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**No. 7/14/2018-DGAD
Government of India
Ministry of Commerce & Industry
Department of Commerce
Directorate General of Trade Remedies
4th Floor, Jeevan Tara Building, 5- Parliament Street, New Delhi 110001**

Dated: 24th day of October, 2018

Final Finding
(Case No – [AC] 02/2018)

Subject: Anti- circumvention investigation concerning the alleged circumvention of anti-dumping duty imposed on the imports of “O-Acid”, originating and exported from China PR.

No. 7/14/2018-DGAD: - Having regard to the Customs Tariff Act 1975, as amended from time to time (hereinafter also referred to as the Act) and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules 1995, as amended from time to time (hereinafter also referred to as the Rules) thereof;

A. Background of the Case

1. Whereas, Designated Authority, on the request of M/s Aarti Drugs Ltd., conducted an anti-dumping investigation on the imports of Ofloxacin Acid (O-Acid), the Product Under Consideration (PUC), and recommended a provisional Anti-Dumping Duty (ADD) vide notification no 14/31/2016-DGAD, dated 23rd May 2017 which was levied by Ministry of Finance vide Customs Notification 35/2017-Customs (ADD) dated 13th July, 2017. The Designated Authority recommended a definitive ADD vide Notification no. 14/31/2016-DGAD, dated 19th December, 2017. Based on the recommendations, the Ministry of Finance imposed ADD on PUC vide Notification no. 06/2018-Customs (ADD) dated 12th March 2018, for a period of three years from the date of provisional duty.
2. Whereas in the ongoing Anti-Circumvention investigation, regarding imports of Ofloxacin-Ester (O-Ester), claimed to be the penultimate stage for production of O-Acid, M/s Aarti drugs Ltd (herein referred as "petitioner" or “Applicant”) filed an application before the Designated Authority (hereinafter also referred to as the Authority) in accordance with the Section 9A of the Act read with Rule 26(1) Customs Tariff (Identification, Assessment & Collection of Anti-Dumping Duty on the Dumped Articles

& for Determination of Injury) Rules, 1995 (AD Rules) for initiation of Anti-Circumvention Investigation concerning imports of O-Ester (hereinafter also referred to as the “Product under Investigation” or “PUI”), a penultimate stage of “Ofloxacin Acid” (hereinafter also referred to as the “O-Acid” or “Product under consideration” or “PUC”) originating in or exported from China PR (herein referred as subject country). The petitioner requested for extension of existing anti-dumping duties on the imports of the O-Acid to the PUI, the penultimate stage product of the PUC originating in or exported from the subject country.

3. Whereas, in view of the duly substantiated application filed by the petitioner under Rules 26 (1), the Authority initiated the investigation vide Notification no 7/14/2018-DGAD dated 4th May, 2018 to determine the existence and effect of the alleged circumvention of the ADD levied and to consider recommendation of extension of ADD on imports of O-Acid also to imports of O-Ester.

B. Procedure

4. The procedure described below has been followed with regard to the investigation:
 - i. The Authority issued Recommendations vide Notification no. 7/14/2018-DGAD dated 4th May, 2018 initiating anti-circumvention investigation, which was published in the Gazette of India.
 - ii. The Authority sent copy of the initiation Notification to the Embassy of China in India, known exporters of PUI from China and known importers of PUI in India, as per information available in the petition.
 - iii. The Authority wrote to the exporters/ producers of the PUC/PUI and requested them to file their responses in the prescribed questionnaire and make their views known in writing within the time limit prescribed. Copies of the letter and questionnaires sent to the exporters were also sent to Embassy of China along with a list of known exporters/ producers, with a request to advise the exporters/ producers from China to respond to the Authority within the prescribed time.
 - iv. A copy of the non-confidential version of the application filed by the petitioner was sent to the Chinese producer/ exporters, and Government of China. A copy of the non-confidential version of the application was also made available to the interested parties, on request, through public file.
 - v. The Authority forwarded a copy of the public notice initiating the anti-circumvention investigations to the following known producers/ exporters in China and gave them opportunity to make their views known in writing within 40 days from the date of the letter in accordance with the AD Rules:
 - a. Zhejiang Ueasy Business Service Co. Ltd.
 - b. Mercy Group Co. Ltd.
 - c. Zhejiang Chemicals Import and Export Corp
 - d. Zhejiang Medicines and Health Products Import and Export Co. Ltd.
 - e. Apelo Kangyu Business Office

- f. Zhejiang Jingxin Pharmaceutical Co., Ltd
 - g. Zhejiang East Pharmaceutical Ltd.
 - h. Yongning pharma
 - i. Jiangsu Guotai Int'l Group Huatai Imp. & Exp. Co Ltd
 - j. China Sinopharm International Corporation
 - k. Zhejiang Hengdian Apelo Imp & Exp Co. Ltd
 - l. Jaingxi Chibang Pharmaceutical Co. Ltd
 - m. Jiangxi Dadi Pharmaceutical Limited Liability Co.
 - n. Zhejiang Xingyang Import & Export Co. Ltd
 - o. Yancheng Xinanzhou Pharmaceutical Co, Ltd
 - p. Inner Mongolia Yuanhong Fine Chemical Co., Ltd
 - q. Zhejiang Yuanhong Medical & Chemical Technology Co., Ltd
- vi. None of the producers/ exporters of the PUC/ PUI from China responded to the Authority, nor any producer/ exporter filed response to the questionnaire in the form and manner prescribed.
- vii. However, only an authorization letter was filed by the following exporter
- a. Zhejiang Ueasy Business Service Co. Ltd.
- viii. Questionnaires were sent to the following known importers/ users of subject goods in India calling for necessary information in accordance with the Rules:
- a. Infinity Laboratories Private Limited
 - b. Bharat Chemicals
 - c. Danopharm Chemicals Pvt. Ltd.
 - d. Vital Laboratories Pvt. Ltd.
 - e. M/s. Cipla Limited
 - f. M/s. Macleods Pharmaceuticals Ltd
 - g. M/s. J.B.Chemicals & Pharmaceutical Ltd.
 - h. M/s. Aristo Pharmaceutical Pvt Ltd
 - i. M/s. Sun Pharmaceutical Ind. Limited
 - j. M/s. Medi Pharma Drug House
 - k. M/s. FDC Ltd
 - l. M/s. Medley Pharmaceuticals Ltd
 - m. M/s. Cadila Healthcare Ltd
 - n. M/s. Merck (India) Ltd
 - o. M/s. Alkem Laboratories Ltd
- ix. In response to the initiation of the subject investigation, only M/s Infinity Laboratories Pvt. Ltd., importer of the PUI responded and filed response to the questionnaire.
- x. In accordance with Rule 6(6) of the Anti-dumping Rules, the Authority provided opportunity to the interested parties to present their views orally in a public hearing held on 24th August, 2018. The oral hearing on 24th August, 2018 was attended by the domestic industry and the only responding importer of the PUI. The parties, who presented their views in oral hearing, were requested to file written submissions of the views expressed orally.

