-heading 29392140. The classification is, however, indicative only and is in no way binding on the scope of the present investigation.

9. There is no significant difference in the Chloroquine Phosphate produced by the Indian industry and the Chloroquine Phosphate exported from China. Chloroquine Phosphate

produced by the Indian industry and exported from China are comparable in terms of characteristics such as physical and chemical characteristics, manufacturing process and technology, functions and uses, product specifications, pricing, distribution & marketing and tariff classification of the goods. The two are technically and commercially substitutable. The consumers have used the two interchangeably. Chloroquine Phosphate produced by the domestic industry and imported from China PR are being treated as like article in accordance with the Anti-Dumping Rules.

D. Standing and scope of the Domestic Industry

D.1. Views Of the Domestic Industry

10 In the present investigation, M/s. Ipca Laboratories Ltd. has filed the petition on behalf of domestic industry. Production of the petitioner constitutes a major proportion of total Indian production. The production of M/s IPCA labs accounts for more than 50 per cent of the total production of the like product produced by the domestic producers. Petitioner submitted that its production accounts for “a major proportion in total eligible Indian production” and therefore, petition satisfies the requirement of standing within the meaning of the anti dumping rules.

D.2. Views of the Importers, Consumers, Exporters and Other Interested parties

11. None of the exporters, importers, consumers and other interested parties has filed any comment or submissions with regard to “domestic industry” and its standing.

D.3. Examination by the Designated Authority

12. There are two producers of the subject product in India, namely M/s. Ipca Laboratories Ltd., Mumbai and M/s. Mangalam Drugs and Organics Ltd, Mumbai. The present sunset review application for continued imposition of anti dumping duty has been filed by M/s. Ipca Laboratories Ltd., Mumbai. The production by M/s IPCA Laboratories Ltd. commands more than 50% share [77%] in Indian production.

13. Rule 2(b) under the Rules provides as follows:-

“(b) “domestic industry” means the domestic producers as a whole engaged in the manufacture of the like article and any activity connected therewith or those whose collective output of the said article constitutes a major proportion of the total domestic production of that article except when such producers are related to the exporters or importers of the alleged dumped article or are themselves importers thereof in which case [such producers may be deemed] not to form part of domestic industry”

For the purpose of this investigation M/s. Mangalam Drugs and Organics Ltd. has not provided the relevant information to the Authority. Thus, in a situation where information with regard to domestic producers as a whole is not available, the Rules require the Authority to consider those producers whose collective output constitutes a major proportion in the total domestic production. Therefore, having regard to the legal provisions and facts & circumstances of the present case, the Authority considers that M/s. Ipca Laboratories Ltd.,

Mumbai constitutes domestic industry for the purpose of the present investigations within the meaning of the Rules.

E. Dumping Margin

E.1 METHODOLOGY OF DETERMINATION

NORMAL VALUE

E.1 Views of the Domestic Industry:

14. The views expressed by the domestic industry are as follows –

- (a) China is a non-market economy. No country has granted market economy country status to China after following elaborate evaluation parameters. China has been treated non-market economy by European Commission and United States in the past three years. European Union and United States are members of World Trade Organization. In India also, the Designated Authority has treated China as non-market economy.
- (b) There are 15 conditions prescribed under the Rules each one of which an intending exporter has to satisfy in order to claim market economy treatment and the information and evidence relevant and necessary to establishment of such a claim. Petitioner has claimed China as non-market economy. Petitioner submits that unless the responding Chinese exporters satisfy all such 15 conditions, the Designated Authority is required to determine normal value in accordance with Para 7 of Annexure-I to the Rules.
- (c) India is an appropriate surrogate country for Chinese producers. Not only consideration of India as a surrogate country would result in access to accurate and adequate information, there is no factual basis to consider that India would not be a proper surrogate country. India has been considered as an appropriate surrogate by other Investigating Authorities too.
- (d) The subject goods are produced only in China and India. On this account as well, it would be appropriate to consider India as an appropriate market economy third country.
- (e) The normal value in China can thus be determined on the basis of (a) price in India, and (b) cost of production in India, duly adjusted, including selling, general and administrative expenses and profit. The normal value has been determined accordingly on the basis of cost of production, duly adjusted for selling, general & administrative expenses and profit.
- (f) In a situation where the dumping continues or is likely to recur in the event of revocation of anti dumping duty and where the domestic industry continues to be injured or the injury to the domestic industry is likely to recur in the event of revocation of anti dumping duty, the anti dumping duty in force should be continued further for a period of five years. In the instant case, dumping of the product from China is likely to recur, should the present anti dumping duty be revoked from China.
- (g) In a situation where there are no current exports of the product under consideration, there is no legal prescription for determination of likelihood. The practice followed by different countries suggests that dumping margin determined on any of the followings can form the basis for determination of likelihood of dumping in the event of no exports in the current period of investigation-

