

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

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

NOTIFICATION

New Delhi the 11th February 2010

Preliminary Findings

Subject: - Anti-Dumping Investigations involving imports of Penicillin-G Potassium originating in or exported from China PR and Mexico and 6-APA originating in or exported from China PR.

No. 14/19/2009-DGAD: - 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, (hereinafter referred as Rules) 1995 thereof;

A. PROCEDURE

2. The procedure described below has been followed:

i. The Designated Authority (hereinafter referred to as Authority), under the above Rules, received a written application from M/s Alembic Limited, Vadodara (manufacturer of both Penicillin G and 6-APA) and M/s. Southern Petrochemical Industries Corporation Ltd. (SPIC), Chennai (manufacturer of only Penicillin G) alleging dumping of (a) Penicillin-G Potassium originating in or exported from China PR and Mexico (hereinafter referred to as subject countries for Penicillin-G); and (b) 6- Amino Penicillanic Acid (also referred to as 6-APA in this notification) originating in or exported from China PR (hereinafter referred to as subject country for 6-APA).

ii. The Authority notified the Embassies/Representatives of the subject countries in India about the receipt of dumping application made by the petitioners before proceeding to initiate the investigation in accordance with sub-rule (5) of Rule 5 supra;

iii. The Authority on the basis of sufficient evidence submitted by the applicant on behalf of the domestic industry, issued a public notice dated 22nd

July, 2009 published in the Gazette of India, Extraordinary, initiating Anti-Dumping investigations concerning imports of Penicillin-G Potassium originating in or exported from China PR and Mexico and 6-APA originating in or exported from China PR, in accordance with the sub-Rule 6(1) of the Rules to determine the existence, degree and effect of alleged dumping and to recommend the amount of anti dumping duty, which, if levied, would be adequate to remove the injury to the domestic industry.

iv. The Designated Authority sent copy of initiation notification dated 22nd July, 2009 to the representatives of the subject countries in India, known exporters from the subject countries, importers, consumers and the domestic industry as per the addresses made available by the applicants and requested them to make their views known in writing within 40 days of the initiation notification.

v. The Authority provided a copy of the non-confidential version of the application to the known exporters and to the representatives of the subject countries in India in accordance with Rule 6(3) supra.

vi. The representatives of the subject countries in India was informed about the initiation of the investigation in accordance with Rule 6(2) with a request to advise the exporters/producers from their country(ies)/territory(ies) to respond to the questionnaire within the prescribed time. A copy of the letter and questionnaire sent to the exporters was also sent to them along with the names and addresses of the known exporters.

vii. The Authority sent questionnaires to elicit relevant information to the following known exporters in subject country in accordance with Rules 6(4).

S.N.	Company's Name	Product	Country
1.	North China Pharmaceutical Company	Pen-G & 6-APA	China PR
2.	Aurobindo Tongling (Datong) Pharmaceutical Co. Ltd.	Pen-G	China PR
3.	Zhuhai Jinyou Imp. & Exp. Co. Ltd.	Pen-G	China PR
4.	Hebei Zhongrun	Pen-G	China PR

5.	Zhongnuo Pharmaceutical	Pen-G	China PR
6.	Jiangxi Dongfeng Pharmaceutical Co. Ltd.	Pen-G	China PR
7.	Sichuan Pharmaceutical Co. Ltd.	Pen-G & 6-APA	China PR
8.	Fersinsa, Mexico	Pen-G	Mexico
9.	Harbin Pharmaceutical Group Co., Ltd	6-APA	China PR
10.	Chengdu United Laboratories	6-APA	China PR
11.	Henan Xinxiang Huaxing Pharma. Factory	6-APA	China PR
12.	Hebei Zhongrun Pharmaceutical Co., Ltd. (Shijiazhuang Pharm Group)	6-APA	China PR
13.	NCPC Beta Co., Ltd.	6-APA	China PR
14.	Livzon Syntpharm Co., Ltd. (Zhuhai FTZ)	6-APA	China PR
15.	Shandong Lukang Pharmaceutical Group Co., Ltd	6-APA	China PR
16.	Zhuhai United Laboratories Co., Ltd	6-APA	China PR

viii. In response to the above notification, following exporters/producers have responded.

S.N.	Company's Name
1.	North China Pharmaceutical Company, China PR
2.	Aurobindo (Datong) Bio-Pharma , China PR
3.	Zhang Jia Kou Gist-Brocades Pharmaceutical, China PR
4.	Zhang Jia Kou Dha Pharmaceutical, China PR
5.	DSM Trading(Shanghai) Co. , China PR
6.	NCPC Beta Co., Ltd, China PR
7.	Fersinsa GB, Mexico
8	DSM Anti-Infectives BV, Netherland

ix Questionnaire was sent to the following known importers and/or consumers of subject goods in India calling for necessary information in accordance with Rule 6(4).

SN	Company' name
1.	DSM Anti Infectives India Ltd.
2.	Elder Pharmaceuticals Ltd.
3.	KDL Biotech Ltd.
4.	Lupin Laboratory Ltd.
5.	Medox Agencies
6.	Nectar Lifesciences Ltd.
7.	Surya Pharmaceutical Ltd.
8.	Dhanuka Labs
9.	Aurobindo Pharma Ltd.
10.	Hindustan Antibiotics Ltd.
11.	Asiatic Drugs & Pharmaceuticals
12.	Unimark Remedies Ltd.
13.	Penam Laboratories Ltd.
14.	Amalgamated Drugs & Pharmaceuticals Pvt. Ltd
15.	Euro Asian Industrial Co.
16.	Apex Drug House
17.	Gypsy Organics India Inc.
18.	Malviya Chemicals & Pharmaceuticals (Pvt.) Ltd.
19.	Bhageria Dye Chem Ltd.
20.	Cebon India Ltd.
21.	Parabolic Drugs Ltd.
22.	Concept Pharmaceuticals Ltd.

23.	Dalas Biotech Ltd.
24.	Ranbaxy Laboratories Ltd.
25.	Surya Pharmaceutical Ltd.
26.	Tini Pharma Limited
27.	Elegant Pharmaceuticals Ltd.

x. Response has been received by the following importers/ embassies: -

S.N.	Company's Name
1.	DSM Anti Infectives India Ltd.
2.	Ranbaxy Laboratories Ltd.
3.	Asiatic Drugs & Pharmaceuticals
4.	Piramal Healthcare Limited
5.	Aurobindo Pharma Ltd., Hyderabad
6.	Embassy of Mexico
7.	Federation of Pharma Enterprises(FOPE)
8.	Doctor Lifeline Remedies (India) Limited
9.	Nectar Lifesciences Ltd, Chandigarh

xi. The Authority made available non-confidential version of the evidence presented by various interested parties in the form of a public file kept open for inspection by the interested parties;

xii. Petitioners relied on import information published by Directorate General of Commercial Intelligence and Statistics (DGCI&S) for 2005-06, 2006-07, 2007-08 and IBIS (secondary source) for 2008-09 for Penicillin-G and IBIS (secondary source) for 6-APA for the entire investigation period in their application. However, subsequent to initiation, the entire data of imports from IBIS and DGCI&S was analysed and it was determined that volume of imports from IBIS was higher than that obtained from DGCI&S. Therefore, for the uniformity and also for the fact that imports volume are higher in IBIS during

POI for both Pen G as well as 6 APA, it has been provisionally decided to take into account import information from IBIS for the volume as well as price effects in the injury analysis and also for the dumping margin determinations.

xiii. Optimum cost of production and cost to make & sell the subject goods in India based on the information furnished by the applicants on the basis of Generally Accepted Accounting Principles (GAAP) was worked out so as to ascertain if anti-dumping duty lower than the dumping margin would be sufficient to remove injury to Domestic Industry.

xiv. Investigation for both the products was carried out for the period starting from 1st October 2008 to 31st March, 2009 (POI). In case of Penicillin-G, the examination of trends, in the context of injury analysis, covered the periods April 2005-March 2006, April 2006-March 2007, April 2007-March 2008, April 2008-September 2008 and the POI. In respect of 6-APA, however, since the domestic industry had re-started production in 2007 only, the injury examination had to be restricted to 2007-08 and 2008-09.

xv. *** in this notification represents information furnished by the applicants on confidential basis, and so considered by the Authority under the Rules.

B. Products under consideration

3. The Products under consideration in the present investigation are Penicillin-G Potassium and 6-APA. The Authority has treated Penicillin-G and 6-APA as two different products for the purpose of the present investigation. Penicillin is a β -lactam antibiotic used in the treatment of bacterial infection caused by susceptible, usually Gram-positive, organisms. The name "penicillin" can either refer to several variants of penicillin available, or to the group of antibiotics derived from the penicillin. Penicillin-G is an organic compound and is classified under Chapter 29 of the Customs Tariff Act. Penicillin is the first antibiotic to be isolated and is used in the treatment of various diseases and infections. Infections wherein penicillin is most effective are: strep, pneumonia, spinal meningitis, gas gangrene, diphtheria, syphilis, and gonorrhoea.

4. 6-APA is a derivative of Penicillin-G and is also an organic chemical. 6-APA is a white powder. It is stable in ordinary conditions and the melting point is 198 - 200° C.

5. The subject goods are classified in Chapter 29 of the Customs Tariff Act, 1975 under subheading 2941 10 and under subheading 29411010 (Penicillin-G) and 29411050 (6-APA) under the Indian Trade Classification. Customs classification is, however, indicative only and is not binding on the scope of the product under consideration and present investigations.

C. Like article

6. The Authority has treated Penicillin-G and 6-APA as dislike article for the purpose of the present determination.

With regard to like article, Rule 2(d) provides as under: -

"like article " means an article which is identical or alike in all respects to the article under investigation for being dumped in India or in the absence of such article, another article which although not alike in all respects, has characteristics closely resembling those of the articles under investigation;

7. For both the domestic like products separately, it is noted that there is no known difference in subject goods produced by the Indian industry and exported from subject country(ies). The subject goods produced by the Indian industry and that imported from subject country(ies) are comparable in terms of characteristics such as physical & chemical characteristics, manufacturing process & technology, functions & uses, product specifications, pricing, distribution & marketing and tariff classification of the goods. The two are technically and commercially substitutable. The consumers are using the two interchangeably. None of the opposing interested parties has raised any objection in this regard. Subject goods produced by the petitioner companies are being treated as domestic like articles to the subject goods imported from subject country(ies) in accordance with the anti-dumping Rules.