- xi. Exporters, importers other domestic producers and other interested parties who have not responded to the Authority nor supplied information relevant to this investigation, have been treated as non-cooperating.
- xii. Details of imports of subject goods for April 2014- March 15, April 2015–March 2016, April 2016-March 2017, the period of investigation July, 2017 - March 2018 and for the first quarter of 2018-19, were obtained from DGCIS.
- xiii. The submissions made by the interested parties during the course of this investigation have been considered by the Authority, wherever found relevant, in this finding.
- xiv. Verification to the extent deemed necessary was carried out in respect of the information & data submitted by the petitioner at the plant premises. Separately, verification also of the manufacturing plant of the cooperating importer was also conducted by the Authority
- xv. Information provided by the interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has accepted the confidentiality claims wherever warranted and such information has been considered as confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non-confidential version of the information filed on confidential basis.
- xvi. Wherever an interested party has refused access to, or has otherwise not provided necessary information during the course of the present investigation, or has significantly impeded the investigation, the Authority has considered such parties as non-cooperative and recorded the findings on the basis of the facts available.
- xvii. In accordance with Rule 16 of the Rules *Supra*, the essential facts were disclosed by the Authority on 25th September, 2018 to the concerned interested parties. Comments were requested by 03rd October, 2018. Comments received on the Disclosure Statement to the extent considered relevant by the Authority have been considered in this Final Finding.
- xviii. *** represents information furnished by an interested party/any other party on a confidential basis and so considered by the Authority under the Rules.
- xix. The average exchange rate of 1US\$ = ₹65.29 prevailing during the POI has been adopted by the Authority in this finding.

C. Product under Investigation and Like Article

C.1. Views of Exporters, Importers, Consumers and Other Interested Parties

5. Following submissions have been made by the other interested party –
 - i. Ofloxacin Ester is completely different product in terms of CAS number, chemical name, chemical composition, weight and formula from O-Acid.
 - ii. Ofloxacin Ester (PUI) and O-Acid (PUC) are two different compounds or chemicals which have different physical and chemical properties/composition, in fact, different category of products as Ofloxacin Ester belongs to Carboxylate Esters group in organic compounds and O-Acid belong to Carboxylic Acid group in organic compounds. Both have different molecular formula and molecular weight. Even Ofloxacin Ester is not soluble in caustic solution whereas O-Acid is freely soluble in it.

C.2. Views of Domestic Industry

6. The domestic industry has made the following submissions with regard to the PUI:
 - i. The product forming the object of circumvention is “Ofloxacin Ester (O-Ester)”.
 - ii. The product under investigation in this case is nothing but just the penultimate stage/ form of the PUC in the original investigation and requires minimal value addition to the tune of 3-4%.for conversion into the PUC.
 - iii. As regards the claims of value addition, the value addition is to be seen for the product whose duties are being circumvented and not any other product that could be formed from the circumventing product. The value addition required to be seen is on the conversion of O-Ester into O-Acid and not on the conversion of O-Ester into Ofloxacin API.
 - iv. The duty is being circumvented through the imports of O-Acid albeit in the form of O-Ester thereby undermining the remedial effects of the anti-dumping duty imposed. The PUI of the present investigation and the PUC of the original investigation belong to the same family.
 - v. The subject goods are classified under Chapter 29 of the Customs Tariff Act, 1975 under the Sub-heading 29349900. The customs classification is indicative only and in no way binding on the scope of investigation.
 - vi. The production process of producing O-Acid from O-Ester involves the process of hydrolysis in acidic water and the cost of converting O-Ester to O-Acid, i.e., the value addition from the stage of O-Ester to O-Acid in India is much below the limits prescribed under the relevant circumvention provisions.