- a. Dumping margin determined at the time of original investigations;
 - b. Dumping margin determined in respect of exports made in the current injury period;
 - c. Dumping margin in respect of exports to third countries;
 - d. Dumping margin based on offers for supplies made by the exporters;
 - e. Dumping margin based on the prices at which material can be exported in the Indian market, having regard to the price prevailing in the Indian market.
- (h) The petitioner has claimed likelihood of dumping on the basis of all above parameters except dumping margin based on exports to third countries. With regard to dumping margin based on exports to third countries, petitioner claimed that the same could not be determined in view of the fact that there is no publicly available information with regard to exports from China to third countries. The petitioner claimed in this regard that China Customs apparently modified the Customs classification meant for Chloroquine Phosphate, and, therefore, China Customs data is not available in respect of export to other countries. Even trade data of the importing countries could also not be relied upon in view of the fact that even these countries are not reporting data for this customs classification and have merged the customs classification with other customs classification. Petitioner provided evidence based on UNCOMTRADE in respect of major countries where Chloroquine Phosphate is being consumed substantiating that the information did not show any transaction for the product under consideration. Since petitioner itself has exported to these countries, petitioner claimed that the trade data could not in any case show nil entries.

E.2 View of exporters/importers and other interested parties

15. None of the exporters, importers, consumers and other interested parties has filed any comment or submissions with regard to export price, normal value and determination of dumping margin

E.3 Examination by the Authority

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

(i) *the comparable price, in the ordinary course of trade, for the like article, when meant for consumption in the exporting country or territory as determined in accordance with the rules made under sub-section (6), or*

(ii) *when there are no sales of the like article in the ordinary course of trade in the domestic market of the exporting country or territory, or when because of the particular market situation or low volume of the sales in the domestic market of the exporting country or territory, such sales do not permit a proper comparison, the normal value shall be either*

(a) *comparable representative price of the like article when exported from the exporting country or territory or an appropriate third country as determined in accordance with the rules made under sub-section (6); or*

(b) *the cost of production of the said article in the country of origin along with reasonable addition for administrative, selling and general costs, and for*

profits, as determined in accordance with the rules made under sub-section (6);

Normal Value in China PR

17. China is a non-market economy. No country has granted market economy country status to China after following elaborate evaluation parameters. The Authority has treated China as non-market economy unless the responding exporters satisfied each & every conditions prescribed under the Rules. Since none of the exporter from China PR responded to the initiation notification and provided information in the form and manner prescribed, the Authority has determined the Normal Value in respect of China PR under para 7 of Annexure I of Anti-dumping Rules, considering China PR as non-market economy. The normal value accordingly has been determined considering cost of production, duly adjusted to include selling, general & administrative expenses and reasonable profit.

18. The Authority has determined the normal value in China PR based on international prices of inputs/ domestic prices and conversion cost of domestic industry, duly adjusted for selling, general & administrative expenses and reasonable profit. Accordingly, the normal value at ex-factory level has been worked out as US\$ *** per Kg.

Export price in China PR

19. None of the exporter from China PR responded to the initiation notification and provided information in the form and manner prescribed. None of the other interested parties have provided any other information that can be used for determination of export price.

20. *The Authority notes that the information made available by IBIS and DGCI&S does not show imports of Chloroquine Phosphate. Even transaction wise data made available by DGCI&S does not show exports of Chloroquine Phosphate during POI and immediate previous year. In absence of import of chloroquine phosphate during POI, export price could not be determined.*

21. In absence of any co-operation from interested parties and imports of subject goods during POI, domestic industry claimed determination of export price on the basis of other methods, as explained in para 14(g) above. Authority notes that, in absence of information on imports of subject goods from subject countries, export price determination on other basis may be misleading.

In view of no current exports in the period of investigation, the Authority holds that there is no continued dumping of the product from China and export price of subject goods could not be determined.

