

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

NOTIFICATION

New Delhi, the 5th April, 2006

**Final Findings
(Sunset Review)**

Subject: Anti-Dumping (Sunset Review) investigations concerning imports of Metronidazole originating in or exported from China PR

No 15/9/2003-DGAD - Having regard to the Customs Tariff Act, 1975, (hereinafter referred to as Act.) as amended in 1995 and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 (hereinafter referred to as Rules.);

A. BACKGROUND

2. WHEREAS, having regard to above Rules the Designated Authority (hereinafter also referred to as the Authority) notified final findings vide Notification No.17/1/99-DGAD dated 14th July 2000 recommending imposition of anti-dumping duties on all imports of Metronidazole originating in or exported from China PR. The original investigation in this proceeding was initiated on 29th July 1999. The Preliminary findings were issued by the Designated Authority vide Notification No. 17/1/99-DGAD 21st February 2000. Final findings of the Authority were issued by the Designated Authority vide Notification No. 17/1/99-DGAD dated 14th July 2000 and the final duty was imposed on the subject goods vide Customs Notification dated 31.8.2000.

3. The Designated Authority, in terms of section 9A (5) of said Act. received a substantiated application from M/s Aarti Drugs Ltd., Mumbai and M/s Unichem Laboratories Ltd., Mumbai requesting for review, enhancement and continuation of the anti-dumping duties levied on the subject goods, for another five years on the grounds that cessation of anti-dumping duty is likely to lead to continuation or recurrence of dumping and injury. The Designated Authority issued a public notice No. 15/9/2003-DGAD dated 8th April 2005, published in the Gazette of India, Extraordinary, initiating anti-dumping (Sunset Review) investigations, to examine whether the expiry of anti dumping duty would lead to continuation or recurrence of dumping or injury

B. PROCEDURE

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

- i) After initiation of the review the Authority sent questionnaires, alongwith the initiation notification, to the known exporters/producers in the subject country in accordance with the Rule 6(4), to elicit relevant information.
- ii) Notices were also sent to the domestic industry in India seeking relevant information in accordance with the Rules;
- iii) The Embassy of the subject country in New Delhi was informed about the initiation of the investigation, in accordance with Rule 6(2), with a request to advise the exporters/producers in their country to respond to the questionnaire within the prescribed time.
- iv) Questionnaires were sent to the known importers and consumers of subject goods in India calling for necessary information in accordance with Rule 6(4),
- v) Request was made to the Directorate General of Commercial Intelligence and Statistics (DGCI&S) to arrange details of imports of subject goods for the past three years, and the period of investigations. The data provided by the domestic industry sourced from International Business Information Services (IBIS) was verified from IBIS.
- vi) Copies of the initiation notification were also sent to FICCI, CII and ASSOCHAM for wider circulation.
- vii) No exporter/producer and importer responded to the questionnaires.
- viii) M/s. Aarti Drugs Ltd., Mumbai, M/s Unichem Laboratories Ltd., Mumbai and M/s J B Chemicals, Mumbai the domestic producers of the subject goods submitted the information/data;
- ix) The Authority verified the information furnished by the domestic industry to the extent possible on the basis of Generally Accepted Accounting Principles (GAAP) to examine the injury suffered, to work out optimum cost of production , cost to make and sell the subject goods in India and so as to ascertain if Anti-Dumping duty lower than the dumping margin would be sufficient to remove injury to Domestic Industry;
- x) The Authority held a public hearing on 8.3.06 to hear the interested parties orally, which was attended by representatives of the domestic industry. The parties attending the public hearing were requested to file written submissions of views expressed orally. The written submissions received from interested parties have been considered by Designated Authority in this findings;
- xi) The Authority made available the public file to all interested parties containing non-confidential version of all evidence submitted by various interested parties for inspection, upon request.
- xii) The views expressed by various interested parties in response to the initiation notification and subsequent to the public hearing are discussed in the relevant paragraphs to the extent these are relevant as per rules and have a bearing upon the case. The arguments raised by the interested parties have been examined, considered and, wherever appropriate, dealt in relevant paragraphs.
- xiii) In accordance with Rule 16 supra, the essential facts/basis considered for these findings were disclosed on 21.3.2006 to known interested parties and comments received have been duly considered in the findings.
- xiv) Investigations were carried out for the period of investigation (POI) from 1st April 2003 to 30th September 2004 (18 months). However injury analysis have been carried out for the years April 2000 – March 2001, April 2001 – March 2002, April 2002 – March 2003 and the period of investigation.

- xv) **** in this notification represents information furnished by an interested party on confidential basis and so considered by the Authority under the AD Rules.

C. PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE

5. The product involved in the original investigation was Metronidazole. This being a Sunset review, therefore, the investigation covers the product covered in the original investigation. Metronidazole is anti-diarrhea and anti-microbial drug. It is used in cases of amoebiasis, trichomonas, to prevent 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. 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 holds that the product being manufactured by the domestic industry and the product being manufactured and exported from the subject country is like articles as per AD Rules.

D. DOMESTIC INDUSTRY

6. In the original investigation the application for anti-dumping investigation was filed by M/s. Aarti Drugs Ltd., Mumbai and M/s Aarey Drugs & Pharmaceuticals, Mumbai on behalf of the domestic industry. In the present sunset review the information/data has been provided by M/s Aarti Drugs Ltd., Mumbai M/s Unichem Laboratories Ltd., Mumbai and M/s J B Chemicals Ltd., Mumbai. The data and information submitted by M/s Aarti Drugs Ltd and M/s Unichem Laboratories Ltd. has been considered for analyzing the injury to the domestic industry. The data provided by M/s J B Chemicals has been disregarded for injury analysis as the domestic sales of this company during POI was only 1 MT whereas rest of the production had been exported.

7. In this case, during POI domestic industry had imported approximately 50% of the total imports of subject goods from China PR in which M/s Aarti Drugs Ltd. account for 40%, M/s Unichem Laboratories Ltd. account 3.07% and M/s J B Chemicals account for 7.15% of total imports. It has been contended that imports were made under Advance Licenses of Duty Exemption Scheme for manufacture of Metronidazole Benzoate for export purpose only and did not enter into commerce of the country, therefore, applicants cannot be excluded from purview of domestic industry.

8. This issue has been examined in terms of Rule 2(b) of Anti Dumping Rules and Article 4.1(i) of the Anti-Dumping Agreement. As per Anti-Dumping Agreement 'when producers are related to exporters or importers or are themselves importers of the allegedly dumped product, the term 'domestic industry' may be interpreted as referring to the rest of producers'. As per Rule 2(b) of the Rules, ' "domestic industry" means the domestic producer as a whole engaged in manufacture of the like article and any activity connected therewith or those whose collective output of the said article constitutes a major production of total domestic production of that article except when such producers are related to

exporters or importers of the alleged dumped articles or are themselves importers thereof in which case such producer may be deemed not to form part of domestic industry’.

9. The Authority examined the issue on imports made under Advance Licenses by the applicants. As per Foreign Trade Policy of India, the inputs imported for export production cannot be sold in India. Inputs imported under Advance Licenses after processing/manufacturing necessarily have to be exported. Therefore, the Authority is of the view that inputs imported under Duty Free Advance Licenses when used for export purpose only will not disqualify the producers from domestic industry under Rule 2(b) of AD Rules.

10. The domestic industry has also raised the issue that J B Chemicals should be treated as domestic industry as per definition in Rule 2(b) of AD Rules as Rules refer to producers as a whole engaged in manufacturing of like article. The Authority has examined this issue and is of the view that M/s J B Chemicals is part of domestic industry as per Rule 2(b), however, its data has not been used for injury analysis as injury to the domestic industry is analysed with reference to its sales in the domestic market. In this case M/s J B Chemicals had sold only 1 MT of its production in the domestic market during POI whereas rest of its production had been exported. As sale of 1 MT by M/s J B Chemicals would be insignificant for its impact on the injury to the domestic industry, therefore, the data of this company has been disregarded for the purpose of injury analysis.

E. INITIATION OF THE REVIEW AND ARGUMENTS RAISED

E.1 Views of Applicant Domestic Industry

11. Domestic industry has submitted that despite anti-dumping duty on Metronidazole, dumping continued from the subject country. ‘Given the volume of imports and level of prices at which the goods have been exported to India in spite of existence of anti-dumping duty, it is likely that volume of import would further increase in case anti-dumping duties are withdrawn.’ Regarding present state of performance, the domestic industry submitted that imposition of anti-dumping duty has helped the domestic industry to maintain and increase their production and utilize capacity at an optimal level and maintain its sales volume. Landing price of imports is significantly below the net sales realization of the domestic industry. Regarding profitability, the industry is facing significant per unit losses over the years. Imports are already undercutting the prices of domestic industry to a significant extent, should the present duty be revoked, the extent of price undercutting would further increase. Further, the performance of domestic industry was already adverse during the period under consideration and it is likely that revocation of anti-dumping measure would result in intensified injury to the domestic industry. It has also been submitted that as per understanding of the domestic industry the production capacity in China for the product under consideration is higher than their domestic demand. Should the current measure be allowed to lapse, there is a threat that significant proportion of the unused production capability would be used to flood the Indian market.