Domestic Industry

8. The application has been filed by M/s Alembic Ltd., Vadodara and M/s. Southern Petrochemical Industries Corporation Ltd. (SPIC), Chennai. Alembic Ltd. produced both the products, whereas SPIC produces Penicillin-G only. As per evidence available, petitioners' production accounts for 100% of the Indian production of Penicillin- G. In case of 6-APA, the petitioner is M/s Alembic Ltd., Vadodara. The petition has been supported by M/s. Alka Remedies Pvt. Ltd. The petitioner claimed that there are number of producers in India. But such production was largely for captive consumption and not for sale in the market. The petitioner submitted that production of 6-APA by those producers who consume it captively and do not sell in the market should not be considered for determination of standing and scope of the domestic industry.

Views of other interested parties

9. DSM Anti-Infectives, India and other interested parties have alleged that the petitioners lack standing with regard to 6-APA. The company has claimed that its own production and job work got done by DSM India amounts to 85% of Indian production of 6-APA. The share of Alembic is only 12% of Indian 6-APA production. As per Rule 2(b), it is not mandatory to always exclude those

domestic producers who are related to exporters, importers or who themselves have imported the product. Exclusion of DSM India on the basis that it is a captive producer relying upon past decisions is erroneous.

10. The petitioners have refuted the claim of DSM and argued that by their own admission, DSM does not sell 6-APA in the market. On this account alone, production by DSM should not be included for the purpose of determination of standing. Petitioners also referred to the past decisions of the Designated Authority and CESTAT in this regard.

Examination by the Authority

11. The Authority has considered claims of the interested parties on this account. The questionnaire response filed by DSM Anti Infeatives India, Zhang Jia Kou Gist-Brocades Pharmaceuticals, Zhang Jia Kou Dha Pharmaceutical and DSM Trading(Shanghai) Co. have been examined in detail. It is noted that

- (a) these companies are related to each other.
- (b) 6-APA has been exported to India by Zhang Jia Kou Dha Pharmaceutical through DSM Trading(Shanghai) and the same has been imported by DSM Anti Infeatives
- (c) the response states that the producers sell their goods through DSM Trading(Shanghai). Further, the response states that DSM Anti Infeatives is the importer of the subject goods.

The Authority notes that the Rule 2(b) provides, inter-alia, 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 :

12. The Authority notes that in the instant case, DSM Anti Infeatives is the producer of 6-APA in India. However, the company has itself imported significant 6-APA from the subject country. Further, the company is related to exporter of 6-APA in China. Thus, the producer is related to exporter and the related company is itself an importer of the subject goods in India. Further, the company has admitted not having sold any 6-APA produced in India. It is also noted that entire production of DSM Anti Infeatives is meant for captive consumption only. Further, while DSM provided no details of the company doing for them job production of 6-APA, the Authority notes that the petition was supported by M/s. Alka Remedies, who claimed that it was producing 6-APA on job work basis for M/s. DSM. It is also noted that while claiming itself as a

domestic producer, the company has not advanced any reasons why it should be considered eligible domestic industry and why the Designated Authority should exercise the discretion available under Rule 2(b). The petitioners, on the contrary, claimed that Rule 2(b) exclusion is meant precisely for such situation – where a domestic producer might be importing itself from its affiliated producer in the subject countries and may not wish other producers to bring the application against dumped imports.

13. Having regard to the provisions under Rule 2(b) and the facts on record, the Authority holds that M/s. DSM Anti Infectives cannot be considered as eligible domestic producer. Its production is required to be excluded for the purpose of determination of domestic industry. In this regard, it is also noted that the Petitioners have claimed and DSM and other interested parties have not rejected the contention that there are no other merchant producers of 6-APA in India (having merchant sale). The Authority therefore holds that production of Alembic commands a major proportion in Indian production. Alembic Ltd. therefore constitutes domestic industry in respect of 6-APA within the meaning of the Rules. Further, Alembic and SPIC constitute domestic industry in respect of Penicillin-G within the meaning of the Rules.

14. The Authority, further, notes that M/s. Alka Remedies Pvt. Ltd. has supported the petition for imposition of anti dumping duties on imports of 6-APA. The limited information provided by the company shows that (a) the company has produced 6-APA on job work, (b) the company has significant capacity for production of 6-APA, which are largely unutilized. However, since the company has not fully cooperated with the Authority, the Authority was unable to include the company within the scope of domestic industry and examine injury suffered by the company. Nevertheless, the limited information filed by them has been used in determination of total demand and market share in the paras relating to Injury.

C NORMAL VALUE

C1 Normal value for China PR

15. The Authority sent questionnaire to the known exporters from China PR, advising them to provide information in the form and manner prescribed. Following parties responded in the form and manner prescribed.

SN	Name of the company	Status (producer/exporter)
1.	Zhang Jia Kou GB Pharmaceutical Co. Ltd.	Producer
2.	North China Pharmaceutical Corporation Ltd.	Producer
3.	Aurbindo (Datong) Bio-Pharma Co. Ltd.	Producer
4.	NCPC Beta Co. Ltd.	Producer & exporter

5. DSM Trading (Shanghai) Co. Ltd. Exporter

Para 7 of Annexure I of the AD Rules provides that

In case of imports from non-market economy countries, normal value shall be determined on the basis of the price or constructed value in the market economy third country, or the price from such a third country to other countries, including India or where it is not possible, or on any other reasonable basis, including the price actually paid or payable in India for the like product, duly adjusted if necessary, to include a reasonable profit margin. An appropriate market economy third country shall be selected by the designated authority in a reasonable manner, keeping in view the level of development of the country concerned and the product in question, and due account shall be taken of any reliable information made available at the time of selection. Accounts shall be taken within time limits, where appropriate, of the investigation made in any similar matter in respect of any other market economy third country. The parties to the investigation shall be informed without any unreasonable delay the aforesaid selection of the market economy third country and shall be given a reasonable period of time to offer their comments.

16. All the responding exporters/producers claimed market economy status. Their claims have therefore been examined considering the above-mentioned legal provisions and the information and evidence provided by these interested parties.

Examination of Market Economy claims in respect of China PR

17. The Authority notes that in the past three years China PR has been treated as a non-market economy country in anti-dumping investigations by India and other WTO Members. China PR has been treated as a non-market economy country subject to rebuttal of the presumption by the exporting country or individual exporters in terms of the AD Rules.

18. As per Paragraph 8 of Annexure I of the AD Rules, the presumption of a non-market economy can be rebutted, if the exporter(s) from China PR provide information and sufficient evidence on the basis of the criteria specified in sub paragraph (3) of Paragraph 8 and establish the facts to the contrary. The 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 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.

19. The Authority notes that consequent upon the initiation and notices issued by the Authority; some Chinese exporters have submitted their questionnaire responses including the market economy questionnaire responses and sought to rebut the non-market economy presumption. The questionnaire responses and the market economy responses of the responding producers and exporter have been examined for determination of normal value of the responding producers/exporter of the subject goods from the subject country as follows:

Views of the domestic industry

20. In support of their claim, the domestic industry has, *inter alia*, made the following contentions –

(a) Market economy status cannot be given in a situation where one of the major shareholders is a State owned/controlled entity;

(b) Market economy status cannot be given unless the responding Chinese exporters establish that the prices of major inputs substantially reflect market values;

(c) Market economy status cannot be given unless the responding exporter establish that their books are audited in line with international accounting standards;

(d) Market economy status cannot be granted even if one of the parameters is not satisfied;

(e) It is not for the Authority to establish that the responding companies are indeed operating under market economy environment and are entitled for market economy treatment. On the contrary, it is for the responding Chinese exporters to establish that they are operating under market economy conditions;

(f) Market economy status cannot be granted unless the responding company and its group as a whole make the claim;

(g) In a situation where the current shareholders have not set up their production facilities themselves but have acquired the same from some other party, market economy status cannot be granted unless process of transformation has been completely established through documentary evidence.

(h) Unless Chinese exporters establish that they pass the test of market economy status for each and every parameters laid down under the Rules, market economy treatment cannot be given to them.

(i) The responding exporters have not established how they are entitled for market economy status in terms of, *inter-alia*, ownership & control, acquisition of plants, raw material prices and accounting standards.

Examination of claim of market economy treatment and Response to exporters questionnaire

M/s North China Pharmaceutical Company (NCPC) and NCPC Beta Co., Ltd.

21. M/s NCPC is a Chinese listed company having largest shareholder named M/s North China Pharmaceutical Group Corporation (NCPGC) having ****% stake. However, this company has not exported to India during the POI and hence no dumping margin determination is being made in respect of M/s NCPC. The information filed by the exporter showed that the company is owned by a large number of shareholders. North China Pharma Group Corporation is the single largest shareholder of the company, commanding ****% of the holding. Further, there are a number of companies listed by the company as its shareholders, whose ownership information has not been provided, even though the prescribed questionnaire specifically requires this information. M/s. North China Pharma Group Corporation is admittedly a State owned company.

22. M/s NCPC Beta Co., Ltd. is owned by North China Pharmaceutical Company and two other shareholders. This company has exported the subject goods to India during the POI. It is noted from the response that M/s North China Pharma Group Corporation and a large number of shareholders in North China Pharmaceutical Company have significant ownership/control in NCPC Beta. No evidence has been provided by the company to establish that its decisions are made in response to market signals and without significant State interference, notwithstanding existence of state holding in the company. NCPC has two subsidiaries, NCPC Beta and North China Pharmaceutical Kangxin Ltd. However, response has been filed by only NCPC Beta. The Authority notes that raw materials and utilities form a significant part of the cost of production of the subject goods. The exporter has merely stated that it is procuring raw materials and utilities from related or unrelated suppliers. The exporter has admitted that it is procuring some raw materials from its subsidiaries. The exporter has however, not provided any evidence to establish that costs of major inputs substantially reflects market values. With regard to books of account, while claiming that these are consistent with Chinese accounting standards, the exporter has not established that the books are consistent with international accounting standards.

