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F. No. 14/31/2016-DGAD  
Government of India  
Ministry of Commerce & Industry  
Department of Commerce  
(Directorate General of Anti Dumping & Allied Duties)  
4<sup>th</sup> Floor, Jeevan Tara Building, 5, Parliament Street, New Delhi 110001

Dated the 19<sup>th</sup> December, 2017

**Subject: Antidumping investigation concerning imports of O-Acid originating in or exported from China PR.**

F.No. 14/31/2016-DGAD: - Having regard to the Customs Tariff Act 1975 as amended from time to time (hereinafter referred as The Act) and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules thereof, as amended from time to time (hereinafter referred as The AD Rules);

**A. Background of the Case**

1. M/s. Aarti Drugs Ltd. (hereinafter referred to as the “applicant” or “domestic industry”) had filed an application before the Designated Authority (hereinafter also referred to as the Authority) in accordance with The Act, as amended from time to time The Anti-dumping Rules, for initiation of anti-dumping investigation and imposition of anti-dumping duty concerning imports of O-Acid originating in or exported from China PR.
2. Whereas, the Authority, on the basis of sufficient evidence submitted by the applicant, issued a Notification No. 14/31/2016-DGAD dated 21<sup>st</sup> September, 2016, published in the Gazette of India, initiating the subject investigations in accordance with the Rule 5 of the above Rule to determine existence, degree and effect of the alleged dumping of the subject goods, originating in or exported from China PR, and to recommend the amount of anti-dumping duty, which, if levied, would be adequate to remove the alleged injury to the domestic industry.
3. The Authority issued Preliminary Findings vide Notification No. 14/31/2016-DGAD dated 23.5.2017 recommending provisional anti-dumping duty in the present case, accordingly, Ministry of Finance issued a notification imposing provisional antidumping duty vide Customs Notification No. No.35/2017-Customs (ADD) dated 13.07.2017.

**B. PROCEDURE**

4. The procedure described herein below has been followed with regard to the subject investigation:

- i. The Authority notified the Embassy of the subject country in India about the receipt of the anti-dumping application before proceeding to initiate the investigations in accordance with sub-rule (5) of Rule 5 supra.
- ii. The Authority issued a notification dated 21<sup>st</sup> September, 2016 published in the Gazette of India Extraordinary, initiating anti-dumping investigation concerning imports of the subject goods.
- iii. The Embassy of China in India was informed about the initiation of the investigations in accordance with Rule 6(2) of the Rules with a request to advise the exporters/producers from China PR to respond to the questionnaire within prescribed time limit.
- iv. The Authority sent exporter's questionnaires to elicit relevant information to the following known producers/exporters in China PR in accordance with Rule 6(4) of the Rules:

SN	Name of Producer/ Exporter
1	Apeloa Kangyu Business Office
2	Zhejiang Jingxin Pharmaceutical Co., Ltd
3	Zhejiang East Pharmaceutical Ltd.
4	Yongning pharma
5	Jiangsu Guotai Int'l Group Huatai Imp. & Exp. Co Ltd
6	Zhejiang Medicines & Health Products Import & Export Co. Ltd
7	Zhejiang Chemicals Import & Ex
8	China Sinopharm International Corporation

- v. In response to the above notification, following exporters/ producers have responded or submitted exporter questionnaire responses.

SN	Name of Producer/ Exporter
1	Zhejiang Hengdian Apeloa Imp & Exp Co. Ltd
2	Jaingxi Chibang Pharmaceutical Co. Ltd
3	Jiangxi Dadi Pharmaceutical Limited Liability Co.
4	Zhejiang Xingyang Import & Export Co. Ltd
5	China Sinopharm International Corporation
6	Yancheng Xinanzhou Pharmaceutical Co, Ltd
7	Shanghai Changyu Chemical Technology Co. Ltd
8	Inner Mongolia Yuanhong Fine Chemical Co. Ltd
9	Dreamland Creation Inc.
10	Zhejiang Yuanhong Medical & Chemical Technology Co. Ltd
11	Zhejiang UeasyBusiness Service Co. Ltd
12	Zhejiang Medicines & Healthproducts Import & Export Co. Ltd
13	Zhejiang Chemicals Import & Export Co. Ltd

- vi. Market Economy Treatment (MET) questionnaire was also forwarded to the known producers/exporters in China PR and the Embassy of China PR in India with a request to

provide relevant information to the Authority within the prescribed time limit. None of the responding exporters have claimed MET.