E.2 Examination by the Authority

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

METHODOLOGY FOR CALCULATION OF DUMPING MARGIN

F. DUMPING DETERMINATION: NORMAL VALUE, EXPORT PRICE AND DUMPING MARGIN

F.1 Examination of Response to Market Economy Treatment Questionnaire by the Authority

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

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

- a) the decisions of concerned firms in China PR regarding prices, costs and inputs, including raw materials, cost of technology and labour, output, sales and investment are made in response to market signals reflecting supply and demand and without significant State interference in this regard, and whether costs of major inputs substantially reflect market values;
- b) the production costs and financial situation of such firms are subject to significant distortions carried over from the former non-market economy system, in particular in relation to depreciation of assets, other write-offs, barter trade and payment via compensation of debts;
- c) such firms are subject to bankruptcy and property laws which guarantee legal certainty and stability for the operation of the firms and
- d) the exchange rate conversions are carried out at the market rate.

15. The Authority sent copies of the questionnaires to all the known exporters for the purpose of determination of normal value. No exporters/producer responded to the Exporter's and Market Economy Treatment (MET) questionnaire. Hence, the presumption of

non-market economy remain unrebutted, therefore, the Authority is proceeding treating exporters/producers in China PR as operating in non-market economy.

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

17. As per para 7 of Annexure 1 of AD Rules, the Authority is required to determine normal value on the basis of 'price or constructed value in the market economy third country or the price from such a third country to other countries, including India or where it is not possible, or on any other reasonable basis, including the price actually paid or payable in India for the like product.' No data or information was made available by the domestic industry about normal value in market economy third country. Exporters/Producers have not responded in this case, therefore, no data is available to the authority in respect of normal value in market economy third country. The prices from third country to India would also be not appropriate to determine as imports from other countries (other than subject country) to India is very small to permit any meaningful conclusion of the normal value. Therefore, the Authority has determined the normal value by resorting to method 'any other reasonable basis'.

F.2 NORMAL VALUE

18. Under the circumstances, the authority has constructed the normal value by considering the raw material for manufacture of Metronidazole at the international prices, the consumption norms of the domestic industry and reasonable profit. Based on above information available, the normal value has been calculated as Rs.***/kg. or USD ***/kg. by considering the average exchange rate during POI of 1USD=Rs.46.06/-

F.3 EXPORT PRICE

19. The export price has been determined on the basis of transaction-wise details provided by IBIS. During POI the CIF value of weighted average export price was Rs.***/kg (US\$***/kg.). After making adjustments on account of inland freight as US\$***, ocean freight as \$*** and marine insurance as \$*** the ex-factory export price has been calculated as US\$ *** (1 US\$ = Rs.46.06/- during the POI).

F.4 DUMPING MARGIN

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

Dumping Margin

Exporter/Producer	Normal Value USD/kg.	Export Price USD/kg.	Dumping Margin USD/kg.
All exporters from China PR	***	***	*** (68.67%)

METHODOLOGY FOR INJURY DETERMINATION AND EXAMINATION OF CAUSAL LINK

G. INJURY DETERMINATION

G.1 CONTINUATION OF INJURY

Views of Domestic industry are summarized below:

21. Imposition of anti-dumping duty has helped the domestic industry to maintain, and increase its production, sales and utilize capacity at higher levels. The domestic industry would have been able to improve itself further had the dumped import not been available in the market place. Increase in production resulted in increase in productivity. The landed price of imports without anti-dumping duty was significantly below the net realization of the domestic industry. The domestic industry was not able to recover fair price from market even after imposition of duty as dumped imports from China PR was available in market at significantly lower prices because of misuse/abuse of duty exemption scheme. The cash profit of domestic industry have deteriorated significantly during injury period similarly, return on investment shows considerably adverse situation.

22. It has also been contended that imports made by EOU have caused injury to the domestic industry due to permission granted by Govt. of India to EOU to sell product in Indian market. It has been submitted that imports made under Advance Licenses cannot be equated as imports made by EOU. Imports made under Advance Licenses cannot enter the commerce of the Country for the reason that party undertakes an obligation to export the resultant end product. Even if such resultant end product involves insignificant incremental production activity, an Advance License holder is not allowed to sell any part of Duty Free Import in the local market. However, the situation is much different in case of EOU, where the policy permits sales in DTA under certain circumstances. Such DTA sales were permissible after reporting insignificant incremental production activities until Foreign Trade Policy 2004. It is a contention of the domestic industry that such flexibility granted to EOUs (which is not available to License holder) was the cause of continued injury to the domestic industry.