23. M/s NCPC Beta has produced both Pen G as well as 6 APA during the POI and has provided the appendix wise response. However, the cost of production information given was also examined. It is found that the information in this

regard is grossly deficient. Information in the form and manner prescribed has not been provided by the exporters. All the deficiencies pertaining to their appendix wise information have been sent to the responding exporter.

24. In view of the above, the Authority is not in a position to grant market economy treatment to the exporter at this stage pending further investigations including on the spot verifications. Therefore, for the purposes of preliminary findings, the normal value is being constructed as explained in the relevant section of these findings.

M/s. Zhang Jia Kou Gist-Brocades Pharmaceuticals (GBP), Zhang Jia Kou DHA Pharmaceutical (DHA) and DSM Trading(Shanghai) Co.

25. M/s. Zhang Jia Kou Gist-Brocades Pharmaceuticals is the producer of Penicillin-G and M/s. Zhang Jia Kou Dha Pharmaceutical is the producer of 6-APA. However, the products under consideration produced by the two companies are exported to India only through M/s. DSM Trading (Shanghai) Co. The information filed by these companies showed that these companies are related to each other. Both Zhang Jia Kou Gist-Brocades Pharmaceuticals and Zhang Jia Kou Dha Pharmaceutical have two shareholders – GB International B. V. (a company owned/controlled by Royal DSM) and Zhang Jia Kou Pharma Group Co. Ltd., who is a state-owned company. No evidence has been provided by these companies to establish that its decisions are made in response to market signals and without significant State interference, notwithstanding existence of state holding in the company. The Authority notes that raw materials and utilities form a significant part of the cost of production of the subject goods. The exporter has stated that it is procuring raw materials and utilities from related or unrelated suppliers, some of which are state owned/controlled entities. The companies have admitted that it is procuring some raw materials from its subsidiaries. The exporter has however, not provided any evidence to establish that costs of major inputs substantially reflects market values. With regard to books of account, while claiming that these are consistent with Chinese accounting standards, the exporter has not established that the books are consistent with international accounting standards.

26. The cost of production information given by M/s DHA and M/s GBP was also examined. It is found that the information in this regard is deficient. Information in the form and manner prescribed has not been provided by the exporters. All the deficiencies pertaining to their appendix wise information have been sent to the responding exporters.

27. In view of the above, the Authority is not in a position to grant market economy treatment to these companies at this stage pending further investigations including on the spot verifications. Therefore, for the purposes of these preliminary findings, the normal value is being constructed as explained in the relevant section of these findings.

Aurobindo (Datong) Bio-Pharma

28. The information filed by the company shows that the company is 100% owned subsidiary of Aurobindo India. The Authority notes that raw materials and utilities form a significant part of the cost of production of the subject goods. The exporter has stated that it is procuring raw materials and utilities from related or unrelated suppliers, some of which are state owned/controlled entities. The exporter has however, not provided any evidence to establish that costs of major inputs substantially reflects market values. With regard to books of account, while claiming that these are consistent with Chinese accounting standards, the exporter has not established that the books are consistent with international accounting standards.

29. The cost of production information given was also examined. It is found that the information in this regard is deficient. Information in the form and manner prescribed has not been provided by the exporters. The limited information provided by the exporters show that substantial domestic sales are below cost of production.

30. In view of the above, the Authority is not in a position to grant market economy treatment to these companies at this stage pending further investigations including on the spot verifications. Therefore, for the purposes of preliminary findings, the normal value is being constructed as explained in the relevant section of these findings.

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

31. The Authority notes that the responding exporters have not provided sufficient evidence to establish their claim of market economy treatment. The claims require further information & evidence, including on the spot verification at the premises of these companies. The producers have named the raw materials and utilities suppliers and identified their legal status. The companies have not provided evidence to establish that these inputs have been procured at prevailing international prices. At the same time, domestic industry has claimed that price of inputs in China PR in this case does not substantially reflect market values. This also calls for further investigations, including spot verification.

32. Considering that the cost of the raw-material and utilities form a significant portion of the cost of the subject goods, the Authority is unable to grant market economy treatment to the Chinese exporters at this stage, pending further investigation including spot verification.

33. In view of the above, pending examination of the claims and verification of the same, the Authority is of the view that the producers/exporters from China PR cannot be granted market economy status for the preliminary determination of their normal Value.

Methodology adopted for constructing Normal Value in case of China PR

34. The Authority has constructed normal value for the Chinese producers at this stage on the following basis –

- (a) Prices of major inputs have been considered on the basis of international prices to the extent available.
- (b) Consumption norms of raw materials per unit of production of the efficient domestic producer has been considered.
- (c) Conversion costs have been adopted on the basis of information/data of efficient producer of the domestic industry.
- (d) Selling, general & administrative costs have been taken on the basis of information/data of efficient producer of the domestic industry
- (e) Profit has been taken @ 5% of ex-factory cost

C2 Normal value in case of Mexico

35. M/s. Fersinsa GB, Mexico has filed response to questionnaire. Though this company has responded to the questionnaire, it has not provided adequate information for the Authority to determine the normal value as per annexure of the anti dumping rules.

36. It was first seen, whether the domestic sales of the subject goods by the company in their home market was representative and viable for permitting determination of normal value on the basis of domestic selling price and whether the ordinary course of trade test was satisfied as per the data provided by the exporter, subject to verification. It is seen that the company does not have representative domestic sales of the product under consideration. Thus, the normal value for the responding exporter can not be determined as per the domestic selling prices of the responding exporter. In view of the fact that the exporter has not provided transaction wise details of exports to an appropriate third country, the exports to third country cannot be accepted as basis of determination of normal value for the responding exporter. With regard to other option, it was noted that cost of raw materials information is not tallying in various appendices and the fact that startup costs claimed by the exporter have not been backed with any supporting documents. In view of this, the cost of production along with reasonable profit has not been accepted as the basis of determining normal value for the responding exporter. All the deficiencies pertaining to their appendix wise information have been sent to the responding exporter.

37. In view of the above facts, the Authority at this stage has constructive the normal value considering best information available by taking the international prices of raw material along with the conversion cost and a suitable profit margin of 5%. The constructed normal value so determined for the responding exporter is US\$ ***/BOU for Pen G. The same normal value has been taken for other exporters also in Mexico.

C3 EXPORT PRICE

Export price for the responding exporters

39. The Authority examined whether the export prices in respect of responding exporters could be determined on the basis of questionnaire responses filed by these interested parties. The export prices have been allowed as claimed by the responding exporters, subject to further investigation and verification.

Zhang Jia Kou Gist-Brocades Pharmaceuticals (GBP) and DSM Trading(Shanghai) Co.

40. The company has 6 export transactions, totaling to **** BOU for Pen G during the POI. Weighted average export price to India has been determined considering the volume and value of exports. Price adjustments have been made on account of inland freight, ocean freight, port handling charges, customs fees, and commission as claimed by the exporter for the purpose of the preliminary findings, subject to further investigation and verification. The net export price after all adjustments claimed by the producer/exporter M/s Zhang Jia Kou Gist-Brocades Pharmaceuticals (GBP) and DSM Trading(Shanghai) Co. has been provisionally determined as US\$ **** per BOU for Pen G.

Zhang Jia Kou DHA Pharmaceutical (DHA)and DSM Trading(Shanghai) Co.

41. The company has **** export transactions, totaling to **** MT of 6APA only during the POI. Weighted average export price to India has been determined considering the volume and value of exports. Price adjustments have been made on account of inland freight, ocean freight, port handling charges, customs fees, and commission as claimed by the exporter for the purpose of the preliminary findings, subject to further investigation and verification. The net export price after all adjustments claimed by the producer exporter M/s DSM Trading (Shanghai) has been provisionally determined as US\$ **** per Kg for 6APA.

North China Pharmaceutical Company (NCPC)

42. The company has nil export transactions, during the POI. Hence no dumping margin determination has been carried out for the responding firm.

NCPC Beta Co., Ltd.

43. The company has **** export transactions, totaling to ****BOU for PenG with a gross sales turnover of US \$****. For 6 APA, the company has * export transaction to India during the POI for **** Kg with a gross turnover of US\$ ****. Weighted average export price to India has been determined considering the volume and value of exports. Price adjustments have been made on account of inland freight, ocean freight, port handling charges, customs fees, and commission as claimed by the exporter for the purpose of the preliminary findings, subject to further investigation and verification. The net export price

after all adjustments claimed by the exporter has been provisionally determined as US\$**** per BOU and US\$**** per Kg for Pen G and 6 APA respectively.

Aurobindo (Datong) Bio-Pharma

44. The company has **** export transactions, totaling to **** MT of 6 APA during the POI. Weighted average export price to India has been determined considering the volume and value of exports. Price adjustments have been made on account of inland freight, ocean freight, port handling charges, customs fees, and commission as claimed by the exporter for the purpose of the preliminary findings, subject to further investigation and verification. The net export price after all adjustments claimed by the exporter and after adding the insurance @ US\$ ****/Kg, has been provisionally determined as US\$****/Kg for 6 APA.

M/s. Fersinsa GB, Mexico

45. M/s. Fersinsa GB, Mexico is a producer of subject goods (Pen G only) who have been exporting through M/s DSM Netherlands to India during the POI. The company has **** export transactions all of Pen G, totaling to **** BOU. Weighted average export price to India has been determined considering the volume and value of exports. Price adjustments have been made on account of inland freight, ocean freight, port handling charges, customs fees, and commission as claimed by the exporter for the purpose of the preliminary findings, subject to further investigation and verification. The net export price after all adjustments claimed by the producer M/s. Fersinsa GB, Mexico and exporter M/s M/s. Fersinsa GB, Mexico has been provisionally determined as US\$ **** per BOU.