C.3. Examination of the Authority

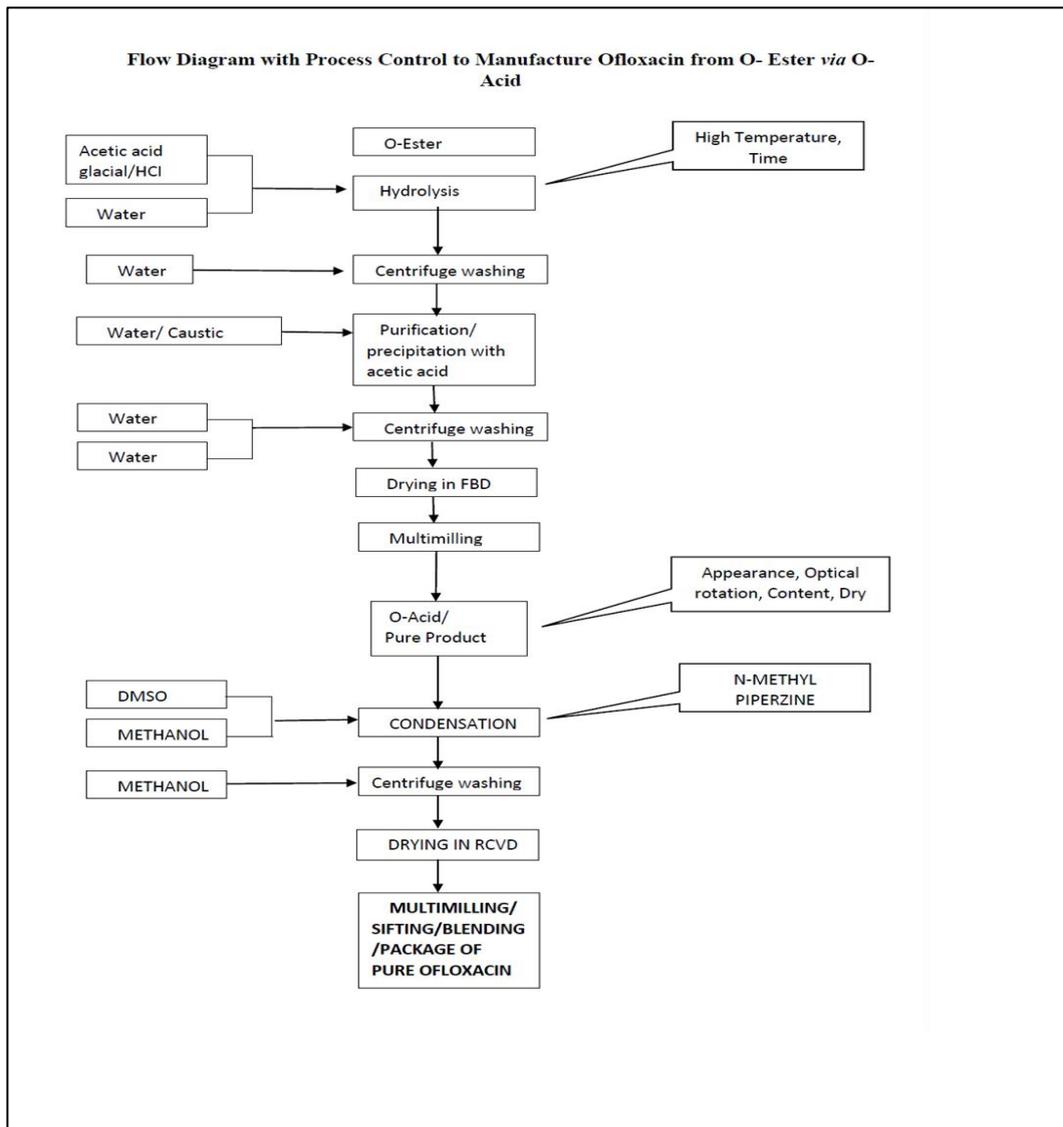
7. The product under consideration attracting anti-dumping duty is O-Acid. The product under investigation is “Ofloxacin Ester (O-Ester)” (also referred to as the “Product under investigation” or “PUI” or “subject goods”), which is claimed to be the penultimate stage in the production of “Ofloxacin Acid (O-Acid)” (also referred to as the subject product or the “Product under Consideration” or “PUC”). The product under consideration was examined and recorded by the Authority in the original investigation as follows:

‘The product under consideration in the present petition is O-acid or Ofloxacin acid. It is an off-white to white crystalline powder and is used as an intermediate for the manufacture of Ofloxacin, which is a synthetic chemotherapeutic antibiotic of the fluoroquinolone drug class considered to be a second-generation fluoroquinolone. Ofloxacin is a racemic mixture, which consists of 50% levofloxacin (the biologically active component) and 50% of its “mirror image” or enantiomer dextrofloxacine.

8. Regarding, the contention that O-Ester is a different product from that of O-Acid, the Authority notes that the present investigation is a circumvention investigation, i.e., examination of the alleged circumvention of the antidumping duty already imposed. In such cases, the circumvented product or PUI need not be a like article to the product under

consideration. It could actually just be ‘parts or components’ of the PUC or in this case a chemical that is primary to production of the PUC.

9. The production process for Ofloxacin was examined at the premises of both – the DI as well as the responding importer. The process is described in the flow chart given below. It is noted that the process from the stage of O-Ester to O-Acid is an incremental process, the stage that is penultimate to production of Ofloxacin. It is seen that O-Ester is hydrolysed in acidic water, which is then cooled and filtered to form dried cakes of O-Acid, which are then further processed to obtain Ofloxacin.



10. The PUI is described as “Ofloxacin Ester” or by its chemical name “9,10-Difluoro-3-Methyl-7-Oxo-2,3-Dihydro-7H-Pyrido (1,2,3-De) 1,4-Benzoxazine-6-Carboxylic Ester” and it is classified under Chapter 29 and subheading 29349900 of the Customs Tariff Act, 1975. The Customs classification is indicative only and in no way binding upon the scope of the investigation.

D. SCOPE OF DOMESTIC INDUSTRY AND STANDING

D.1. Views of Exporters, Importers, Consumers and Other Interested Parties

11. Views of other interested parties with regard to domestic industry are as follows:
- i. Aarti Drugs Ltd. is producing the subject goods for manufacturing Ofloxacin and not for sale in the domestic market. Aarti Drugs Ltd. has built installed capacity for O-Acid dedicated to cater the need of their own Ofloxacin plant and thus cannot constitute domestic industry in terms of AD Rules.

D.2. Views of domestic industry

12. Following submissions have been made by the domestic industry –
- i. The petition has been filed by M/s Aarti Drugs Ltd. The petitioner company is the sole producer of the PUC in the country.
 - ii. The Petitioner Company has neither imported in the period of investigation nor is related to any exporter/ producers of subject goods in subject countries or importers in India. However, the petitioner did import the PUC in the injury investigation since the landed price of the PUC was much below the cost of production and so it was not feasible to produce the same because of presence of dumped imports. Since the imposition of the provisional duty and then the definitive anti-dumping duty on the imports of PUC, the petitioner has not imported the PUC into the country.
 - iii. The petitioner is the sole producer of the subject goods in India and constitutes “domestic industry” within the meaning of the Anti-Dumping Rules.
 - iv. Petitioner has set up capacity far in excess of Ofloxacin. Thus, clearly the intention of the petitioner is also in the merchant market. The petitioner did not sell goods in domestic market, not out of unwillingness but because of compulsion. Availability of low priced imports of O-Acid earlier and now O-Ester has made it difficult for the producer to sell goods.