G.2 Examination by the Authority

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

24. Article 3.1 of the ADA and Annexure II of the AD Rules provide for an objective examination of both, (a) the volume of dumped imports and the effect of the dumped imports on prices in the domestic market for the like products; and (b) the consequent impact of these imports on domestic producers of such products, with regard to the volume

effect of the dumped imports. The authorities are required to examine whether there has been a significant increase in imports, either in absolute term or relative to production or consumption in the importing member. With regard to the price effect of the dumped imports, the authorities are required to examine whether there has been significant price undercutting by the dumped imports as compared to the price of the like product in the importing country, or whether the effect of such imports is otherwise to depress prices to a significant degree, or prevent price increase, which would have otherwise occurred to a significant degree.

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

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

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

i) Import Volume and share of the subject country:

Particulars	Unit	2000-01	2001-02	2002-03	POI Annualised	Apr'03-Sep'04 (POI)
Market share						
In Imports						
Imports as per IBIS						
China	MT	461.54	416.21	469.00	676.144	1014.22
Trend	Indexed	100	90	102	146	146
Other Countries	MT		13.00	1.00	26.00	39.00
Total Imports	MT	461.54	429.21	470.00	702.14	1053.22
Trend	Indexed	100	93	102	152	152
Market share in Imports						
China	%	100.00	96.97	99.79	96.30	96.30
Other Countries	%	0.00	3.03	0.21	3.70	3.70
Total Imports		100	100	100	100	100

27. The transaction wise details provided by the Directorate General of Commercial Intelligence and Statistics (DGCI&S) indicate that imports of Metronidazole had been made under different custom tariff heads. The quantity of imports reported by DGCI&S is 706.15 MT during POI. The transaction-wise details of imports provided by International Business Information Services (IBIS) shows that imports have been higher than what has been reported by the DGCI&S. It appears that all import transactions under different custom heads have not been captured in the data provided by DGCI&S, therefore, the data provided by the IBIS has been relied upon for analysis. Information provided by IBIS shows that imports from the subject country from base year to POI increased by 46%.

During the same period, total imports from all countries increased by 52%. Share of the subject country in total imports during POI was 96%, as compared to the other countries whose share was approximately 4%.

28. From the base year to POI, the demand of the subject goods grew by 40% and production increased by 18% indicating disproportionate growth imports from subject country as compared to growth in demand and production of domestic industry.

ii) Demand, Output and Market shares

a) Production of the Domestic Industry

Particulars	Unit	2000-01	2001-02	2002-03	POI Annualised	Apr'03- Sep'04 (POI)
Utilization of Capacity						
Capacity	MT	864	864	864	952	1428
Capacity Utilization	%	88	89	97	94	94
Trends	Indexed	100	102	111	107	107
Output						
Production	MT	758	772	841	896	1343
Trend	Indexed	100	102	111	118	118

29. It has been noted that capacity of domestic industry has increased by 10% during POI as compared to the base year. It has also been noted that the capacity was added by one of the domestic producers in the last six months of the POI. The production shows the rising trend, as compared to base year it had increased by 18% during POI. However, as compared to demand which grew by 40% during the same period, the production could only increased by 18%.

b) Sales of Domestic Industry

Particulars	Unit	2000-01	2001-02	2002-03	POI Annualised	Apr'03- Sep'04 (POI)
Natural and Potential Decline in Sales						
Sales - Domestic	MT	535	647	652	673	1009
<i>Arti Drugs</i>		345	404	466	457	685
<i>Unichem</i>		190	243	185	216	324
Trend	Indexed	100	121	122	126	126
Sales - Exports	MT	92	53	119	68	102
<i>Arti Drugs</i>		52	17	49	21	32
<i>Unichem</i>		40	36	70	47	70
Total Sales	MT	627	700	771	741	1111
Captive Consumption	MT	94	115	18	151	227

<i>Arti Drugs</i>		79	94	5	108	163
<i>Unichem</i>		15	21	13	43	64
Sales including captive	MT	630	762	669	824	1236
Trends	indexed	100	121	106	131	131

30. Analysis of data shows that domestic sales had been rising, as compared to base year it grew by 26% during POI. The total of domestic sales and captive consumption also shows rising trend, as compared to base year it grew by 31% during POI.

31. One of the producer had increased its capacity during last six months of POI. The captive sales of the same producer increased by 89% during last six months as compared to 2003-04. The domestic sales of same producer does not show any growth during POI as compared to previous years rather it declined by 1% indicating that the additional capacity and output from additional capacity had not been used in domestic sales.