Determination of Export Price in respect of Non-Co-operative Exporters/Producers

46. The Authority notes that a number of exporters had responded to the notice of initiation issued earlier, which was terminated later. In the present investigations, however, a number of these exporters have not responded. Further, the information on record shows that whereas the known volume of imports in the POI was **** MMU of Penicillin-G and **** MT of 6-APA, the responding exporters have claimed to have exported much less to India. Since no other response has been received from other producer/exporter of the subject goods and further since these producers/exporters command a significant proportion in total imports, the Authority has determined export price for non cooperating exporters as per facts available in terms of Rule 6(8) of the AD Rules. The import shipment wise data has been collated and the export price in respect of non-cooperating exporters has been considered at the lower representative level.

C5 Dumping Margin

47. The Authority has determined dumping margin cumulatively for all sales of the product under consideration made by an exporter during the investigation

period by considering weighted average of the volumes sold. Comparison has been made at ex factory level. The comparison showed existence of dumping of the subject goods during the POI. The weighted average dumping margin, expressed as a percentage to the export price has been determined as positive and significant. For, M/s Zhang Jia Kou Gist-Brocades Pharmaceuticals and DSM Trading(Shanghai) Co, the dumping margin is provisionally determined as negative pending further investigations and verifications.

48. Besides, information filed by the domestic industry and responding foreign producers show that there were significant differences in the prices of the product within the period of Investigation. Domestic industry submitted that there were significant changes in the prices depending on time periods. The domestic industry has therefore requested that the Authority should ignore the transactions booked before the start of the investigation period and consider date of order as the date of sale. However, the Authority has accepted the claims made by the exporters at this stage, pending further investigation, including on the spot verifications.

Considering the normal value and export price as determined above, the dumping margins have been determined as follows:

Penicillin-G

Exporter	Country	Dumping Margin US\$ per Kg	Dumping Margin as %
Zhang Jia Kou Gist-Brocades Pharmaceuticals and DSM Trading(Shanghai) Co.	China	****	(2.89)
NCPC Beta Co., Ltd.	China	****	25.24
Non-Co-operative producers/exporters	China	****	57.42
M/s. Fersinsa GB	Mexico	****	31.76
Non Co-operative producers/exporters	Mexico	****	49.68

6-APA

Exporter	Country	Dumping Margin US\$ per Kg	Dumping Margin as %
Zhang Jia Kou Dha Pharmaceutical and DSM Trading(Shanghai) Co.	China PR	****	38.87
NCPC Beta Co., Ltd.	China PR	****	74.41
Aurobindo (Datong) Bio-Pharma	China PR	****	62.50
Non-Co-operative producers/exporters	China PR	****	82.17

D Injury and causal link

49. 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.

50. 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.”

Views of Other Interested Parties

51. The interested parties opposing imposition of anti dumping duties have advanced following arguments

(i) Arguments on behalf of M/s DSM and others

- (a) There is no adverse price effect. Price undercutting ranges between 2-7%.
- (b) No adverse effect on capacity utilization, sales or market share.
- (c) There is nothing in support of claims of “threat of material injury”.
- (d) Petitioners have understated the Landed Value. Authority should consider exporter’s data.
- (e) Press Release dated 8th May 2009 from Alembic provides different picture from what petition says, and different reasons (like major restructuring exercise, foreign exchange loss) for alleged loss.

(ii) Arguments on behalf of Asiatic Drugs & Pharmaceuticals Pvt. Ltd.

There are only two domestic producers and they do not have enough capacity to meet Country’s Demand.

(iii) Arguments on behalf of Ranbaxy Ltd.

- (a) The petitioner has given combined injury analysis, which is wrong.
- (b) POI should have been of 12 months
- (c) Price fluctuations have been witnessed across the globe
- (d) Import prices have actually gone up
- (e) In earlier two petitions the petitioner has failed to show any case of injury
- (f) The injury analysis is flawed as it has cumulated the effect of imports from China & Mexico, without proving that the cumulation is warranted.
- (g) Imports from China have declined.
- (h) Petition claims that dumping forced Alembic to suspend production in 2005 however Annual Reports say it was because of Global meltdown in prices
- (i) Alembic has been undertaking restructuring exercises.
- (j) Petition contains no injury-analysis for M/s Alka Industries, whose share in Indian production for 6APA is 58%.
- (k) CIF value of 6APA imports has increased by 206%.
- (l) Increase in Domestic industries selling prices has been more than the proportionate increase in cost.
- (m) The production, capacity utilization and sales have actually increased.
- (n) Market share of Chinese Pen-G imports has been decreasing, and that of Mexican imports have increased only by 3%, whereas that of Domestic industry has been increasing.
- (o) Wages and productivity have also witnessed huge increase.
- (p) This is a case of contraction in demand.

(iv) Arguments on behalf of Embassy of Mexico

- a. Determination of reconstructed Normal Value on the basis of information supplied by the Domestic Industry instead of the “cost of production in Mexico” is contrary to Art. 2.2 of AD Agreement.
- b. The Indian and Mexican markets are not comparable because of different costs of Labour and technology used in PUC.
- c. The source of data for determining export price is not known, nor that whether this data pertains to POI.
- d. The determination does not clarify which documental sources are taken in consideration to obtain the amounts of the adjustments.
- e. with regard to comparison of Normal value with the export Price it is not known that what were the basis of comparison and whether it was with respect to similar goods.
- f. the Injury analysis is based upon the heterogeneous segments of periods under the injury period. Reference is made to:
 - i. WTO Panel report-Mexico-import of Beef & Rice.
 - ii. WTO Appellate Body Report- Mexico- import of Beef & Rice.
 - iii. WTO Panel Report – Steel Pipe & Tubes from Guatemala.
- g. If 12 months periods are compared then we will find a reduction of 7% in Domestic sales, which could be due to fall in consumption, and not related to Mexican Imports.
- h. We request not to accumulate Mexico to China as there are wide disparities with regard to Import Volumes, Market Shares, Prices, Market conditions, and no. of consumers catered by the two countries.
- i. There are no enough evidences for significantly low Mexican prices, except for mere arguments.
- j. Non-attribution analysis has also not been done.
- k. The closure of the plants of the domestic producers did not occur during the Injury Period.
- l. the Injury analysis has ignored the productivity, and investments. Whereas ability to raise capital nothing has been provided.
- m. During April 2008 to March 2009 the Indian Sales has the highest share.

(v) Arguments on behalf of Federation of Pharma Entrepreneurs

- a) Any imposition of AD would directly impact prices of life saving end products, and thereby the public interest.
- b) Cloxacillin, an end-product of Pen-G, is controlled by DPCO. Any increase in price of its raw-material due to imposition of AD will likely to affect the formulators of Pharma Industry.
- c) An imposition of duty would likely to trigger the Chinese Pharma Industry to intensify competition with the Indian Pharma Industry.

50. The Authority has taken note of the arguments of the interested parties 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.

51. The Authority has examined views expressed by various interested parties and observes as follows –

- (a) As regard the argument on possible adverse impact on downstream products, the Authority notes that none of the interested parties have provided verifiable information to establish possible adverse impact of imposition of anti dumping duty. The Authority has further noted the claim of the domestic industry that selling prices of Penicillin-G cannot exceed the limits laid down by the Government. of India. Further, it is recognized that imposition of anti dumping duty might have some impact on the prices of the product. However, fair competition will not be reduced as a result of imposition of anti dumping duty.
- (b) As regards the argument that imposition of anti-dumping duties would lead to intensified competition between the Indian and Chinese Pharma industry, the Authority notes that the argument is fully unsubstantiated.
- (c) As regards adoption of constructed normal value at the stage of initiation in case of Mexico, the Authority notes that the petition contained evidence of dumping to the extent information could be reasonably provided by the applicant. As far as current determination is concerned, the same is based on data/information provided by the Mexican producer to the extent considered relevant by the Authority. The current determination is therefore, fully consistent with Article 2.2 of the Anti-dumping Agreement.
- (d) As regards sufficiency of evidence on export price in the petition, the Authority notes that the petition contained sufficient information with regard to the volume, value and the price at which goods have been exported from Mexico. In fact, the questionnaire response filed by the Mexican producer establishes the dumping that was alleged by the petitioner in his application. In any case, the Authority has now adopted information provided by the exporter in determining dumping margin for the responding exporter.
- (e) With regard to evidence of price adjustment, the petition contained best available information. The Authority has, however, now adopted information given by the exporter in this preliminary finding.

- (f) With regards to level of trade in determining dumping margin, it is noted that the petitioner had done comparison of normal price with export price at the same level of trade and in respect of similar goods as per the information best available to him. Subsequent to the initiation and after examination, it is noted that neither the information contained in the petition nor the questionnaire response filed by the interested parties show anything to the contrary.
- (g) As regards the argument of investigation period, the Authority notes that POI has been chosen based on pricing behavior of the subject goods from subject countries and also based on reasons given by the applicants in their petition. Indeed, the information shows that the performance of the domestic industry has been quite adverse for quite some time. Further, the performance of the domestic industry improved significantly with the significant increase in the import price. The import price, however, substantially declined in the current period.
- (h) With regard to cumulative assessment, the Authority notes that volume of imports is more than de-minimis in respect of both the countries. The import price from Mexico and China are comparable.
- (i) The evidence with regard to shipment wise import price from Mexico clearly shows significantly low prices in respect of Mexico.
- (j) It is noted that the petition filed by the domestic industry contained information about causal link analysis. Further, the petitioner claimed that none of the other factors have caused injury to the domestic industry. The Authority has analysed the causal link and other factors in the relevant heading in injury and causal link.
- (k) The Authority has analyzed/examined injury in respect of productivity, investment and ability to raise capital in the present finding.
- (l) With regards to sales, it is noted that the sales of the domestic industry improved up to September 2008 and thereafter declined in Oct.08 – March 09. There is no substantiated claim by any interested party with regard to seasonality etc, which could have been responsible for this decline.