D.3. Examination of the Authority

13. The Authority notes that the petition for anti-circumvention investigation and extension of existing ADD on imports of O-Acid to the imports of O-Ester is filed by M/s Aarti Drugs Ltd as per Rule 26(1) which reads as under;

“(1) Except as provided herein below, the designated authority may initiate an investigation to determine the existence and effect of any alleged circumvention of the anti-dumping duty levied under section 9A of the Act, upon receipt of a written application by or on behalf of the domestic industry.”

14. M/s Aarti Drugs Ltd. were considered as the Domestic Industry as per Rule 2(b) in the original investigation on the basis of which ADD on PUC has been recommended and then

imposed on notified on 12 March,2018. Rule 2(b) of the Anti-Dumping Rules defines domestic industry as under: -

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

15. The petitioner is not related (either directly or indirectly) to any exporter of O-Ester or O-Acid in China or an importer in India. The Authority notes that the petitioner has not imported the PUC from China during period of investigation.
16. It is not in dispute that production of petitioner constitutes a major proportion in the Indian production. The importer has however disputed eligibility of the petitioner to claim status of domestic industry within the meaning of Rule 2(b) on the grounds that the petitioner is a captive producer. The Authority had considered this aspect in the original investigation and concluded as follows:

The interested parties have contended that the applicant has set up facilities only for captive consumption and the Authority has held in the past that captive consumption is not required to be considered for determination of standing of a domestic producer under Rule 5. The Authority notes that (a) the capacities created by the company for Ofloxacin Acid are much higher than its own requirement, (b) such capacities are quite comparable to the demand for the product in the Indian market, (c) the applicant has stated that after commencing production, they offered the product for sale through email communications and public advertisements in Chemical Weekly, thereby, it can be inferred that the DI had set up plant for captive as well as merchant sales. The present investigation is a case where the Authority is investigating whether dumping of the product is materially retarding establishment of domestic industry in the Country in addition to causing injury to the present capacities. In view thereof, the Authority holds that the fact of absence of actual merchant sales up to POI should not deprive the company from being treated as domestic industry under Rule 2(b).

17. The Authority notes that Rule 26 (1) requires an Anti-Circumvention petition to be filed by the Domestic Industry of the ADD already levied. In this investigation, the Domestic Industry of the existing ADD comprised of M/s Aarti Drugs Ltd. as stated above. The petitioner has still not been able to sell good in the merchant market in view of imports of O-Acid being almost replaced by imports of O-Ester. In view of this the Authority is of the opinion that the standing of petitioner and its eligibility as domestic industry of PUC as required under Rule 26(1) is not compromised.

E. Evidence of Circumvention

E.1 Submissions by Exporters, Importers and Other Interested Parties

18. Submissions made by the interested parties with regard to evidence of circumvention is as follows:
- i. In the process of manufacturing of Ofloxacin from O-Ester, production of O-Acid is not captured/ reported and Infinity Labs does not account for the production of O-Acid. Infinity does not produce O-Acid for commercial sales. Value addition to produce Ofloxacin from O-Ester is more than 35%.
 - ii. There is around 10% difference in molecular weight, however, around 17-18% value addition is done due to yield difference after manufacturing. After adding all the expenses, the value addition goes up by around 30-35%. Moreover, O-Ester is an impurity in O-Acid and it should be absent in O-Acid or limited to maximum 0.5% thereby confirming that it is backward integration and not circumvention.
 - iii. The difference of prices of producing O-Ester supplied by Chinese suppliers versus O-Acid is only 10-15%, however, actual manufacturing difference is more than 30-35%.
 - iv. Even the clause of 35% value addition is not applicable here in chemical reactions. As reactions depend upon one compound to other manufacture compound and in some cases when two compounds join together in condensation reaction, the resultant compound is large showing huge value addition whereas if the reaction is acidic hydrolysis or hydrogenation or reduction or oxidation than the molecular weight of the resultant compound is almost same and there is not much value addition even though the resultant compounds are totally different with different category and different chemical and physical properties.

E.2. Submissions by Domestic Industry

19. Following submissions have been made by the domestic industry with regard to circumvention which are as follows-
- i. Exports of the intermediate product, O-Ester started and increased after the imposition of provisional anti-dumping duties on O-Acid and the same has intensified.
 - ii. Because of the imposition of ADD, the producers from China have found it advantageous to export O-Ester, a penultimate intermediary product and dump the same into India.
 - iii. There is a change in the pattern of trade. The volume of imports from subject country has shifted from O-Acid from O-Ester. Whereas imports of O-Ester have increased significantly, the imports of O-Acid have declined and are now non-existent.
 - iv. The significant increase in imports of O-Ester post imposition of provisional duties supports the contention that O-Ester is being exported from China to circumvent the ADD earlier imposed on DFS.
 - v. There is change in chemical and physical nature of product, there is no circumvention at all rather it is backward integration in the process of manufacturing Ofloxacin.

E.3. Examination of the Authority

20. The Authority has examined the aforesaid submissions and alleged circumvention phenomena under relevant Act/ Rules i.e. section 9 A (1) of the Customs Tariff Act, 1975 and Rule 25 of the AD Rules which state as follows–

“Section 9A(1A) of the Customs Tariff Act Where the Central Government, on such inquiry as it may consider necessary, is of the opinion that circumvention of anti-dumping duty imposed under sub-section (1) has taken place, either by altering the description or name or composition of the article subject to such anti- dumping duty or by import of such article in an unassembled or disassembled form or by changing the country of its origin or export or in any other manner, whereby the anti-dumping duty so imposed is rendered ineffective, it may extend the anti-dumping duty to such article or an article originating in or exported from such country, as the case may be.”

21. Rule 25 of AD Rules relates to Circumvention of anti-dumping duty. This states as under –

(1) Where an article subject to anti-dumping duty is imported into India from any country including the country of origin or country of export notified for the purposes of levy of anti-dumping duty, in an unassembled, unfinished or incomplete form and is assembled, finished or completed in India or in such country, such assembly, finishing or completion shall be considered to circumvent the anti-dumping duty in force if,

- (a) the operation started or increased after, or just prior to, the anti-dumping investigations and the parts and components are imported from the country of origin or country of export notified for purposes of levy of anti-dumping duty; and*
(b) the value consequent to assembly, finishing or completion operation is less than thirty-five percent of the cost of assembled, finished or complete article.