- vii. The Authority sent Importer's Questionnaires to the following known importers/ users of subject goods in India calling for necessary information in accordance with Rule 6(4) of the Rules. However, no questionnaire response has been received from any importer of the subject goods:

SN	Name of Importers/Consumers
1	M/s. Cipla Limited
2	M/s. Macleods Pharmaceuticals Ltd
3	M/s. J.B.Chemicals & Pharmaceutical Ltd.
4	M/s. Aristo Pharmaceutical Pvt Ltd
5	M/s. Sun Pharmaceutical Ind. Limited
6	M/s. Medi Pharma Drug House
7	M/s. FDC Ltd
8	M/s. Medley Pharmaceuticals Ltd
9	M/s. Cadila Healthcare Ltd.
10	M/s. Merck (India) Ltd
11	M/s. Alkem Laboratories Ltd.

- viii. The China Chamber of Commerce for Import & Export of Medicines & Health Products Association have filed submissions. Submissions/Responses made by all the parties have been taken into account in the present determination.
- ix. 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.
- x. Further information was sought from the applicant and other interested parties to the extent deemed necessary. Verification of the data provided by the domestic industry and producers/exporters was conducted to the extent considered necessary for the purpose of the investigation.
- xi. Information provided by the interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claims. On being satisfied, the Authority has accepted the confidentiality claims, wherever warranted and such information has been considered 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 and the same were kept in the public file maintained by the Authority as per the Rules.
- xii. The Non-injurious Price has been worked out based on the cost of production and cost to make and sell the subject goods in India based on the information furnished by the domestic industry on the basis of Generally Accepted Accounting Principles (GAAP) so as to ascertain the injury margin and apply lesser duty rule followed by the drawback. Applicant started their trial production in June 2015 and full scale production from

- October 2015. Investigation was carried out for the period starting from July 2015 - June 2016 (POI). Injury analysis has been carried out on month to month basis.
- xiii. Request was made to the Directorate General of Commercial Intelligence and Statistics (DGCI&S) to arrange details of imports of subject goods for the past three years, including the POI. The Authority has relied upon import data procured from DGCI&S in the present investigation.
  - xiv. Subsequent to issuance of preliminary findings, the interested parties were asked to file their comments on preliminary findings.
  - xv. The Authority held an oral hearing on 31<sup>st</sup> July 2017 to provide an opportunity to the interested parties to present relevant information orally in accordance with Rule 6 (6), which was attended by the representatives of domestic industry and the opposing interested parties. The representatives of domestic industry and the interested parties who presented their views orally at the time of oral hearing were advised to file written submissions of the views expressed orally.
  - xvi. The last date for issue of Final finding was 20<sup>th</sup> September, 2017, however the same was extended for three months by Central Government in terms of Rule 17(1)(a) upto 20<sup>th</sup> December, 2017.
  - xvii. Due to change of the Designated Authority and in line with the judgment of the Hon'ble Supreme Court in the ATMA case, another oral hearing was conducted by the new Designated Authority on 25<sup>th</sup> October, 2017. The parties, who presented their views in the 2nd oral hearing, were requested to file written submissions of the views expressed orally, followed by rejoinder submissions.
  - xviii. A Disclosure Statement was issued on 30.11.2017 containing essential facts under consideration of the Designated Authority, giving time up to 07.12.2017 to furnish comments, if any, on Disclosure Statement. The Authority has considered post disclosure comments received from interested parties appropriately.
  - xix. The submissions made by the interested parties considered relevant by the Authority have been addressed in this Final Finding.
  - xx. \*\*\* in this Final Finding represents information furnished by an interested party on confidential basis, and so considered by the Authority under the Rules.
  - xxi. The exchange rate adopted by the Authority for the subject investigation is 1 US \$ = Rs. 66.84

## **C. PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE**

### **C.1 Views of the Domestic industry**

5. Following submissions have been made by the domestic industry with regard to product under consideration:
  - i. The product under consideration is O-acid or Ofloxacin Acid. It is an intermediate chemical for 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 dextrofloxacina.