Dumping margin

22. Though the normal value has been determined but in absence of export price availability of for subject goods, dumping margin has not been determined.

F. METHODOLOGY FOR INJURY DETERMINATION AND EXAMINATION OF CAUSAL LINK

F.I INJURY AND CAUSAL LINK

F.1.1. Views of the domestic industry

23. The domestic industry has raised a number of arguments with regard to injury and causal link, which are summarized below. The main arguments are that:

- (a) The performance of domestic industry improved over the injury period. This is consistent with the trend of decline in imports. The domestic industry could improve itself in the absence of imports. Injury to the domestic industry is, however, most likely in the event of revocation of anti dumping duties.
- (b) There may be no exports of the product under consideration in the present proposed investigation period from China PR. No imports during this period, however, do not establish that the product is unlikely to be dumped. It only establishes that there was no continued dumping.
- (c) Imports continued at lower levels till 2005-06, but ceased subsequently entirely towards the expiry of the period. However, whenever exports have been made, the same are at dumping prices. Further, the Chinese exporters have exported salts of Chloroquine Phosphate. Likely dumping is established even if salt price is considered as price of the product under consideration (even though there would be substantial value addition).
- (d) Import prices in respect of shipments made to India over the injury period have been significantly below the net sales realization of the domestic industry, thus resulting in significant price undercutting. Positive price undercutting is likely, should the present duties be revoked.
- (e) Considering the import prices of salts, landed price of imports is likely to be lower than the selling price of the domestic industry, thus causing price undercutting.

F.1.2. Views of exporters, importers, users etc

24. There has been no response from any producer/exporter in China PR. Nor has any arguments been advanced on any aspect of the present investigations, including on injury & causal link from any exporters.

F.1.3. Examination by the Authority

25. Article 3.1 of the WTO Agreement and Annexure-II of the Rules provide for an objective examination of both, (a) the volume of dumped imports and the effect of the dumped imports on prices, in the domestic market, for the like products; and (b) the consequent impact of these imports on domestic producers of such products. With regard to the volume effect of the dumped imports, the Authority is required to examine whether there has been a significant increase in dumped imports, either in absolute term or relative to production or consumption in India. With regard to the price effect of the dumped imports, the Authority is required to examine whether there has been significant price undercutting by the dumped imports as compared to the price of the like product in India, or whether the

effect of such imports is otherwise to depress the prices to a significant degree, or prevent price increases, which would have otherwise occurred to a significant degree.

26. As regards the impact of the dumped imports on the domestic industry para (iv) of Annexure-II of the Anti Dumping Rules states as follows.

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

27. The Authority has taken note of the arguments on injury examination and addressed the issues raised at appropriate places. The Authority has examined the injury parameters objectively taking into account the facts and the arguments of the interested parties.

28. 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 likely effect on the prices and profitability to examine the existence of injury and causal link between dumping and injury, if any. The Authority has further examined the likelihood of continuation or recurrence of dumping and injury in the event of revocation of anti-dumping duty.

a) Assessment of Demand

29. The Authority has determined demand or apparent consumption of the product in the Country as the sum of merchant sale and captive consumption of the Indian Producers and imports from all sources. The demand so assessed can be seen in the table below.

Figures in KG

	Unit	2004-05	2005-06	2006-07	2007-08
Sales of domestic industry	Kgs.	364540	375260	442259	627358
Trend	Indexed	100	103	121	172
Sales of Other Indian Producers	Kgs.	101600	222330	192590	147190
Trend	Indexed	100	219	190	145
Imports	Kgs.	71583	10750	0	0
Trend	Indexed	100	15	0	0
Demand/consumption	Kgs.	5,37,723	6,08,340	6,34,849	7,74,548
Trend	Indexed	100	113	118	144

The Authority notes that the demand of the product in the country has shown a positive trend and grew over the injury period. The demand for the product under consideration has increased by 44% as compared to the base year.

b) Import Volume & market share

30. With regard to the volume of the dumped imports, it has been examined whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in India. Annexure-II (ii) of the Anti-dumping rules provides as under :-