Explanation I. – ‘Value’ means the cost of assembled, complete or finished article less value of imported parts or components

Explanation II. - For the purposes of calculating the ‘value’, expenses on account of payments relating to intellectual property rights, royalty, technical know- how fees and consultancy charges, shall not be taken into account.

(2)....

(3)

Explanation. - For the purposes of this sub-rule, it shall be established that there has been a change in trade practice, pattern of trade or channels of sales if the following conditions are satisfied, namely: -

- (a) absence of a justification, economic or otherwise, other than imposition of anti-dumping duty;*
(b) evidence that the remedial effects of the anti-dumping duties are undermined in terms of the price and or the quality of like products.

22. The Authority notes that Rule 25(1)(a) requires to establish the onset or increase in

phenomena of circumvention and further the Rule 25(1)(b) requires to establish that ‘value addition’ associated with the said phenomena is in accordance with the stipulated threshold in this sub Rule.

23. Regarding the claim that the domestic importer is not circumventing the anti-dumping duty, but instead is involved in the process of backward integration of the production of Ofloxacin, the Authority is of the opinion that backward integration by setting up additional manufacturing plants/ equipment has to be seen in the context of how far back is the integration process going and what is the actual value added in the process. This is adequately captured in the extant rules that require a value addition of at least 35% being achieved. In this case too examination of the value addition achieved is a critical factor.

F. SHIFT IN TRADE PATTERN

24. The Authority notes that provisional ADD was earlier imposed on imports of the PUC from the subject country vide notification no. 35/2017-Customs (ADD) dated 13th July, 2017. Definitive duties were imposed vide Notification no. 06/2018-Customs (ADD) dated 12th March 2018. The duties so imposed are in force. The Authority has to examine the onset and enhancement of phenomena of circumvention of existing ADD just after the imposition of the provisional ADD i.e. from July 2017. The Authority also has examined whether there is change in pattern of trade and whether this change has stemmed from a practice, process or work for which there was insufficient due cause or economic justification other than the imposition of duty. The table below depicts the trade pattern.

		Imports			
		O-Acid		O-Ester	
		Volume	Value	Volume	Value
		MT	Rs Lacs	MT	Rs Lacs
a)	Annual				
	2015-16	602	14,084	-	-
	2016-17	456	8,642	-	-
	2017-18	134	2,169	305	4,212
b)	Monthly				
1	15-Apr	47	1,214	-	-
2	15-May	63	1,559	-	-
3	15-Jun	91	2,184	-	-
4	15-Jul	95	2,240	-	-
5	15-Aug	56	1,308	-	-
6	15-Sep	86	2,014	-	-
7	15-Oct	24	583	-	-
8	15-Nov	12	271	-	-
9	15-Dec	7	212	-	-
10	16-Jan	21	453	-	-
11	16-Feb	60	1,240	-	-

		Imports			
		O-Acid		O-Ester	
		Volume	Value	Volume	Value
		MT	Rs Lacs	MT	Rs Lacs
12	16-Mar	40	806	-	-
13	16-Apr	20	500	-	-
14	16-May	67	1,355	-	-
15	16-Jun	47	999	-	-
16	16-Jul	75	1,467	-	-
17	16-Aug	16	303	-	-
18	16-Sep	11	205	-	-
19	16-Oct	41	760	-	-
20	16-Nov	32	568	-	-
21	16-Dec	28	497	-	-
22	17-Jan	64	1,073	-	-
23	17-Feb	40	643	-	-
24	17-Mar	17	272	-	-
25	17-Apr	24	372	-	-
26	17-May	42	645	-	-
27	17-Jun	55	921	-	-
28	17-Jul	-	-	24	325
29	17-Aug	12	206	64	843
30	17-Sep	-	-	56	738
31	17-Oct	-	-	16	214
32	17-Nov	-	-	25	326
33	17-Dec	-	-	-	-
34	18-Jan	-	-	40	563
35	18-Feb	1	25	32	475
36	18-Mar	-	-	48	730
37	18-Apr			16	232
38	18-May			40	604
39	18-Jun			16	246

25. It is noted that the volume of imports of O-Acid from China declined post imposition of the provisional ADD since July 2017 whereas imports of O-Ester from China started since then. It is thus seen that whereas imports of O-Acid declined and have become non-existent, the imports of O-Ester increased since the imposition of provisional ADD. Shift in imports from O-Acid to O-Ester since the imposition of the provisional duty establish the shift in the pattern of trade.

F.1 VALUE ADDITION BELOW 35% OF THE COST OF ASSEMBLY, FINISHING OF COMPLETE ARTICLE

26. The Rule 25(1)(b) of AD Rules requires that “*value consequent to assembly, finishing or completion operation is less than thirty-five percent of the cost of assembled, finished or*

complete article”. Authority notes that none of the producers/exporters from China has responded. Further, the importer who has responded has converted the subject goods into the ultimate downstream product. The Authority therefore, in accordance with provisions of para 6(8), has considered the cost of production data of M/s Aarti Drugs Ltd. for the purpose of evaluating value addition from O-Ester to O-Acid during the POI.

27. The value addition from O-Ester (PUI) to O-Acid (PUC) evaluated as per Rule 25 (1) (b) is depicted in Table below:

Particulars		Conversion Factor	Rs/MT	Rs/MT
Raw material cost O-Ester			***	
Conversion Cost	Up to O-Ester stage		***	
	Ester to O-Acid			
	Total Cost up to O-Ester			***
	O-Ester for O-Acid	1.11		***
	Raw Material and Conversion cost for O-Acid		***	
	Cost of O-Acid			***

Particulars	UOM	Price
Value Addition	Rs/MT	***
Cost of O-Acid	Rs/MT	***
Value Addition	%	***
Value Addition	Range %	0 -10