Cumulative Assessment in the case of Pen-G

52. Annexure II (iii) to the Anti Dumping Rules provides that in case imports of a product from more than one country are being simultaneously subjected to anti dumping investigations, the designated authority will cumulatively assess the effect of such imports, in case it determines that:

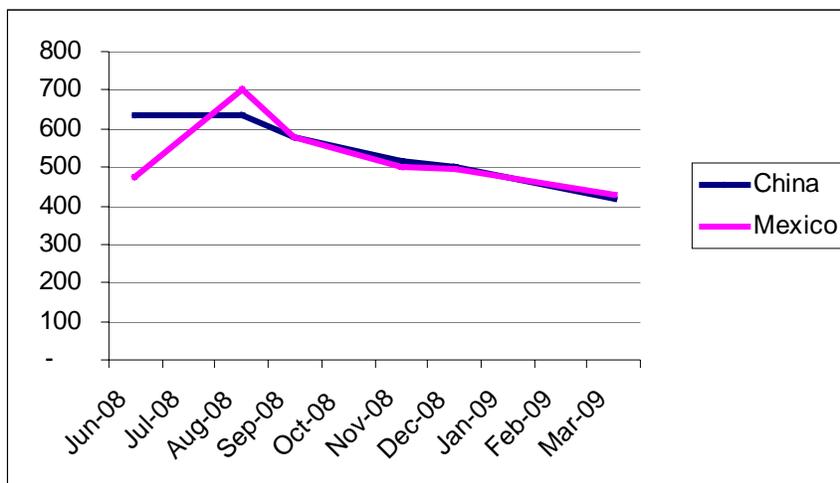
(a) *the margin of dumping established in relation to the imports from each country is more than two percent expressed as percentage of export price and the volume of the imports from each country is three percent of the imports of the like article or where the export of the individual countries less than three percent, the imports cumulatively accounts for more than seven percent of the imports of like article, and;*

(b) *cumulative assessment of the effect of imports is appropriate in light of the conditions of competition between the imported article and the like domestic articles.*

53. The Authority considered whether it would be appropriate to cumulatively assess injury to the domestic industry. As stated below, it would be appropriate to assess injury to the domestic industry cumulatively from China and Mexico:-

- i. The margins of dumping from each of the subject countries are more than the limits prescribed,
- ii. The volume of imports from each of the subject countries is more than the limits prescribed,
- iii. Cumulative assessment is appropriate in view of the following factors:-
 - (a) The goods involved are like articles and are competing in the same market;
 - (b) Imports from both the countries are increasing.
 - (c) The imported products are being sold through the same channel of distribution and to comparable category of customers;
- iv. In view of the argument that cumulation of injury was unwarranted, the Authority compared the import price from China and Mexico. The graph and/or table below shows the factual position. It is seen that the two prices have moved in tandem.

0	China	Mexico
Jun-08	636	475
Aug-08	634	703
Sep-08	577	578
Nov-08	516	499
Dec-08	500	498
Mar-09	417	426



v. In view of the above facts, it is held that a cumulative assessment of the effects of the imports of Pen-G is appropriate in light of conditions of competition between imported products and conditions of competitions between the imported products and domestic like product.

Assessment of demand

54. For the purpose of the present investigation, the Authority has defined demand or apparent consumption of Penicillin - G in India as the sum of domestic sales of the Indian Producers including captive consumption and imports from all sources in case of Penicillin-G. In case of 6-APA, the Authority has defined demand or apparent consumption of the product as the sum of domestic sales of the Indian producers including job work done and imports from all sources. The demand so assessed is given in the table below.

Demand

Pen-G	Unit	2005-06	2006-07	2007-08	Apr-Sep'08 (annualized)	POI (annualized)
Total Imports	000' BOU	14,895	17,866	20,282	11,352	12,862
Sales of Domestic Industry	000' BOU	2,243	1,926	2,636	3,344	2,503
Demand	000' BOU	17,138	19,792	22,918	14,696	15,365
Trend		100	115	134	86	90
6-APA	Unit	2005-06	2006-07	2007-08	Apr-Sep'08	POI (annualize)

					(annualized)	d)
Total Imports	MT	1,283	2,080	2,384	3,570	4,528
Sales – Alembic	MT	0	0	60	203	213
Sales – Alka (including job work)	MT	9	424	400	442	190
Demand	MT	1,291	2,504	2,844	4,215	4,931
Trend		100	194	220	326	382

55. It is seen that the demand for Penicillin-G has shown a modest declining trend during the injury period as a whole, however, demand of 6-APA has shown significant increase. However, it is noted that demand for Pen-G increased significantly from 2005-06 to 2007-08 before declining in first half of 2008-09 and again increased during the POI. It is noted that significant use of Penicillin-G is in production of 6-APA. About 3 BOU of Penicillin-G is consumed in production of 1 kg. of 6-APA. The domestic industry argued that since 6-APA is a derivative of Penicillin-G, the import volumes must be determined considering imports of both Penicillin-G and 6-APA. It is observed that the imports of Pen-G and Pen-G equivalent of 6-APA from China has increased significantly between 2007-08 and POI as can be seen from the table below:

	Unit	2005-06	2006-07	2007-08	Apr-Sep'08 (annualized)	POI (annualized)
Pen-G and Pen-G equivalent of 6-APA						
Demand	000' BOU	21,012	27,303	31,450	27,341	30,158
Trend		100	130	150	130	144

Volume effect: Volume Effect of dumped imports and Impact on domestic Industry

Volume and market share of dumped imports

56. It is observed that the volume of dumped imports of products under consideration has significantly increased from 2005-06 to 07-08 and thereby declined sharply during first half of 2008-09 and thereafter it again increased during POI. It is further noted that market share of imports from subject countries in total imports in the case of Pen-G has been very significant through the injury period. It is also noted that the market share of dumped imports in total production and consumption has also been very significant throughout the injury period.

57. It is noted that dumped imports of 6-APA from China PR remained at low levels earlier, but increased significantly, particularly after initiation of previous anti dumping investigation of Pen-G, in absolute terms and in relation to production and consumption in India. The market share of dumped imports from subject country in total imports as well as in demand has increased significantly during the injury period. Import volumes from subject country(ies) and other countries has been as under: -

	Unit	2005-06	2006-07	2007-08	Apr-Sep'08 (annualized)	POI (annualized)
Imports of Pen-G						
China PR	000' BOU	14,197	17,801	20,262	11,078	11,982
Mexico	000' BOU	574	65	0	274	880
Subject countries	000' BOU	14,771	17,866	20,262	11,353	12,862
Other Countries	000' BOU	124	0	20	0	0
Total Imports	000' BOU	14,895	17,866	20,282	11,352	12,862
<i>Trend</i>		<i>100</i>	<i>120</i>	<i>136</i>	<i>76</i>	<i>86</i>
Market Share in Imports						
China PR	%	95.31	99.64	99.90	97.59	93.16
Mexico	%	3.85	0.36	-	2.41	6.84
Subject countries	%	99.16	100		100	100
Other Countries	%	0.83	-	0.10	-	-
Imports of 6-APA						
	Unit					
China PR	MT	1,051	1,957	2,221	3,387	4,440
Other Countries	MT	232	124	163	183	88
Total Imports	MT	1,283	2,080	2,384	3,570	4,528
<i>Trend</i>		<i>100</i>	<i>162</i>	<i>186</i>	<i>278</i>	<i>353</i>
Market Share in Imports						
China PR	%	81.94	94.06	93.16	94.87	98.06
Other Countries	%	18.06	5.94	6.84	5.13	1.94

58. Thus, the dumped imports of subject goods from subject countries show an adverse volume effect.

Market share in demand

59. It is seen that in case of Penicillin-G the share of imports from subject countries had declined till Sept., 2008. The same however increased once again in the POI. Further, the share of imports in any case has remained very high. In case

of 6-APA, the share of Chinese imports increased throughout the period with a brief decline during the middle of the period. The share of domestic industry (applicant as well as supporter) declined by half from 2006-07 to the POI. Further, the share of imports has remained very high throughout injury period.

Penicillin G

Market Share in Demand %	2005-06	2006-07	2007-08	April 08-Sep 08	Oct08-Mar09
Domestic Industry	13.09	9.73	11.50	22.75	16.29
Other Indian producer	-	-	-	-	-
Imports-China	82.84	89.94	88.41	75.38	77.98
Imports-Mexico	3.35	0.33	-	1.86	5.73
Imports – Subject Country (ies)	86.19	90.27	88.41	77.25	83.71
Imports - Other countries	0.72	-	0.09	-	-

6-APA

Market Share in Demand %	2005-06	2006-07	2007-08	April 08-Sep 08	Oct08-Mar09
Alembic	-	-	2.11	4.82	4.32
Alka Remedies (incl. Job work done for others)	0.66	16.92	14.06	10.49	3.85
Applicant + supporter	0.66	16.92	16.17	15.31	8.17
Imports – China	81.40	78.15	78.09	80.36	90.04
Imports - Other countries	17.94	4.94	5.73	4.34	1.78

Price Effect of dumped imports and Impact on domestic Industry

60. With regard to the effect of the dumped imports on prices, the Authority is required to consider whether there has been a significant price undercutting by the dumped imports as compared with the price of the like product in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree.

61. The impact of dumped imports on the prices of the domestic industry 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 cost of production (COP), Net Sales Realization (NSR) and the Non-Injurious Price (NIP) of the domestic industry have been compared with the landed cost of imports from the subject country. The net sales realization was arrived after deducting all rebates and taxes. Landed value of imports has been calculated by adding 1% handling charge and applicable basic customs duty (10%) to the CIF value of subject imports. The landed value of imports was compared with net

sales realization of the domestic industry and it was found that the dumped imports are not undercutting the prices of the domestic industry. The domestic industry has however claimed that there has been positive price undercutting on account of dumped imports of subject goods from subject countries if landed values are calculated with a lead time of one and half months from the date of shipment and they are compared with the net selling prices of the domestic industry of the days when the subject goods landed.

Evolution of prices

62. In order to examine the trends in the import price over the injury period, the Authority considered import prices over the injury period. The domestic industry claimed that there were too significant changes in the prices in very short period over the injury period. It was further claimed that the trend was required to be examined on a month to month basis.