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

31. The information regarding the imports volume and market share is given in the following table:

	UOM	2004-05	2005-06	2006-07	2007-08
Sales of Domestic industry	Kgs.	364540	375260	442259	627358
Trend	Indexed	100	103	121	172
Sales of Other Indian Producers	Kgs.	101600	222330	192590	147190
Trend	Indexed	100	219	190	145
Subject Country-China	Kgs.	70,658	6,250	0	0
Trend	Indexed	100	8	0	0
Other countries	Kgs.	925	4500		
Trend	Indexed	100	485	0	0
Total Imports	Kgs.	71583	10750	0	0
Trend	Indexed	100	15	0	0
Demand	Kgs.	537723	608340	634849	774548
Trend	Indexed	100	113	118	144
Market Share in Demand					
➤ Domestic industry	%	67.79	61.69	69.66	81.00
Trend	Indexed	100	91	103	119

➤ Other Indian Producers	%	18.89	36.55	30.34	19.00
Trend	Indexed	100	193	161	100
➤ Subject Country-China	%	13.14	1.03	0.00	0.00
Trend	Indexed	100	8	0	0
➤ Other countries	%	0.17	0.74	0.00	0.00
Trend	Indexed	100	435	0	0
Total	%	100%	100%	100%	100%

32. Authority notes from the above that the share of the domestic industry in demand increased significantly over the injury period except for the year 2005-06 on account of anti-dumping duties. Hence no continuation of dumping and injury is evident. However, in sunset review, in the absence of continuation of dumping, the Authority is required to evaluate the likelihood of dumping and injury in the event of revocation of anti-dumping duty, which has been done at appropriate place in this finding.

Price Effect

33. With regard to the effect of the dumped imports on prices, Annexure II (ii) of the Rules lays down as follows

“With regard to the effect of the dumped imports on prices as referred to in sub-rule (2) of rule 18 the Designated Authority shall consider whether there has been a significant price under cutting by the dumped imports as 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 increase which other wise would have occurred to a significant degree.”

34. In the present case, the Authority notes that:

- (a) Imports were significant in 2004-05 and continued at lower levels till 2005-06, but ceased subsequently entirely towards the expiry of the period. Further, whenever exports have been made, it has been found that the same were at prices below normal values.
- (b) Due to no imports during POI and immediate previous year, price undercutting can not be determined for POI but Authority noted that the import prices in respect of shipments made to India over the injury period have been significantly below the net sales realization of the domestic industry, thus resulting in significant price undercutting. Price undercutting is likely, should the present duties be revoked.

Economic Parameters relating to the Domestic Industry

35. Annexure II to the Rules requires that a determination of injury shall involve an object examination of consequent impact of the imports on domestic producers of such products. With regard to consequent impact of these imports on domestic producers of such products,

the Rules further provide that the examination of the impact of the dumped imports on the domestic industry should include an objective and unbiased evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including actual 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.

Production, sales, capacity and capacity utilization

36. Actual production, capacity and capacity utilization of the domestic industry increased between the base year and the period of investigation as shown in the following table-

	Unit	2004-05	2005-06	2006-07	2007-08
Sales of Domestic Industry					
Merchant	Kgs.	244352	243961	231205	198695
Trend	Indexed	100	99	95	81
Captive	Kgs.	120188	131308	198988	428663
Trend	Indexed	100	109	166	357
Exports	Kgs.	145926	226045	207165	205482
Trend	Indexed	100	155	142	141
Total Sales	Kgs.	510466	601314	637359	832840
Trend	Indexed	100	118	125	163
Production of domestic industry	Kgs.	525128	583477	596123	883098
Trend	Indexed	100	111	114	148
Capacity	Kgs.	725000	725000	725000	725000
Trend	Indexed	100	100	100	100
Capacity utilization	%	72.43	80.48	82.22	121.81
Trend	Indexed	100	111	114	148
Imports – China	Kgs.	70658	6250	0	0
Trend	Indexed	100	9	0	0

The Authority notes that there has been consistent increase in production, sales (including captive transfer) and capacity utilization over the injury period. Thus, the domestic industry has been able to improve its volumes after imposition of anti dumping duties.

Market share

37. Share of the domestic industry and various other parties in demand in India was as under:

Figures in %

Particular	2004-05	2005-06	2006-07	2007-08
Domestic industry	67.79	61.69	69.08	81.00
Other Indian Producers	18.89	36.55	30.92	19.00
Subject Country-China	13.14	1.03	0.00	0.00
Other countries	0.17	0.74	0.00	0.00

38. The Authority notes that the share of the domestic industry in total demand increased significantly over the injury period on account of anti dumping duties. In this regard, the petitioner has submitted that with the imposition of anti-dumping duties, the share of imports declined significantly and the share of domestic industry increased. The domestic industry is in a position to cater to the Indian demand.