28. The landed value of PUC derived from the imported PUI, i.e. after adjusting the landed value of PUI with value addition is lower than the landed value of PUC including existing ADD when imported directly in finished-form from China.
29. As regards the contention that there is significant value addition from the stage of O-Ester to Ofloxacin, the downstream product, it is noted that the investigation concerns production of O Ester to O-Acid.
30. The Authority has examined the coincidence between the ‘change in pattern of trade’ and imposition of the ADD on the PUC by conducting a cost benefit analysis and other economic benefits/ cost savings from the production and exports of O-Ester instead of O-Acid. It is noted that there was no market or requirement for O-Ester prior to imposition of antidumping duty on O-Acid. Imposition of Antidumping duty on O-Acid led to commencement of O-Ester imports.
31. The Authority has considered the value addition involved in the process of producing O-Acid from O-Ester. The value addition involved in producing O-Acid from O-Ester is determined

to be much below the limits prescribed under the law. Production of O-Ester is only a step before the production of O-Acid in the manufacturing process for Ofloxacin. O-Ester is hydrolysed in acidic water to yield O-Acid. Because of the imposition of ADD on O-Acid, the producers in China have found it advantageous to stop at O-Ester, the unfinished/penultimate stage of O-Acid, and export the same into India. The investigation has thus shown that there exists no economic justification other than the incentive to avoid the ADD on O-Acid for export of O-Ester to India.

G. DUMPING OF PUI AND UNDERMINING THE REMEDIAL EFFECT OF THE ANTI-DUMPING DUTY

G.1 Submissions by Exporters, Importers and Other Interested Parties

32. Following submissions have been made by other interested parties with regard to injury are as follows-
- i. Infinity does not maintain books of accounts for O-Acid production or sale thus, domestic industry not being affected in any way. Production of Ofloxacin from O-Ester is costly and in terms of manpower, electricity, power, fuel, etc.
 - ii. Since petitioner is not competing for sale of O-Acid in open market, thus, imports of O-Ester (main raw material used in production of O-Acid) cannot cause injury to petitioner.
 - iii. Aarti Drugs not fulfilling domestic demand of O-Acid as they have not made any sales. Thus, injury caused due to other factors.

G.2. Submissions by Domestic Industry

33. Following submissions have been made by the domestic industry with regard to injury are as follows-
- iv. O-Ester is being imported into India instead of O-Acid and being converted into O-Acid/Ofloxacin for further use. This has rendered the duty on O-Acid as ineffective. The Imports have shifted from O-Acid to O-Ester since the imposition of the provisional duties.
 - v. There is a significant change in the pattern of trade with reference to prices and quantity of the product and the same is undermining the remedial effects of ADD earlier imposed on imports of O-Acid.
 - vi. The imports of O-ester have directly resulted into absence of merchant market for the domestic industry despite the imposition of anti-dumping duties. This has rendered the existing duties redundant as the imposition of ADD was supposed to enable fair play in the market but the same has not happened.
 - vii. The landed value of the PUC derived from the prices of the PUI is much below the landed prices of the imported PUC even with the ADD. In fact, the landed value of the PUC derived from the PUI is much below the levels of PUC being imported prior to the imposition of the duty. This has rendered the duty ineffective.
 - viii. The derived PUC is undercutting the notional selling prices of the PUC by a significant margin.

G.3. Examination of the Authority

34. The Authority notes that Rule 26(4) requires establishing that the article circumventing the existing ADD is dumped in India as a primary condition. Further Rule 26(5) states that evidence/ procedural requirements of Rule 6 shall apply *mutatis mutandis* to the investigation carried out under this Rule.
35. The Authority notes that none of the producers/exporters have filed Questionnaire Response.
36. Rule 6 (8) provides that “*In a case where an interested party refuses access to, or otherwise does not provide necessary information within a reasonable period, or significantly impedes the investigation, the designated authority may record its findings on the basis of the facts available to it and make such recommendations to the Central Government as it deems fit under such circumstances*”.
37. The Authority notes that while the Petitioner has submitted that China PR be treated as a Non-Market Economy, since in the instant case none of the producers/ exporters has responded, and Rule 6(8) needs to be resorted to the examination of issues raised on market situation by the petitioner is not required.
38. The Authority resorting to Rule 6(8) has constructed the normal value for the PUI i.e. O-Ester, by considering the normal value for O-Ester earlier established at the time of original investigations, and duly adjusted for the value addition from O-Ester to O-Acid. The normal value has also been adjusted for the differences in the raw materials cost during the two periods.
39. For the purpose of evaluating ex-factory export price of PUI in POI, DGCIS data has been adopted. The weighted average ‘CIF’ price of PUI during POI has been considered as 1383 Rs/Kg. Adjustments on account of Marine Insurance, Commission, Port Expenses, Bank Charges and Inland Freight Expenses have been considered to an extent of 6.92 Rs/Kg, of CIF, 1% of FOB, 0.5 % of FOB, 0.5% of FOB and 0.5% of FOB respectively on the basis of data provided by the Petitioner and Authority’s past consistent practice on norms related to such adjustments. The Table below depicts the dumping margin.

Computation of Dumping Margin

Particulars	Rs/MT
Constructed Normal Value O-Ester	***
Net Export Price	***
Dumping Margin	***
Dumping Margin %	***
Dumping Margin (Range %)	20-30%

40. The dumping margin is proposed to be considered as *** \$/MT, which is significant and above *de minimus* limits under the AD Rules.

41. Thus, the shift in trade pattern, value addition being lower than prescribed threshold and continuation of dumping are collectively established to be present in this case.

H. UNDERMINING REMEDIAL EFFECT OF ADD EXISTING ON PUC BY CIRCUMVENTION

42. Explanation to Rule 25 provides as follows:

Explanation. - For the purposes of this sub-rule, it shall be established that there has been a change in trade practice, pattern of trade or channels of sales if the following conditions are satisfied, namely: -

(a) absence of a justification, economic or otherwise, other than imposition of anti-dumping duty;

*(b) evidence that the remedial effects of the anti-dumping duties are undermined **in terms of the price and or the quality of like products.***

H.1 Volume Effect

H.1.1 Complete Shift from O-Acid (PUC) to O-Ester (PUI)

43. The Authority has considered the transaction-wise import data procured from DGCI&S for the assessment of volume and value of imports of both PUC & PUI from the subject country. Whereas the imports of O-Ester have increased significantly post the imposition of the provisional duty since July 2017, imports of O-Acid have declined and are non-existent. Thus, the imports of O-Acid (PUC) has been almost replaced by O-Ester (PUI).