32. The exports sales does not show any uniform trend, from base year it declined in 2001-02, risen sharply in 2002-03, however, during POI it declined to 74% of the base year.

c) Demand and Market Share

Particulars	Unit	2000-01	2001-02	2002-03	POI Annualised	Apr'03- Sep'04 (POI)
Demand	MT	1091	1191	1139	1526	2289
Trend	Indexed	100	109	104	140	140
Domestic Sales of petitioner	MT	535	647	652	673	1009
Captive Consumption	MT	94	115	18	151	227
Sales of Other Producers	MT					
Total Imports	MT	462	429	470	702	1053
Market share in Demand						
China	%	42.30	34.93	41.17	44.31	44.31
Other Countries	%	0.00	1.09	0.09	1.70	1.70
Domestic Sales of petitioner	%	49.04	54.32	57.19	44.08	44.08
including Captive	%	57.70	63.98	58.74	53.98	53.98
Other Producers	%	0.00	0.00	0.00	0.00	0.00
Total demand		100.00	100.00	100.00	100.00	100.00

33. The demand of subject goods has been calculated by addition of domestic sales, captive consumption and all imports from all the countries. The growth in demand shows positive trend, it increased by 40% during POI as compared to the base year. The analysis of data shows that market share of domestic industry in respect of domestic sales in demand increased in 2001-02 and 2002-03 but declined in 2003-04 and POI. During POI, the market share of the domestic industry declined to 90% of the base year. The market share

of domestic industry in respect of domestic sales and captive consumption shows that it increased in 2001-02 and 2002-03 but declined in 2003-04 and POI. During POI the market share of domestic industry declined to 94% of the base year. On the other hand the share of subject country in total demand from base year declined in 2001-02, however, it rose in 2002-03, 2003-04 and POI. During POI, the market share of subject country in demand grew by 5% of the base year.

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

34. The impact on the prices of the domestic industry on account of dumped imports from the subject country has been examined with reference to the price undercutting, price underselling, price suppression and price depression, if any. For the purpose of this analysis the weighted average cost of production, weighted average Net Sales Realisation (NSR) and the Non-Injurious Price (NIP) of the domestic industry (worked out after normating the costing information of the domestic industry) have been compared with landed cost of imports from the subject country.

Price Undercutting

Particulars	Unit	2000-01	2001-02	2002-03	POI Annualised	Apr'03-Sep'04 (POI)
Price Undercutting/ Price Suppression						
Landed Value- China	Rs./kg	363.85	347.84	326.06	310.38	310.38
Net Sales Realisation	Rs./kg	***	***	***	***	***
Cost of Production	Rs./kg	***	***	***	***	***
Price Undercutting	Rs./kg	***	***	***	***	***
Price Undercutting (Range)	%	***	***	***	20-30%	***

Price Underselling

(Value in Rs./kg)

Price Underselling	Metronidazole
Non Injurious Price	***
Landed Value	***
Price Underselling	***
Price Underselling (%)	***
Price Underselling range	27-37

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

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

37. The landed value of imports from the subject countries was lower than the net sales realization of the domestic industry for the subject goods during the POI thereby, undercutting the selling price of the domestic industry. The undercutting margin was in the range of 20-30% during the POI.

38. The trend of cost of production shows that cost of production declined to 96% of the base year whereas the selling price declined to 98% of the base year during POI. As imports from subject country were coming at significantly low prices since many years, therefore, selling prices were already depressed. However, the undercutting in the range of 20%-30% during POI further suppressed the prices whereby selling prices which remained static from 2001-02 to POI whereas cost of production was rising from 2002-03 to POI.

39. The price underselling is an important indicator of assessment of injury; thus, the Authority has worked out a non injurious price and compared the same with the landed value to arrive at the extent of price underselling. The non-injurious price has been evaluated for the domestic producer by appropriately considering the cost of production for the product under consideration during the POI. Also in order to eliminate inefficiencies, the capacity utilization has been normated. The analysis shows that the weighted average landed value of the subject goods from subject country is less than the non injurious price determined for the domestic industry during the period of investigation. The underselling margin was in the range of 27-37% during the POI.

G.3 Examination of other Injury Parameters

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

i) Profits and Actual and Potential Effects on Cash Flow

Particulars	Unit	<i>Indexed data</i>				
		2000-01	2001-02	2002-03	POI Annualised	Apr'03- Sep'04 (POI)
Profitability						
Cost of Production weighted	Rs./kg	***	***	***	***	***
Trend	Indexed	100	91	91	96	96

Selling Price Weighted	Rs./kg	***	***	***	***	***
Trend	Indexed	100	98	98	98	98
Profit/Loss	Rs./kg	***	***	***	***	***
Trend	Indexed	-100	-37	-27	-87	-87
Total Profit/Loss - Domesstic	Rs. Lacs	***	***	***	***	***
Trend	Indexed	-100	-45	-33	-109	-109
Cash Profit	Rs. Lacs	***	***	***	***	***
Trends	Indexed	-100	-28	-19	-106	-106