Profit/loss, return on investment and cash flow

39. The return on investment, profit/loss before and after interest, return on investment and cash profit has moved as shown in the table below:

	Unit	2004-05	2005-06	2006-07	2007-08
Profit /(Loss)					
Cost of Sales - Domestic	Rs/Kg	***	***	***	***
Trend	Indexed	100	103	108	106
Selling price	Rs/Kg	***	***	***	***
Trend	Indexed	100	91	109	114
Profit/(Loss)	Rs/Kg	***	***	***	***
Trend	Indexed	(100)	(161)	(105)	(67)
Profit/(Loss)	Rs/Lacs	***	***	***	***
Trend	Indexed	(100)	(161)	(99)	(54)

Profit before Interest and Taxes	Rs/Lacs	***	***	***	***
Trend	Indexed	(100)	(166)	(96)	(50)
Cash Profit	Rs/Lacs	***	***	***	***
Trend	Indexed	(100)	(166)	(96)	(51)
Return on Capital Employed	%	***	***	***	***

40. The Authority notes from the above that the financial performance of the domestic industry has improved over the injury period. The per unit loss to the domestic industry has reduced during POI in comparison to base year . There is gradual improvement in the situation of the domestic industry after cessation of dumped imports. Return on capital employed improved from negative ***% during base year to negative ***% during POI.

41. In order to analyze the impact of dumped imports on cash flow, the Authority has considered the trends in cash profits, as the domestic industry is a multi product company and cash flow situation of the company would not be indicative of the situations in the subject product. The cash profit has been determined by addition of amount of depreciation to the profit (profit before tax). The trend shows the same trend as that of profits with the cessation of dumped imports.

Inventories:

42. Average stock of finished products with the domestic industry was nil during base year 2004-05 and 2005-06 and increased to 6133 Kg during 2006-07 and POI, as per position shown below:

	Unit	2004-05	2005-06	2006-07	2007-08
Average stock	Kgs.	Nil	Nil	6133	6133

Employment, wages and productivity

43. The Authority notes that since the petitioner is a multi product company and anti dumping duty is in place. These parameters do not show injury.

Growth

44. Growth of the domestic industry is positive in respect of volume as well as price parameters such as sales volume, production, capacity utilization, profitability, return on investment and cash flow.

Dumping margin

45. The Authority notes that the dumping margin determined in the previous investigation was quite significant. In absence of actual export price during POI in absence of actual import

from subject countries, the dumping margin in the present investigation has not been determined.

Ability to raise capital investments

46. The Authority notes that though the position of the domestic industry has improved gradually but the domestic industry is still incurring losses, therefore, to raise further investment is difficult.

Conclusion on injury

47. The imposition of anti dumping duties resulted in decline in imports and improvement in performance of the domestic industry during the injury period. The performance of the domestic industry improved in terms of production, sales, capacity utilization and productivity. Though the losses to the domestic industry has reduced substantially during injury period but still domestic industry is not in position to earn profit. Return on investment, however, reduced from negative ***% during base year to negative ***%.

48. The Authority notes that the performance of the domestic industry improved with decline and ultimately cessation of imports.

Other known factors and causal link

49. The Authority examined the issue of causal link and other non-attributive factors as laid down in the Rules to segregate injury, if any, caused by other factors. In this regard, the following indicative factors as laid down in the Rules have been examined.

(a) Volume and Prices of imports not sold at the dumped prices

The Authority notes that since the subject goods are produced only in India and China, injury because of dumping from third countries is ruled out. In fact, share of imports from subject country has declined over the injury period and reached zero during the POI.

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

The Authority has not found any trade restrictive practice followed by the domestic industry and other Indian producers. The Authority notes that the subject goods are freely importable and there are no trade restrictive practices in the domestic market.

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

There is no contraction in the overall demand during the period under consideration. Therefore, any possible decline in demand is not a factor, which could have caused injury to the domestic industry. There is no argument by interested parties regarding the change in the pattern of consumption, nor it appears that changes in the pattern of consumption could have inflicted the injury to the domestic industry.

(e) Export performance

Export sales of the domestic industry are more or less stable over the injury period. However, the data with respect to domestic sales has been examined separately.