Period	2004-05	2005-06	2006-07	2007-08	2008-09
Apr	276	269	271	382	377
May	269	284	278	402	513
June	265	279	290	506	591
July	276	278	298	662	599
Aug	272	278	305	727	582
Sep	258	273	312	749	529
Oct	253	256	313	743	465
Nov	249	256	324	690	474
Dec	264	282	351	606	458
Jan	263	276	368	396	423
Feb	284	267	381	327	390
Mar	269	266	386	328	364

63. The Authority notes that the import price of Penicillin-G was quite low between April, 2004 – April, 2007. Prices started rising from April, 2006 and peaked in Aug.-Oct. 2007. The transaction wise import data shows as high price as Rs. 749 per bou in Sep., 2007. Prices thereafter however steeply declined to a very low level and bottomed in Feb.-March, 2008. Once again prices increased and peaked in June-Aug., 2008. The levels achieved were however much lower than the levels registered earlier. Prices have thereafter declined significantly.

64. The Authority has examined the information submitted by the domestic industry and considers that these price movements are indeed very erratic and a weighted average CIF prices and their landed values and their corresponding Net sales realization and cost of sales may not give a correct picture of the amount of the price effect on account of dumped imports of subject goods from subject countries. However, as a matter of consistency, the Authority has analysed the

price effect as mentioned underneath based on weighted average CIF prices and Net sales realization.

Price undercutting

65. In order to determine whether the imports are undercutting the prices of the domestic industry in the market, the Authority has compared landed price of imports with net sales realization of the domestic industry. Authority has determined net sales realization considering selling price, excluding taxes & duties, rebates, discounts & commissions and freight & transportation. Entire sales volumes of the domestic industry have been included in the calculations. Landed price of imports has been determined considering weighted average CIF import price, with 1% landing charges and applicable basic customs duty. The comparison was done between net sales realization and landed price of imports. The domestic industry claimed, due to such steep variations in the prices, that price reductions have to be offered not only to those customers who threaten (or actually partially shift) to imported material, but also to those customers who are not resorting to import or not using imported material, any potential loss of business being very critical for the domestic industry. Further, petitioners have claimed that determination of price undercutting should be done on the basis of date of order booked by the consumers.

66. However, the Authority as a matter of consistent practice has determined the landed price of subject goods as per IBIS sources. From the examination, it is determined that the landed prices of dumped imports are not undercutting the prices of the domestic industry in the case of both Pen G and 6APA. However, the landed prices of the subject goods are significantly below the cost of sales of the subject goods of domestic industry which suggests significant underselling by the domestic industry for both the subject goods. It is also noted that there is a price depression in the net selling prices of the domestic industry from 2007-08 in the Pen-G and 6 APA. It is also noted that cost of sales have increased more than corresponding rise in the selling prices. Further, net selling prices have increased in tandem with the landed prices and have been slightly below the landed prices after 2007-08 for both the products while it was slightly higher than landed prices in 2005-06 for pen -G.

	Unit	2005-06	2006-07	2007-08	Apr-Sep'08	POI
Penicillin - G						
Net Sales Realisation	Rs./BOU	****	****	****	****	****
Cost of Sales	Rs./BOU	****	****	****	****	****
Landed Price - China PR	Rs./BOU	314	365	604	558	459
Landed Price - Mexico	Rs./	341	426		562	480

	BOU					
Landed Price - Subject Countries	Rs./BOU	315	365	604	558	460
Price Undercutting – China	Rs./BOU	****	****	****	****	****
Price Undercutting – Mexico	Rs./BOU	****	****	****	****	****
Price Undercutting - Subject Countries	Rs./BOU	****	****	****	****	****
Price Undercutting – China	%	****	****	****	****	****
Price Undercutting – Mexico	%	****	****	****	****	****
Price Undercutting - Subject Countries	%	3-6	(5-10)	(5-10)	(5-12)	(4-8)
Price Underselling – China	Rs./BOU					****
Price Underselling - Mexico	Rs./BOU					****
Price Underselling - Subject Countries	Rs./BOU					****
Price Underselling – China	%					****
Price Underselling - Mexico	%					****
Price Underselling - Subject Countries	%					25-35

6-APA		2005-06	2006-07	2007-08	Apr-Sep'08	POI
Net Sale Realization	Rs./ Kg			****	****	****
Cost of Sales	Rs./ Kg			****	****	****
Landed Price - China PR	Rs./ Kg			****	****	****
Price Undercutting	Rs./ Kg			****	****	****
Price Undercutting	%			6-12	(2-6)	(2-6)
Price Underselling	Rs./ Kg					****
Price Underselling	%					****
Price Underselling	%					45-55%

Price suppression/depression

68. It is noted from the above that in case of Penicillin-G- in 2007-08, the increase in the selling price was more than increase in the cost of production. However, thereafter, the decline in the selling prices was more than the decline in the cost of production. Further, in the investigation period, whereas the cost of

production increased, selling price declined. Thus, the import prices of subject goods have suppressed the domestic prices so much so that landed prices are even less than cost of production of subject goods produced by the domestic industry.

	Unit	2005-06	2006-07	2007-08	Apr-Sep'08	POI
Penicillin - G						
Net Sales Realisation	Rs./BOU	****	****	****	****	****
<i>Indexed</i>		100	104	170	155	133
Cost of Sales	Rs./BOU	****	****	****	****	****
<i>Indexed</i>		100	115	140	135	144

This holds good for both the Pen-G and 6 APA. Further, in the case of 6 APA, there is a price depression as net selling prices of the domestic industry has declined during the entire injury period. Further the decline in the net selling prices of 6 APA was higher than cost of sales of domestic industry.

	2005-06	2006-07	2007-08	Apr.-Sep08	POI
Penicillin – G (Rs/BOU)					
Net Sales Realization	****	****	****	****	****
Cost of Sales	****	****	****	****	****
Trends in					
➤ Selling price		10-20	200-250	-40-60	-60-80
➤ Cost of production		55-65	100-120	-15-25	30-40
6-APA (Rs /Kg)					
Net Sales Realization			****	****	****
Cost of Sales			****	****	****
Trends in					
➤ Selling price				-90-110	-90-110
➤ Cost of production				-350-450	50-75

6-APA		2005-06	2006-07	2007-08	Apr-Sep'08	POI
Net Sale Realization	Rs./ Kg			****	****	****
<i>Indexed</i>				100	94	81
Cost of Sales	Rs./ Kg			****	****	****

<i>Indexed</i>				<i>100</i>	<i>84</i>	<i>87</i>
Landed Price - China PR	Rs./ Kg			****	****	****
<i>Indexed</i>				<i>100</i>	<i>108</i>	<i>93</i>

69. For example, in the case of 6APA, it is noted that while the landed price has declined by 7 percent, the net sales realization has declined by 19% while the cost of sales has declined by 13%. Therefore, it is provisionally noted that landed prices of 6APA from subject country continues to suppress the domestic prices so that it is not able to attain the level where it could meet at least its cost of production.

ECONOMIC PARAMETERS RELATING TO THE DOMESTIC INDUSTRY

70. Annexure II to the Rules requires that a determination of injury shall involve an objective examination of the consequent impact of these 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, Capacity and Capacity Utilization, Sales

71. The Information on capacity, production, capacity utilization and sales volumes of the domestic industry is mentioned in the table below. It is noted that the production of the domestic industry had an erratic trend and over the injury period, it shows a marginal increase though during the POI, it shows the decline over previous period. It is also noted that capacity utilization increased during injury period till first half of 2008-09 and there after it declined during the POI in tandem with the production and other volume parameters. It is also noted that one of the petitioner companies, M/s. Alembic Limited had to suspend its production in 2005-06 and it again restarted in 2007. It is also noted that though the production was restarted in May 2007, the capacity was significantly under-utilized. The capacity utilization however, improved in Apr-Sep. 2008 and then declined once again in the POI, both in the case of Pen-G and 6-APA. Further, it is noted that the other domestic producer, M/s. SPIC suspended production after the POI.

Penicillin G

	2005-06	2006-07	2007-08	April 08- Sep08 (Annualized)	Oct 08-Mar09 (Annualized)
Volume in '000 BU					
Domestic sales	2,243	1,926	2,636	3,344	2503
<i>Trend</i>	<i>100</i>	<i>86</i>	<i>118</i>	<i>149</i>	<i>111</i>
Capacity	4,572	4,872	4,872	4,872	4,872
<i>Trend</i>	<i>100</i>	<i>107</i>	<i>107</i>	<i>107</i>	<i>107</i>
Production	2,180	2,010	3,114	3,972	3,482
<i>Trend</i>	<i>100</i>	<i>92</i>	<i>143</i>	<i>182</i>	<i>160</i>
Capacity Utilization %	47.67	41.26	63.92	81.52	71.46
<i>Trend</i>	<i>100</i>	<i>87</i>	<i>134</i>	<i>171</i>	<i>150</i>

6-APA

	2007-08	April 08-Sep08 (Annualized)	Oct 08-Mar09 (Annualized)
Volume in MT			
Domestic Sales	50	203	213
<i>Trend</i>	<i>100</i>	<i>408</i>	<i>424</i>
Capacity	600	600	600
<i>Trend</i>	<i>100</i>	<i>100</i>	<i>100</i>
Production	84	246	212
<i>Trend</i>	<i>100</i>	<i>293</i>	<i>252</i>
Capacity Utilization %	14.03	41.14	35.48
<i>Trend</i>	<i>100</i>	<i>293</i>	<i>253</i>

Profits, return on investment and cash flow

72. The petitioners have claimed that the product has a history of continued dumping. . It is also noted that one of the petitioner companies, M/s. Alembic Limited had to suspend its production in 2005-06 and it again restarted in 2007. The petitioners have also claimed that there were other Indian Producers of Penicillin-G in the country, who were also forced to suspend the production.