Year/ Period	Imports			
	O-Acid		O-Ester	
	Volume	Value	Volume	Value
	MT	Rs Lacs	MT	Rs Lacs
2015-16	602	14,084	-	-
2016-17	456	8,642	-	-
2017-18	134	2,169	305	4,212
2018-19 (Apr – Jun)	-	-	72	1,083

44. The Authority finds that the import of O-Acid from China PR has declined post imposition of provisional ADD. However, imports of PUI, O-Ester started and have increased post imposition of provisional ADD on O-Acid.

H.1.2 Inability to Garner Market Share

45. It was noted in the original investigation that the domestic industry despite being a sole

producer claimed to be making all efforts required, but was unable to make merchant sales.

H.2 Price Effect

46. The impact of imports of O-Ester on the prices of the domestic industry has been examined with reference to price undercutting. For the purpose of this analysis, a comparison of the landed price of imports for PUI from subject country during the period of investigation, after appropriate adjustment in order to derive price of O-Acid was made with the selling price for O-Acid of the domestic industry in the domestic market. While undertaking this analysis, in the absence of the merchant market for the domestic industry, the Authority has considered the net selling price of the domestic industry on a notional basis after considering all due adjustments to ensure a fair and an undistorted comparison. The expenses incurred in India in converting O-Ester to O-Acid have been added on the basis of value addition determined by the Authority. Thus, the landed price of imports of O-Ester was adjusted upward by the amount of value addition and thereafter compared with the selling price of the domestic industry. The comparison has shown that the adjusted landed price of imports of O-Ester is significantly below the notional selling price of O-Acid by the domestic industry. Thus, the imports of O-Ester are resulting in price undercutting and are thus having an adverse price effect. This has eroded the efficacy of the ADD imposed on the PUC. Also the computed price of O-Acid from O-Ester during the injury period showed to be much below the landed price of the imports of O-Acid.

47. The table below illustrates the extent of circumvention:

Particulars	UOM	POI
Landed Price of O-Ester	Rs/MT	1,490
Value Addition	%	***
Value Addition	Rs/MT	***
Landed Value of O-Acid (Derived)	Rs/MT	***
Landed Price of O-Acid (Actual)	Rs/MT	***
Landed Value of O-Acid with ADD	Rs/MT	***

Particulars	UOM	Value
Landed value of O-Acid	Rs /kg	1,544
Net Sales Realization of O-Acid	Rs /kg	***
Price undercutting	Rs /kg	***
Price undercutting	%	***
Price undercutting	Range %	10-20

I. POST DISCLOSURE COMMENTS

I.1 Views of the Domestic Industry

48. Post disclosure submissions made by the domestic industry are as follows:

- i. Ofloxacin Ester or “9,10-Difluoro-3-Methyl-7-Oxo-2,3-Dihydro-7H-Pyrido (1,2,3-De)1,4-Benzoxazine-6-Carboxylic Ester” is classified under Chapter 29 and subheading 29349900 of the Customs Tariff Act, 1975. The Customs classification is indicative only and in no way binding upon the scope of the investigation.
- ii. O-Acid is first produced in the form of O-Ester (product under investigation), which is only the penultimate stage in the production of O-Acid. Instead of undertaking full production process for O-Acid, the Chinese producers are stopping at Ester and exporting to India. The Indian consumers, who requires O-Acid for production of Ofloxacin, starts from Ester stage, as Ester has all the essential properties of Acid and processes the same into Ofloxacin. Hence, the subject goods, O-Acid, continue to be exported to India, albeit in penultimate form and in different name.
- iii. The process involved from the stage of O-Ester is only hydrolysis and is only an incremental process. O-Ester is first hydrolysed in acidic water (such that it obtains acidic properties) to obtain O-Acid. In case if the PUI is to be directly used in production of Ofloxacin, it can be used only after isolation of solid O-Acid but without drying. However, if the same is to be sold in the merchant market for further production into Ofloxacin, it is cooled, filtered and dried, so that cakes of O-Acid are formed and the same are made available in the merchant market.
- iv. The value addition involved in processing O-Ester to O-Acid is only about 3.49% which is minimal and much below the limits as prescribed under law. It has no other use except for further processing/ conversion into O-Acid and hence has no market other than being used for producing O Acid. The landed value of PUC derived from the imported PUI, i.e. after adjusting the landed value of PUI for the value addition is lower than the landed value of PUC including existing ADD when imported directly in finished-form from China.
- v. There has been a change in the pattern of trade since the imposition of the provisional duty. The imports of O-Acid have been replaced by the imports O-Ester. The exports of unfinished form of O-Acid in the form of O-Ester started immediately after imposition of provisional antidumping duties in July of 2017. Prior to the imposition of the provisional duties, imports of O-Ester were non-existent. After imposition of duties, imports of O-Ester increased and that of O-Acid has almost stopped. Imports of O-Ester in India were non-existent prior to imposition of the provisional duty on the imports of O-Acid.
- vi. The circumvented product i.e. O-Acid in the form of O-Ester is entering the Indian market at dumped prices and thereby rendering the existing duties ineffective.
- vii. First, because of dumping of O-Acid in the country and then now dumping of O-Ester in the country, the domestic industry has not been able to sell O-Acid in the market and is facing significant plant underutilisation. Despite making several public offers to sell O-Acid in the market, the petitioner has not been able to do so, as a result of continued dumping of O-Acid, albeit in different forms.
- viii. A comparison of the derived cost of O-Acid from the landed value of O-Ester after considering due adjustments for conversion into O-Ester made with the notional selling price of O-Acid produced by the domestic industry, reveals that the adjusted landed price of imports of O-Ester is significantly below the notional selling price of O-Acid

by the domestic industry. The imports of O-Ester are resulting in price undercutting and are having an adverse price effect. The same is leading to erosion of the efficacy of the ADD imposed on the PUC. Even, the computed price of O-Acid from O-Ester during the injury period showed to be much below the landed price of the imports of O-Acid.

- ix. The landed value of O-Acid as considered by the Designated Authority in the anti-dumping investigation was around Rs 2,358 per kg. However, the landed value of O-Ester in the present POI declined to Rs 1,490 per kg. Even after considering value addition, the landed value in terms of O-Acid comes to Rs 1542/kg which shows that the import price of O-Ester is much lower than that of O-Acid.