Particulars	Unit	2004-05	2005-06	2006-07	POI
Exports Sales	Kgs	145926	226045	207165	205482
Trend	Indexed	100	155	142	141

(f) Productivity of the Domestic Industry

Productivity of the domestic industry has gone up after the anti dumping duty levied on subject goods.

Likelihood of dumping & injury

Views of the Domestic Industry

50. The present investigation is a review investigation and the Authority is required to examine whether revocation of duty is likely to lead to recurrence of dumping and injury. There may be no exports of the product under consideration in the present proposed investigation period. No imports during this period, however, does not establish that the product is unlikely to be dumped. It only establishes that there was no continued dumping. In fact, the following clearly establishes likelihood of dumping.

- (a) Dumping in exports made – Whenever exports have been made by Chinese producers, the same have been below associated normal value. Such being the case, dumping is likely to recur in the event of revocation of anti dumping duty.
- (b) No Chinese Demand – The product has zero or negligible domestic demand in China. Thus, Chinese producers have set up and holding these facilities only for the purpose of exports. India is one of the largest consumers of this product. In fact, past imposition of anti dumping duties on imports from China has led to a number of Chinese producers suspending their production. However, there are at least three known producers in China at present that have been operating their plants at extremely low levels. Under these circumstances, revocation of anti dumping duties would not be less than a red carpet welcome to these producers.
- (c) Decline in Chinese Global exports – While Chinese producers are faced with zero or negligible domestic consumption, global demand for this product has also declined. Indeed this is welcomed, considering that the same indicates eradication of Malaria. However, the surviving producers have been left with practically no local and international demand and have been operating at very low capacities. Such being the case, revocation of duty would result in instant flooding of Indian market with Chinese material.
- (d) Current DPCO price is far lower than normal value. Govt. of India has cautiously fixed the DPCO price of the product, which now happens to be significantly below the normal value of this product in China. Since the law does not allow selling of the product above DPCO, there is no way Chinese producers can export the material without resorting to dumping.

In view of the above, it is evident that Chinese producers would resort to dumping in the event of revocation of present anti dumping duties.

51. The domestic industry has also made following submissions on the disclosure statement:

- (i) That none of the exporters from subject country have responded to the Authority and those exporter may be treated as non-cooperative .
- (ii) That all producers/exporters of subject goods in China PR may be treated as operating under non-market environment.
- (iii) That the scope of the product under consideration & like article, Standing of the petitioners and scope of the domestic industry may be re confirm.
- (iv) That likelihood of dumping should be determined by considering various possible way in a situation of no actual known shipments during the current POI.
- (v) That the Designated Authority shall determine whether there is likelihood of recurrence of dumping.
- (vi) That no published information is available with regard to exports of the product under consideration from China to third countries, the Designated Authority may consider other option before concluding on likelihood of recurrence of dumping.
- (vii) that whenever exports have been made from China PR, the same were at dumped prices. Further, the Chinese exporters have been exporting salts of Chloroquine Phosphate. Likely dumping is established even if salt price is considered as price of the product under consideration (even though there would be substantial value addition).
- (viii) that given the legislative requirements in India, the Chinese producers cannot sell the product at prices higher than DPCO. In fact, they have to sell at lower prices only, as the DPCO is the price at which the imported product can be resold in the Country. The likelihood of dumping is also established at the DPCO price of the Chloroquine Phosphate prevailing during the investigation period.
- (vii) That the China does not have any significant consumption of the subject goods.

- (ix) That the imposition of anti dumping duties resulted in decline in imports and improvement in performance of the domestic industry during the injury period.
- (x) That the producers in China are having significant freely disposable production capacity for Chloroquine Phosphate and the India is one of the largest consumers of this product.
- (xi) That in view of the surplus capacities with the Chinese producers and likelihood of dumping considering the import prices of Chloroquine salts and DPCO prices, the dumping and consequent injury to the domestic industry is likely to recur if the duties are revoked in respect of imports from China.
- (xii) That anti dumping duties on the subject goods are required to be extended further for a period of five years;

Examination by the Authority

52. The present investigation is a sunset review and the Authority is required to examine whether revocation of duty is likely to lead to continuation of or recurrence of dumping and injury. The Authority has taken note of all the issues raised by the domestic industry and other interested parties on disclosure statement and have dealt with at appropriate places in the final findings. The Authority has noted as under:

(i) There is no import of subject goods from China to India during POI and immediate previous year, therefore, no continued dumping.