41. The cost of production from the base year to 2001-02, 2002-03 declined to 91% of the base year and increased during POI. However, during POI the cost of production was 96% of the base year. Net sales realization from the base year declined to 98% during 2001-02, 2002-03 and POI. It shows that realization was better in 2001-02 and 2002-03, however, during POI cost of production increased but net selling price could not increased proportionately. Per unit losses were declining from base year to 2002-03, however, during POI losses increased. Similarly, cash losses from base year improved till 2002-03 but during POI it shows deterioration.

ii) Employment and Wages

Particulars	Unit	2000-01	2001-02	2002-03	POI Annualised	Apr'03-Sep'04 (POI)
Employment						
Employee	Nos.	***	***	***	***	***
Trend	Indexed	100	76	83	92	92
Wages						
Wages paid to employees	Rs. Lacs	***	***	***	***	***
Trend	Indexed	100	120	151	151	151
Wages per unit of production	Rs.	***	***	***	***	***
Trend	Indexed	100	118	136	128	128

42. Number of employees declined from base year to POI despite addition of capacity during POI. This was explained as progressive automation in the industry.

43. The wages have been increasing consistently from base year to POI. As compared to base year wages increased by 51% during POI. However, wages per unit of production had increased by 28% during POI as compared to base year.

iii) Productivity

Particulars	Unit	2000-01	2001-02	2002-03	POI Annualised	Apr'03-Sep'04 (POI)
Productivity						
Employees	Nos	***	***	***	***	***

Production	MT	***	***	***	***	***
Productivity per employee	MT	***	***	***	***	***
Trend	Indexed	100	101	109	120	120

44. The number of employees declined from base year to POI and the production per employee had increased considerably during POI, it increased by 20% during POI as compared to the base year

iv) Inventories

Particulars	Unit	2000-01	2001-02	2002-03	POI Annualised	Apr'03-Sep'04 (POI)
Average inventories	MT	***	***	***	***	***
Trend	Indexed	100	94	103	165	165

45. The average inventory in absolute term shows rising trend. As compared to base year it had increased by 65% during POI. However, average inventory measured as equivalent of number of days of domestic sales, it declined from 38 days in base year to 25 days during POI.

v) Return on Capital Employed and Ability to Raise Capital

Particulars	Unit	2000-01	2001-02	2002-03	POI Annualised	Apr'03-Sep'04 (POI)
Net Fixed Assets	Rs. Lacs	***	***	***	***	***
Capital Employed-NFA Basis	Rs. Lacs	***	***	***	***	***
Return on Capital Employed	%	***	***	***	***	***
Trends	Indexed	-100	-16	-1	-146	-146

46. On evaluation of data it shows that return on capital employed on NFA basis, it improved from base year to 2002-03 but deteriorated significantly during POI.

vi) Factor affecting prices

47. Evaluation of export prices from subject country shows that it had been declining from base year to POI. During POI it was 96% of the base year. The customs duty has also been declining from base year to POI. From 25% in 2000-01 it declined to 20% during POI. The combined effect of decreased export price and reduced customs duty consequently impacted the landed value of subject goods. During POI it was 85.30% of the base year. The cost of production declined in 2001-02 and 2002-03, however, it increased during POI.

48. As the anti-dumping duty was in force, the imports of subject goods was possible only after application of anti-dumping duty. As per Foreign Trade Policy of India, export-

oriented units/EPZs were permitted to make import the subject goods without payment of any custom duty. The imports by these units were permitted for processing and export purpose only, however, EOU units were also permitted to sell some parts of production in the domestic tariff area (DTA) on application of normal custom duty. In this case, Metronidazole was permitted by EOU and after small processing the product was being sold in domestic tariff area virtually nullifying the effect of anti-dumping duty, therefore, the price of the Metronidazole was being affected by imports from subject country.

vii) Magnitude of Dumping

49. The dumping margin for the subject country has been found out to be 68.65%.

viii) Growth

50. The evaluation of data shows there was growth in demand, production, sales and productivity of the subject goods. However, it shows negative growth in cost of production, selling price, profit and return on capital employed.