73. However, the import prices once again started rising from 2007-08. It was claimed by the domestic industry that encouraged by the changed market conditions, M/s Alembic recommenced commercial production of Penicillin-G and also started production of 6-APA. However, with the commencement of production, the import prices once again have gone down. It is noted from the examination of the information submitted by domestic industry that profits, return on investments and cash profit are once again showing significant deterioration. The situation is similar in case of 6-APA. The operations resulted in losses from the start and the losses have mounted during the injury period. It is also noted that

there was an adverse impact of dumping on profits, cash flow and return on investments as can be seen from the information contained in the table below:

Penicillin G	Unit	2005-06	2006-07	2007-08	April 08-Sep 08	Oct 08-Mar09
					(annualized)	(annualized)
Profit/loss		****	****	****	****	****
per unit	Rs./bou					
Index		-100	(154.62)	(31.79)	(61.08)	(183.62)
Profit before tax	Rs. Lacs	****	****	****	****	****
Index		-100	(154.62)	(31.79)	(61.08)	(183.62)
PBIT	Rs. Lacs	****	****	****	****	****
		-100.00	-135.32	6.49	-45.84	-164.21
Cash Profit	Rs./bou	****	****	****	****	****
		-100.00	-261.06	83.44	-36.81	-395.82
Cash Profit	Rs. Lacs	****	****	****	****	****
		-100.00	-235.32	92.57	-49.59	-338.62
Return on investments - NFA %	%	****	****	****	****	****
Index		-100.00	-273.68	9.06	-61.71	-251.62

6-APA	Unit	2007-08	April 08-Sep 08	April 08-Sep 08 (annualized)	Oct 08-Mar09	POI (annualized)
Profit/loss per unit	Rs./Kg	****	****	****	****	****
		-100	(53.86)	(53.86)	(103.23)	(103.23)
Profit before tax	Rs. Lacs	****	****	****	****	****
		-100	(91.12)	(182.24)	(183.12)	(366.24)
PBIT	Rs. Lacs	****	****	****	****	****

		-100	(96.43)	(192.86)	(196.27)	(392.53)
Cash Profit	Rs./Kg	****	****	****	****	****
		-100	(53.34)	(53.34)	(105.33)	(105.33)
Cash Profit	Rs. Lacs	****	****	****	****	****
		-100	(91.74)	(180.45)	(185.16)	(373.66)
Return on investments - NFA	%	****	****	****	****	****
Return on investments - NFA	%	-100	(58.04)	(116.07)	(118.85)	(237.70)

Market share of domestic industry

74. It is observed that market share of the domestic industry for Pen-G has increased during the injury period though it has declined significantly during the POI from the preceding year and remains very low. Though, the share of imports from subject country(ies) has declined during the injury period, it has remained significant during the injury and preceding period.

75. It is also noted that dumped imports from China PR capture a significant portion of 6-APA market and their share has increased in the POI. It is also noted that market share of domestic industry along with the supporter has significantly gone down during the injury period for the 6APA.

Penicillin G

Pen-G	Unit	2005-06	2006-07	2007-08	Apr-Sep'08 (annualized)	POI (annualized)
Total Imports	000' BOU	14,895	17,866	20,282	11,352	12,862
Sales of	000' BOU	2,243	1,926	2,636	3,344	2,503

Domestic Industry						
Demand	000' BOU	17,138	19,792	22,918	14,696	15,365
Trend		100	115	134	86	90
6-APA	Unit	2005-06	2006-07	2007-08	Apr-Sep'08 (annualized)	POI (annualized)
Total Imports	MT	1,283	2,080	2,384	3,570	4,528
Sales – Alembic	MT	0	0	60	203	213
Sales – Alka (including job work)	MT	9	424	400	442	190
Demand	MT	1,291	2,504	2,844	4,215	4,931
Trend		100	194	220	326	382

Employment, productivity and wages

76. It is also noted that petitioners are multi product companies. There is no apparent adverse effect on account of these factors as has been mentioned below in numbers.

	2005-06	2006-07	2007-08	April 08-Sep 08 (annualized)	Oct08-Mar09 (annualized)
Indexed					
Employment (Nos.)					
➤ Penicillin-G	100	100	97	101	100
➤ 6-APA	-	-	100	85	85
Wages (Rs. Lacs)					
➤ Penicillin-G	100	77	123	162	158
➤ 6-APA	-	-	100	275	237
Productivity per employee					
➤ Penicillin-G (in '000 BOU)	100	92	147	181	159
➤ 6-APA (in MT)	-	-	100	344	297

Factors affecting domestic prices: -

77. Consideration of the import prices from China PR and other countries, change in the cost structure, competition in the domestic market, factors other than dumped imports that might be affecting the prices of the domestic industry in the domestic market show that the landed value of imported material from subject country(ies) is the most important factor affecting the prices of the domestic industry. Further, the petitioners have claimed that the import prices of Chinese material have shown an erratic trend and this has also led to closure of plants by Indian producers at several instances during the injury period. The benchmark for the Indian producers' prices is the import prices from China PR in the case of 6 APA and China PR and Mexico in the case of Pen-G. Imports from other countries are in any case insignificant and are not benchmark for the domestic industry prices. There is no viable substitute to this product. Demand for the product was showing an increase for 6APA (as has been worked out separately in the para relating to market share in demand) and could not have been a factor responsible for price suppression faced by the domestic industry. The shrinkage in demand of Pen-G during the POI could be provisionally attributed to the fact that imports of Pen-G dried up after petitions were filed by the domestic industry earlier and imports of 6APA increased significantly thereafter. It is thus noted that the only factors responsible for the domestic industry prices are the import prices of the product and the cost of production of the domestic industry. It is further noted that from the table below that whereas the cost of production increased, the dumped import prices from subject countr(ies) much lower than the domestic cost of production and aligning slightly higher than domestic selling prices prevented the domestic industry from increasing their prices in line with the increase in the costs.

Penicillin G	2005-06	2006-07	2007-08	April 08-Sep 08	Oct08-Mar09
Cost of Sales per BOU	****	****	****	****	****
Trend	100	115	140	135	144
Selling Price per BOU	****	****	****	****	****
Trend	100	104	170	155	133

6-APA	2007-08	April 08-Sep 08	Oct08-Mar09
Cost of Sales per Kg	****	****	****
Trend	100	84	87
Selling Price per Kg	****	****	****
Trend	100	94	81

The magnitude of the margin of dumping: -

78. Authority notes that dumping margin for large volume of exports for Penicillin G from China and Mexico and for 6-APA from China is not only more than de-minimis but also very substantial. The margin of dumping for the large volume of exports of both the subject goods from subject countr(ies) is considered significant.

Inventories: -

79. There is no adverse effect on the inventories during the POI if compared with the base year. However, as noted below, the inventories started building from 2006-07 onwards and were at very high level for the Pen-G. However, these have declined significantly for 6APA during the same period.

	2005-06	2006-07	2007-08	April 08- Sep 08	Oct08- Mar09
Average inventories					
➤ Penicillin-G ('000 BOU)	116	33	41	82	116
<i>Trend</i>	100	28	35	71	100
➤ 6-APA (Kg)	-	-	309	324	30
<i>Trend</i>	-	-	100	105	10

Growth: -

80. Growth of the domestic industry in terms of a number of parameters, both volume and price, is negative. It has also been claimed that dumping in the past has led to a situation of plant closures.

	2005-06	2006-07	2007-08	April 08- Sep 08	Oct08- Mar09
Penicillin-G					
Production	% -	(5-10)	40-60	20-30	(10-15)
Domestic Sales Volume	% -	(8-12)	20-30	6-12	(20-30)
Domestic Sales Value	% -	(5-10)	80-120	(1-2)	(30-50)
Sales Price Per KG	% -	3-5	50-70	(5-10)	(12-16)
Cost of Sales - Per BU	% -	12-16	20-25	(2-5)	5-10
6-APA					
Production	%		-	150-250	(10-20)
Domestic Sales Volume	%		-	200-250	3-5

Domestic Sales Value	%		-	200-250	(8-12)
Sales Price Per KG	%		-	(4-8)	(12-16)
Cost of Sales - Per KG	%		-	(12-20)	2-5

Ability to raise capital investments: -

81. Both the petitioner companies are multi product companies. However, given the state of affairs of the constituents of the Indian industry where one of the petitioners has shut down operations even after initiation of the present investigations and the other company is in acute losses, dumping of the product would certainly have adverse impact on the ability of the domestic industry to raise capital investment.

Lost sales

82. During the investigations, the Domestic industry provided evidence showing that the customers demanded lower prices, citing current market prices, based on offers for sale by the Chinese producers. Evidence has also been provided to show that the Chinese producers have reduced the prices substantially during the course of negotiations with the customers. The Domestic industry has argued that they are forced to reduce the prices based on such offer, or loose the orders from the customers.

Conclusions on injury of Pen- G

83. It is noted from the above that volume of dumped imports of subject good from subject countr(ies) increased significantly in absolute terms till 2007-08 before it declined during first half of 2008-09 and after that it has again increased during POI. It is further noted that dumped imports of Penicillin-G from subject countries have increased significantly in relation to consumption in India and has been very significant in terms of production of domestic industry throughout the injury period. It is further noted that market share of dumped imports in total imports have been 100% throughout injury period and it has been consistently significant (over 80%) in the total demand during the same time. In terms of price effect, it is noted that import prices have shown too significant fluctuations, disproportionate to the changes in the cost structures. It is further noted that even though the average price undercutting during the investigation period was negative, the prices in the domestic market are directly impacted by the dumped imports of subject goods from subject countries. It has been determined that dumped imports are leading to price suppression and significant price underselling. It has been claimed by the domestic industry that selling prices of

the domestic industry were materially below the prices notified by the Govt. of India through DPCO.

84. On the impact of volume and price effect on the domestic industry, it is noted that the market share of the domestic industry has seen a marginal increase of 2 percentage points during the injury period which is considered very paltry even when its production and capacity utilisation has shown an increase during the injury period. It is further noted that performance of the domestic industry over the injury period improved with the increase in the import prices and deteriorated with the decline in the import prices. Further, performance of the domestic industry after improvement upto Sept., 2008, declined steeply thereafter with the significant reduction in the import prices thereby impacting adversely in terms of, collectively and cumulatively, production, sales, capacity utilization, market share, profits, return on investments, cash profit during the POI. It is also noted that one of the constituents of the domestic industry has claimed to have suspended production after the investigation period in view of significant financial losses. Examination of the various parameters provisionally shows that the domestic industry has suffered material injury.