(ii) Domestic industry in its written submission furnished the data for the period 1990-2007, on the reported malaria cases in South-East Asia and Western Pacific countries of WHO region. It has been noted from the World malaria Report for the year 2007 that during the year 2007 nil cases of malaria reported in respect of the country China as against 1476562 cases of malaria in respect of the country India. In addition to India and China 850 cases of malaria reported in respect of Bhutan and 59848 cases of malaria reported in respect of the country Cambodia. Authority notes that there is negligible demand/consumption of subject goods in China whereas there is huge demand of subject goods in India

(iii) The imports of the product under consideration from China have although ceased from 2005-06, the exporters in China P.R. are still having disposable capacities. Existence of significant production capacities in a situation where the demand for the product under consideration in China is almost nonexistent coupled with declining demand of the product in the global market increases the likely dumping from subject country.

FINAL FINDINGS:

53. Having regard to the contentions raised, information provided and submission made by the interested parties and facts available before the Authority through the submission of interested parties or otherwise as recorded in the above findings and on the basis of above analysis of the state of current and likely dumping and injury and likelihood of continuation or recurrence of dumping and injury, the Authority concludes that:

- (i) Exporters/producers from subject country are treated as non-cooperative.
- (ii) Though there is no continued dumping but whenever exports have been made from China PR during injury period, the same were below domestic selling price.

(iii) The Authority after accessing data available on World Trade Atlas has found that product under consideration was earlier being imported under a specific code under 8 digit level i.e. 29392140 being unique code for this product. Subsequently, the Authority found no reported export under this unique ITC HS classification. However, at the 6 digit level with ITC HS 293921, the import volume of product "Quinine" which also includes the product under consideration (Chloroquine Phosphate) was in the vicinity of 76 MTS during 2004-05 and around 70 MTS during 2006-07. This indicates that imports of PUC have consistently been taking place at 6 digit level from the subject country. However, during POI, the imports reported in this data are only 4 MTs, which could be construed as a strategy so that imports do not get reported as exporters were aware about sunset review being due. To that extent withdrawal of existing anti dumping measures would open the floodgates for the Chinese producers, enable them to divert from other countries the product under consideration at dumped prices to India considering that the available spare capacity in China far exceed their total demand. It may also be worth a mention that because of inability of the domestic industry to capture imports in their data, total demand could not be assessed properly and in fact total demand has been calculated by taking commercial sale of domestic industry only.

(iv) In view of above, it is concluded that import of subject goods are still coming to India in the code of quinine and there is likelihood of recurrence of dumping, should the present measures be withdrawn.

(v) Further, should the present anti-dumping duties be revoked, injury to the domestic industry is likely to continue and intensify.

Indian Industry's interest and other issues

54. The Authority recognizes that the continuation of duties might affect the price levels of the product in India. However, fair competition on the Indian market will not be reduced by the anti dumping measures. On the contrary, continuation of anti dumping measures would remove the unfair advantage gained by dumping practice, would prevent the decline of the domestic industry and help maintain availability of wider choice to the consumers of subject goods. The Authority, notes that the continuation of the anti dumping measures would not restrict imports from subject countries in any way, and therefore, would not affect the availability of the products to the consumers. The consumers could still maintain two or even more source of supply.

55. The purpose of anti dumping duties, in general, is to eliminate injury caused to the Domestic Industry by the unfair trade practices of dumping so as re-establish a situation of open and fair competition in the Indian market, which is in the general interest of the country. Continuation of anti dumping measures would not restrict imports from the subject country in any way and, therefore, would not affect the availability of the products to the consumers.

Recommendations

56. Having concluded that there is likelihood of continuation or recurrence of dumping and injury on account of imports from China PR, if the duties are revoked, the Authority is of the opinion that the measures is required to be extended in respect of imports from subject country, however quantum of anti-dumping duty in force need not be revised. Therefore, the Authority considers it necessary and recommends to continuation of anti-dumping duty on import of subject goods from the subject country recommended vide Notification No. 14/3/2003-DGAD dated 15th July 2004 and imposed vide Customs Notification No. 84/2004-Custom dated 30th August, 2004 and further extended upto 02nd September 2009 vide Customs Notification No. 108/2008 - Custom dated 16th October, 2008.

(R. Gopalan)
The Designated Authority