G.4 Conclusion on Injury Parameters

51. The capacity of domestic industry had increased during POI by approximately 10%, the capacity utilization also increased by approximately 7%. The production could increase by 18% and the domestic sales also shows improvement by 26%. However, this needs to be seen against growth in demand by 40% during POI. The sales growth though showing improvement was not commensurate with the growth in demand. As compared to growth in sales, the growth in imports during the same period was 46%. The growth in demand was 40%, the market share of domestic industry (domestic sales and captive consumption) decreased from 58% in the base year to 54% during POI as compared to market share of the subject country which increased from 42% in base year to 44% during POI. On evaluation of landed value with net selling price, it is apparent that imports had been undercutting the price of domestic industry. The profitability after improving shows deterioration during POI, likewise cash profit shows deterioration consequently return on investment also deteriorated during the same period.

G.5 OTHERS KNOWN FACTORS

i) Volume and prices of imports from other sources

52. During the POI the imports have taken place mainly from China PR. Out of total imports of 1054 MT during POI, 96.30% of imports have taken place from China PR. The imports of 39 MT from other countries including Hong Kong is not possible factor causing injury to the domestic industry.

ii) Contraction in demand and / or change in pattern of consumption

53. The total demand of the subject goods shows significant growth. It increased by 40% during POI as compared to the base year, therefore, this factor is not possible reason which could have caused injury to the domestic industry.

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

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

iv) Development of technology and export performance

55. Technology or technology related issues have not been raised by any interested party as cause of injury to the domestic industry. It is noted that the domestic industry was exporting some quantity during the base year however, during the POI the exports declined to 74% of the base year. As exports constitute very small portion of the domestic sales, therefore, this factor is not causing injury to the domestic industry.

v) Productivity of the Domestic Industry

56. Productivity of the domestic industry has shown improvement. It has improved by 20% during POI as compared to the base year. Wages to the employees have increased by 51% during POI and wages per unit of production also increased by 28% during POI as compared to the base year.

G.6 CAUSAL LINK

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

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

58. As discussed above, the injury to the domestic industry is not caused by these other known factors. Though the anti-dumping duty was in force even then because of misuse of duty exemption schemes, the imports from China PR continued to be available to dumped prices which was undercutting prices of domestic industry and was being sold at prices

below the non-injurious prices of the domestic industry, forcing the domestic industry to keep their prices low to compete with the dumped imports. Consequently, the domestic industry suffered in profitability, cash profits and return on investment, therefore, the dumped imports from the subject country was causing injury to the domestic industry.

H. LIKELIHOOD OF RECURRENCE OF DUMPING AND INJURY

H.1 Recurrence of Dumping

59. The domestic industry has made following submissions regarding recurrence of dumping:

a) Surplus capacity and export orientation of Chinese producers

60. It has been submitted that the capacities created by producers in China PR are significantly higher than demand in their local market. Further, there are several producers of the subject goods who are competing very aggressively with each other not only in the domestic market but in export market as well. Evidently huge capacities have been created considering export market. In order to capture these markets, these producers are willing to sell the product even at dumped price. In this regard, it has been informed that the capacity in China is 5000 MT, production in China is 4000 MT, consumption in China is 1500MT, export from China is 2500 MT and excess unutilized capacity is 1000 MT. The Indian demand is 1526 MT. It has also been informed that by utilizing their excess capacity the Chinese producers would be in a position to reduce its losses. Therefore, the Chinese producers are resorting to dumping.

61. The Authority has examined the argument raised by the domestic industry and it has been found that evidence has been submitted about the capacity of Metronidazole in China PR, however, no evidence has been submitted about the consumption. In the post disclosure submission, it had been argued that non-cooperation by foreign producer cannot shift burden of proof on Indian producers, otherwise it would imply that Indian producers would be penalized for non-cooperation of the foreign producers. It has also been submitted that petitioner was not called upon to provide any evidence during the course of investigation. The Authority is of the view that as per AD Rules, the Authority is to make the determination on the basis of facts and evidence made available by any of the interested party. Simple assertions not backed by any evidence cannot be accepted just because it had not been opposed by any other interested parties or the other interested parties have not cooperated. Therefore, the Authority did not find that any evidence has been submitted in support of contention of the domestic industry and takes a view that in absence of the material it cannot be concluded whether any excess capacity exist in China PR.

b) Continuance of Dumping

62. It has been submitted that imports at present are being made under Advance License category. Anti-dumping duty paid imports are possibly nil at present due to duty itself, even though the difference between landed price of imports (without anti-dumping duty) and selling price of domestic industry is too significant. It has been submitted that in such

a situation, on revocation of anti-dumping duty, the dumping of goods would aggravate in the imports other than the advance license category. It has also been submitted that there is no reason to believe that why the exporters and producers from China would not continuously dump on revocation of duty.

63. The Authority has examined that argument and finds that in view of the findings that there exists dumping as already discussed in part F of these Findings, there is a possibility of continuation of dumping on revocation of duty.

c) Third Country Dumping

64. The Metronidazole is being exported by Chinese producers to a number of countries in the world. Information available suggests that producers and exporters from China are dumping Metronidazole in the other world markets also. This is evident from prices at which goods have been exported to a number of countries.