I.2 Views of the other Interested Parties

49. Post disclosure submissions made by other interested parties are as follows:

- i. The petitioner is only producing the subject goods for manufacturing Ofloxacin and not for sale in the domestic market. The petitioner has not made any sales in the domestic market and is only present as a captive consumer of the goods and not as a domestic seller. The petitioner cannot be treated as domestic industry because it is only a captive consumer and not a domestic seller and so does not meet the criteria of being called as domestic industry.
- ii. The petitioner has made unrealistic offers to sell O-Acid. An exorbitant rate of Rs 2500/- with the condition of advance payment and delivery after four weeks is unreasonable. At such a price, Ofloxacin, the finished product, will become uncompetitive in the market and the same should be compared with the price quoted by Aarti for Ofloxacin and with the import price of Ofloxacin with basic customs duty and anti-dumping duty. With such a high price, the cost of manufacturing Ofloxacin should also be considered as it requires value addition of Rs 300/-
- iii. Infinity has done backward integration and does not account for any production of O-Acid as it consumes the same captively. It produces ofloxacin directly from O-Ester and not from O-Acid. The value addition from the conversion of O-Ester to Ofloxacin is more than 35%.
- iv. The normal value of O-Ester was never established before at the time of the original investigations as the original investigation was in context of O-Acid and not O-Ester.
- v. No data depicting the undermining of remedial effects was provided by the domestic industry till date. The domestic industry be asked to provide at least indexed numbers in non-confidential version to substantiate how imports of product under investigation are causing injury. In the absence of the same, undermining of remedial effects cannot be examined.
- vi. In the absence of any imports of O-Acid in the period of investigation, how can the landed price of O-Acid be determined. When no merchant sales have been made then how can the selling price of the domestic industry be determined. In the absence of any price data undermining of remedial effects cannot be examined.

I.3 Examination of the Authority

50. The issues raised in the post disclosure submissions received from the interested parties have largely been raised earlier during the investigation and also addressed appropriately. However, for the sake of clarity the submissions by the interested parties are being examined as below:
- i. As regards the claims on the petitioner not producing goods for the merchant market and using them only for captive consumption, the Authority notes that the issues relating to the standing of the domestic industry has been discussed at various stages of not just this investigation but also during the investigation resulting in imposition of the ADD on import of O-Acid from China. There is little to add other than to note that the DI as determined in the earlier investigation is the same as that in this case. The Authority would like to point out that in an anti-circumvention investigation the primary focus of the Authority is whether an ADD already imposed is being circumvented or not.
 - ii. As regards the issue of computation of normal value it is clarified that the Authority has resorted to Rule 6(8) and has constructed the normal value for the PUI i.e. O-Ester, by considering the normal value determined for O-Acid earlier established at the time of original investigations, and duly adjusted for the value addition from O-Ester to O-Acid. The normal value has also been adjusted for the differences in the raw materials cost during the two periods.
 - iii. As regards the argument that the interested party does not produce O-Acid and directly uses O-Ester to produce Ofloxacin, it is noted that, verification at the premises of the domestic industry as well as the responding importer and the evidence placed on record, shows that the process of converting O-Ester into Ofloxacin cannot be undertaken without the conversion of O-Ester first into O-Acid.
 - iv. It is also noted that this being a circumvention investigation the aspect of value addition is to be seen from the circumventing product to the circumvented product. In view of the same it is considered that the value addition is required to be seen from the conversion of O-Ester into O-Acid and not of O-Ester into Ofloxacin. Such value addition is much below the threshold limits as prescribed under the law.
 - v. As regards the argument that because of lack of merchant sales, selling price cannot be determined, the Authority recalls that even at the time of original investigations, the undercutting was calculated by comparing the landed value of O-Acid with the sale price, which is taken as the transfer price of O-Acid to Ofloxacin plant. The Authority considered this transfer price as the optimum price. Thus the Authority has considered the net selling price of the domestic industry on a notional basis after considering all due adjustments to ensure a fair and an undistorted comparison.

J. CONCLUSION

51. Having examined the contentions of the Domestic Industry and various interested parties and on the basis of the analysis as above, the Authority concludes that
- i. The anti-dumping duty imposed on imports of O- Acid, originating and exported from

China PR vide Customs Notification No. 6/2018-Customs (ADD) dated 12th March, 2018 was circumvented through exports of O-Ester from China PR in accordance with Rule 25 (3) of the AD Rules. The imports of O-Ester in India constitute circumvention of ADD earlier imposed on imports of O-Acid.

- ii. O- Ester has been exported at dumped prices during the POI.
- iii. O- Ester exports from China has undermined the existing AD measure on imports of O-Acid originating in or exported from China PR vide Customs Notification No. 6/2018-Customs (ADD) dated 12th March, 2018.

K. RECOMMENDATION

- 52. The Authority, keeping in view the aforesaid, recommends extension of the existing Anti-Dumping Duty on “O-Acid”, originating and exported from China PR and imposed vide Customs Notification No. 6/2018-Customs (ADD) dated 12th March, 2018 to import originating and exported from China PR of “Ofloxacin Ester” or “9, 10-Difluoro -3-Methyl-7-Oxo-2, 3-Dihydro-7H-Pyrido (1,2,3-De) 1, 4-Benzoxazine-6-Carboxylic Ester”, classified under HS subheading 29349900. The duty amount is to be arrived at on the same basis as notified in the said Customs Notification. The AD Duty will be applicable from the date of its notification by the Ministry of Finance and the validity of AD Duty would be co-terminus with the duty on O-Acid as levied through Custom Notification No. 6/2018-Customs (ADD) dated 12th March, 2018.
- 53. Landed value of imports for the purpose of this Notification shall be the assessable value as determined by the Customs under the Customs Act, 1962 (52 of 1962) and includes all duties of customs except duties under sections 3, 3A, 8B, 9 and 9A of the said Act.
- 54. An appeal against the order of the Central Government arising out of this final finding shall lie before the Customs, Excise and Service Tax Appellate Tribunal in accordance with the Customs Tariff Act.

(Sunil Kumar)

Additional Secretary & Designated Authority.