Conclusions on injury of 6APA

85. It is noted that dumped imports of 6-APA from China PR remained at low levels earlier, but increased significantly, particularly after initiation of previous anti dumping investigation of pen-G, in absolute terms and in relation to production and consumption in India. The market share of dumped imports from subject country in total imports as well as in demand has increased significantly during the injury period. For assessing the price effects, it is noted that import prices from subject country have shown too significant fluctuations, in line with the fluctuations in the prices of Penicillin-G, thus suggesting a correlation that dumping of Penicillin-G might be leading to dumping of 6-APA as well, particularly after initiation of previous anti dumping investigations of Pen-G by the Authority. It is further noted that even though the average price undercutting during the investigation period was negative, the prices in the domestic market are directly impacted by the dumped imports of subject goods from subject country. It has been further noted that dumped imports are leading to price suppression and significant price underselling.

86. Performance of the domestic industry over the injury period shows that the same improved with the increase in the import prices and deteriorated with the decline in the import prices. Further, performance of the domestic industry after improvement upto Sept., 2008, declined steeply thereafter with the significant reduction in the import prices in terms of, collectively and cumulatively, production, sales, capacity utilization, market share, profits, return on investments, cash profit. Examination of the various parameters provisionally shows that the domestic industry has suffered material injury.

E Causal Link and Other Factors

87. The Authority has examined existence of causal link between the dumped imports and injury suffered by the domestic industry in the light of the arguments of the interested parties and having regard to the Rules in this regard.

Effect of other known listed parameters

88. 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.

Volume and Prices of imports not sold at the dumped prices

(a) The Authority notes that there are negligible imports of the products under consideration from other countries during the POI. In fact, share of subject imports has significantly increased over the injury period and reached nearly 100% during the POI. Imports from third countries could not have therefore caused injury to the domestic industry.

Performance of Other Domestic producers

(b) The petitioners have claimed that there were other producers of Pen-G in India, who have long back shut down operations as a result of severe dumping. It has been claimed that the petitioners are also finding hard to sustain production activities in view of intensified dumping.

(c) 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. The Authority notes that the subject goods are freely importable and there are no trade restrictive practices in the domestic market.

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

There is a contraction in the overall demand during the period under consideration for Pen-G. However, it has been claimed that the demand has increased over the injury period after considering Penicillin-G and Penicillin-G equivalent of 6-APA. Therefore, any possible decline in demand may not be a factor, which could have caused injury to the domestic industry. Further, there is no contraction in demand for 6 APA and in fact demand has grown significantly. 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) Developments in Technology, Export performance and productivity of the Domestic Industry

Technology for production of the product has not undergone any change. Developments in technology are, therefore, not a factor of injury.

(f) Export performance - The petitioners have provided information with regard to exports separately. The Authority notes that injury claimed by the domestic industry is on account of domestic operations.

(g) Productivity – Productivity of the domestic industry has improved.

89. From the foregoing, it is evident that the domestic industry has not suffered material injury due to other factors.

Factors establishing causal link and conclusion on causal link for Pen-G and 6APA

90. The Authority conducted an analysis of the performance of the domestic industry vis a vis subject goods over the injury period. It is noted that the performance of the domestic industry has materially deteriorated during the injury period. The causal link between dumped imports and the injury to the domestic industry is established on the following grounds:

- (i) There is significant correlation between the prices offered by the domestic industry and Foreign Producers from subject countr(ies). It is further noted that even when the domestic industry has been offering sub-optimal prices and lowering its prices, it is also loosing sales. Thus, decline in sales volumes is a direct consequence of dumped imports from the subject country (ies);
- (ii) It is further noted that decline in sales volumes has resulted in reduction in the selling prices. Further, to keep its plant running, it is selling the both the subject goods at prices significantly below its cost of production. As a direct consequence, the profits of the domestic industry declined so rapidly that the domestic industry went into a situation of financial losses from a situation of profits;
- (iii) It is noted that reduction in profits directly resulted in deterioration in return on capital employed and cash flow. Thus, deterioration in profits, return on capital employed and cash flow is provisionally attributed due to dumped imports of subject goods from subject countr(ies).;

(iv) It is also noted that consistent decline in sales volumes has adversely affected the production and capacity utilization. It is noted that decline in production and capacity utilization is due to dumped imports.

Therefore, the Authority provisionally concludes that the domestic industry has suffered material injury and such injury has been caused significantly by price and volume effects of dumped imports from the subject country (ies).

Magnitude of injury and injury margin

90. The Authority has determined non-injurious price for the domestic industry taking into consideration cost of production of the domestic industry. This non-injurious price of the domestic industry has been compared with the landed values of the subject imports to determine injury margin. The injury margins have been worked out as follows:

Dumping Margin and Injury margin Pen-G

Exporter	DSM-Netherland	DSM Trading (Shanghai)	NCPC Beta	Others China PR	Others Mexico
Producer	Fersinsa Gb-Maxico	Zhang Jia Kou Gist-brocades			
Dumping Margin	****	****	****	****	****
Injury Margin	****	****	****	****	****
ADD Minimum of DM/IM	****	****	****	****	****

6APA

Producer/Exporter	DSM Trading (Shanghai)	Aurobindo	NCPC Beta	Others
	Zhang Jia Kou			
Dumping Margin	****	****	****	****
Injury Margin	****	****	****	****
ADD Minimum of DM/IM	****	****	****	****

F Conclusions:

91. After examining the issues raised and submissions made by the interested parties and facts made available before the Authority as recorded in this finding, the Authority provisionally concludes that:

- (a) The products under consideration (both Pen-G and 6 APA) have been exported to India from the subject country (ies) (China PR and Mexico for Pen-G and China PR for 6 APA respectively) below their normal values.
- (b) The domestic industry for both the products under consideration has suffered material injury.
- (c) The injury has been caused by the dumped imports of subject goods (Pen-G and 6 APA) from the subject country (ies).

G Indian industry's interest & other issues

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

93. It is recognized that the imposition of anti-dumping duties might affect the price levels of the products manufactured using the subject goods and consequently might have some influence on relative competitiveness of these products. However, fair competition in the Indian market will not be reduced by the antidumping measures, particularly if the levy of the anti-dumping duty is restricted to an amount necessary to redress the injury to the domestic industry. On the contrary, imposition of anti-dumping measures would remove the unfair advantages gained by dumping practices, would prevent the decline of the domestic industry and help maintain availability of wider choice to the consumers of the subject goods.

H Recommendations

94. The Authority notes that the investigation was initiated and notified to all interested parties and adequate opportunity was given to the exporters, importers and other interested parties to provide positive information on the aspect of

dumping, injury and causal link. Having initiated and conducted a preliminary investigation into dumping, injury and causal links between dumping and injury to the domestic industry in terms of the Rules laid down and having provisionally established positive dumping margin as well as material injury to the domestic industry caused by such dumped imports, the Authority is of the view that imposition of provisional duty is required to offset dumping and injury pending completion of the investigation. Therefore, Authority considers it necessary and recommends imposition of provisional anti-dumping duty on imports of subject goods from the subject countries in the form and manner described hereunder.

95. Having regard to the lesser duty rule followed by the Authority, the Authority recommends imposition of provisional anti-dumping duty equal to the lesser of margin of dumping and margin of injury, so as to remove the injury to the domestic industry. Accordingly, provisional antidumping duty equal to the amount indicated in Col 7 of the table below is recommended to be imposed from the date of notification to be issued in this regard by the Central Government, on all imports of subject goods originating in or exported from the subject countries.

Col. No.	1	2	3	4	5	6	7	8	9
SN	Heading/ subheading	Description of goods	Country of origin	Country of export	Producer	Exporter	Duty amount	Unit	Currency
1	29411010	Penicillin-G Potassium	China PR	China PR	Zhang Jia Kou Gist-Brocades Pharmaceutical Co. Ltd.	DSM Trading (Shanghai) Co. Ltd.	NIL	BOU	US\$
2	29411010	-do-	China PR	China PR	NCPC Beta	NCPC Beta	2.10	BOU	US\$
3	29411010	-do-	China PR	China PR	Any combination other than mentioned in Sr. nos. 1 and2 above		3.80	BOU	US\$
4	29411010	-do-	China PR	Any country other than subject countries	Any	Any	3.80	BOU	US\$
5	29411010	-do-	Any country other than subject countries	China PR	Any	Any	3.80	BOU	US\$
6	29411010	-do-	Mexico	Netherlands	Fersinsa Gb	DSM Anti- Infectives B.V.	3.31	BOU	US\$

7	29411010	-do-	Mexico	Mexico	Any combination other than mentioned in Sr. no. 6 above		3.31	BOU	US\$
8	29411010	-do-	Mexico	Any country other than subject countries	Any	Any	3.31	BOU	US\$
9	29411010	-do-	Any country other than subject countries	Mexico	Any	Any	3.31	BOU	US\$
10	29411050	6-APA (6-Amino Penicillanic Acid)	China PR	China PR	Zhang Jia Kou DHA Pharmaceutical Co. Ltd.	DSM Trading (Shanghai) Co. Ltd.	10.27	Kg	US\$
11	29411050	-do-	China PR	China PR	NCPC Beta	NCPC Beta	18.38	Kg	US\$
12	29411050	-do-	China PR	China PR	Aurobindo (Datong) Bio-Pharma Co. Ltd.	Aurobindo (Datong) Bio-Pharma Co. Ltd.	16.45	Kg	US\$
13	29411050	-do-	China PR	China PR	Any combination other than mentioned in Sr. nos. 10,11 and 12 above		18.54	Kg	US\$
14	29411050	-do-	China PR	Any country other than China PR	Any	Any	18.54	Kg	US\$
15	29411050	-do-	Any country other than China PR	China PR	Any	Any	18.54	Kg	US\$

I Further Procedure

96. The following procedure would be followed subsequent to notifying the preliminary findings: -

- (a) The Authority invites comments on these findings from all interested parties and the same would be considered in the final finding;
- (b) Exporters, importers, applicants and other interested parties known to be concerned are being addressed separately by the Authority, who may

make known their views, within forty days from the date of the dispatch of the letter. Any other interested party may also make known its views within forty days from the date of publication of these findings;

- (c) The Authority would hold hearing to hear the views of various interested parties orally;
- (d) The Authority would conduct further verification to the extent deemed necessary;
- (e) The Authority would disclose essential facts before announcing final findings.

P.K Chaudhery
Designated Authority