65. The Authority examined the issue and is of the view that in absence of any evidence that the China is dumping the subject goods in other countries, the existence of exports to other countries cannot be interpreted as recurrence of dumping to India

Conclusion on Recurrence of Dumping

66. The Authority has found existence of dumping as already analysed in part F of this findings and in view of the other factors as analysed above, the Authority is of the view that there is a possibility of continuance of dumping.

H.2 Recurrence of Injury

67. Regarding recurrence of injury the domestic industry has made following submissions:

a) Vulnerability of the Domestic Industry

68. It has been submitted that should the present duty be revoked, the extent of price undercutting would result in quantum jump in imports of product under consideration, given the price at which these exporters are exporting. Further the performance of the domestic industry was already adverse during period under consideration due to limited imports volume available in market through misuse of export promotion schemes. Should the duties be revoked, there would be no restriction on imports at dumped prices. It is likely that revocation of anti-dumping measure would result in intensifying injury. It has also been submitted that revocation of present duty would cause a significant price undercutting and resultant suppression/depression of prices in the Indian market, as the domestic industry would have no option but first to try to maintain its market share rather than maintaining its selling prices. This would in turn further erode the profitability of the domestic industry. The domestic industry would thereafter be forced to reduce its prices in order to sell the product given that no consumption would continue to buy from domestic industry at higher prices should the imports prices be lower than the domestic industry's prices. Any reduction in the prices by the domestic industry would then imply deterioration

in profits of the domestic industry. The domestic industry could even be forced out of the market.

b) Significant price undercutting by imports with current measures

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

c) Level of dumping margin

70. It has been submitted that the dumping margin is significant as per the calculation made by the domestic industry.

Conclusion on Recurrence of Injury

71. The Authority has already found the existence of material injury to the domestic industry and in view of the merits in the arguments of the domestic industry about vulnerability of the domestic industry, significant price undercutting and level of dumping margin, the Authority is of the view there is a possibility of continuance of injury because of dumping of the subject goods

72. The Authority recognizes that the imposition of anti dumping 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, imposition of anti dumping measures would remove the unfair advantages gained by dumping practices, would prevent the decline of the domestic industry and help maintain availability of wider choice to the consumers of subject goods. The Authority notes that the imposition of anti dumping measures would not restrict imports from subject country in any way, and therefore, would not affect the availability of the product to the consumers. The consumers could still maintain two or even more sources of supply

I. FINAL FINDINGS

73. The Authority after considering the foregoing concludes that:

- a. Subject goods originating in or exported from subject country have been exported to India below their normal value, resulting in dumping;
- b. The domestic industry has suffered material injury due to dumped imports;
- c. And discontinuation of anti-dumping duties on the subject goods from subject country may likely to continue or lead to the recurrence of injury to the domestic industry and dumping;

J. Indian industry's interest & other issues

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

K. Recommendations

75. In view of positive determination of likelihood of dumping and injury on account of imports from China PR the Authority is of the opinion that continuation of the measure is required against imports from that country. However, considering the current level of dumping from that country and injury suffered by the domestic industry, the Authority is of the opinion that the measure in force needs to be revised. Therefore, Authority considers it necessary and recommends anti-dumping duty on imports of subject goods from China PR in the form and manner described hereunder.

76. Having regard to the lesser duty rule followed by the authority, the Authority recommends imposition of definitive anti-dumping duty equal to the margin of dumping or margin of injury whichever is lesser, so as to remove the injury to the domestic industry. Considering that the duty in the original investigation was imposed on reference price basis the Authority recommends continuation of definitive antidumping duty, on all imports of subject goods originating in or exported from China PR, as the difference between the landed value and the reference price as indicated in Col 9 of the table below, if the landed value at the time of importation is below the value indicated at Col.9.

S. No	Sub-Heading	Description of Goods	Specification	Country of Origin	Country of Export	Producer	Exporter	Amount	Unit of Measurement	Currency
1	2	3	4	5	6	7	8	9	10	11
1.	29332 920	Metronidazole		China PR	Any Country	Any Producer	Any Exporter	9.94	Kg	USD

77. Landed value of imports for the purpose shall be the assessable value as determined by Customs under the Customs Act, 1962 and all duties of customs except duties levied under Sections 3, 3A, 8B, 9 and 9A of the Customs Tariff Act, 1975.

78. An appeal against this order shall lie before the Customs, Excise and Service tax Appellate Tribunal in accordance with the relevant provisions of the Act.

(Christy Fernandez)
Designated Authority