- ii. Import data for the product under consideration shows that the product under consideration is commercially transacted by a number of different names, such as O Acid, Ofloxacin Acid (Ofloxacin Acid 98% Min), 9,10-Difluoro-2,3-Dihydro-3-Methyl-7-Oxo-7h-Pyrido[1,2,3-De]-1,4-Benzoxazine-6-Carboxylic Acid (Ofloxacin Q Acid), 9,10-Difluoro-2,3-Dihydro-3-Methyl-7-Oxo-7h-Pyrido(1,2,3-De)-1,4-Benzoxazine-6-Carboxylic Acid (Ofloxacin Acid), Ofloxacin Q Acid, 9,10-Difluoro-2,3-Dihydro-3-Methyl-7-Oxo-7h-Pyrido(1,2,3-De)-1,4-Benzoxazine-6-Carboxylic Acid (Ofloxacin Q Acid), Ofloxacin Acid, Ofloxacinacid, Q-Acid Of Ofloxacin, etc. Since these are various possible commercial names of the product under consideration, the scope of the product under consideration includes all these names.
- iii. Ofloxacin Acid is used in production of Ofloxacin. This is the sole use of Ofloxacin Acid. Ofloxacin is sold under a wide variety of brand names as well as generic drug equivalents, for oral and intravenous administration. Ofloxacin is also available for topical use, as eye drops and ear drops. It is on the WHO Model List of Essential Medicines, the most important medications needed in a basic health system
- iv. The scope of the product concerned be clarified to include Ofloxacin Ester and any other forms in which the product can be transacted. Inclusion of Ofloxacin Ester is clearly permissible for the reasons Ofloxacin Ester was never imported in to India before imposition of anti-dumping duty, provisional duties got imposed on 13<sup>th</sup> July, 2017, imports of Ofloxacin Ester started in July. Imports to the tune of 142 MT have come into the market in just 3 months, Ofloxacin Ester is nothing but Ofloxacin acid in different form and the sole purpose of importing Ofloxacin Ester is to avoid ADD that is payable on imports of O-Acid, there is no other usage of O Acid ester, and the cost of converting Ofloxacin Acid ester to O Acid is very insignificant.

### **C.2. Views of the opposing interested parties**

6. None of the interested parties have made submissions with regard to product under consideration.

### **C.3. Examination by the Authority**

7. 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 dextrofloxacin.
8. O- Acid is used in production of Ofloxacin, which is used to treat certain infections including bronchitis, pneumonia, and infections of the skin, bladder, urinary tract, reproductive organs, and prostate.
9. Product under consideration is classified under Chapter 29 of the Customs Tariff Act. The PUC is imported under various other HS codes namely 29419030, 29152990, 29163990,

29183090, 29189900, 29349900, 29411090, 29419090, 29420090. Customs classification in any case is indicative and not binding on the scope of the product under consideration in the present investigation.

10. The Authority notes from the information available on record that the product under consideration produced by the domestic industry is like article to the goods imported from the subject country. Product under consideration produced by the domestic industry and imported from the subject country are comparable in terms of physical & chemical characteristics, manufacturing process & technology, functions & uses, product specifications, pricing, distribution & marketing and tariff classification of the goods. The goods produced by the domestic industry and imported from the subject country are like articles in terms of the Rules. The two are technically and commercially substitutable. Thus, the Authority holds that goods produced by the applicant domestic industry are like article to the subject product under consideration imported from subject country in accordance with the AD Rules.
11. The domestic industry has demanded extension of antidumping duty to the imports of ester form of the product under consideration. The Authority however considers that it has not been established that inclusion of ester form of the product under consideration shall not imply extension of scope of the product under consideration. Further, inclusion of ester form of the product under consideration cannot be considered at such belated stage of the proceedings. In any case, the domestic industry can prefer an application under anti-circumvention law in case the domestic industry considers that the product is being imported to circumvent the antidumping duty earlier recommended on imports of ester form of product under consideration.

#### **D. SCOPE OF DOMESTIC INDUSTRY & STANDING**

##### **D.1. Views of the Domestic industry**

12. Following submissions have been made by the domestic industry with regard to scope and standing of the domestic industry:
  - i. The applicant is the sole producer of the product under consideration and has set up new production facility hitherto not produced in India.
  - ii. Applicant has been producing Ofloxacin for quite some time for which the applicant was importing Ofloxacin Acid from China.
  - iii. Petitioner was importing the product under consideration in the past for the reason that there was no production of the product under consideration in India. Petitioner made significant investment for production of the product under consideration and commenced commercial production. However, the Chinese producers intensified dumping as soon the petitioner commenced commercial production.
  - iv. The raw materials costs (at optimum consumption factors) involved in production of the product under consideration were higher than the price offered by the Chinese producer. It is thus a clear case where the Chinese producers have offered highly aggressive prices

and even below a level that is supported by the costs involved on account of raw materials. The petitioner was therefore forced to import some volumes of the product under consideration after commencement of commercial production

- v. The applicant has not exported the product under consideration. The applicant is not related to any importer or exporter of the product under consideration from the subject country. In any case, there is no such relationship that would attract possibilities of exclusion under Rule 2(b).
- vi. Considering the circumstances in which the applicant has imported the product under consideration, the Authority should consider the applicant as eligible domestic industry within the meaning of the Rules.
- vii. The petitioner is a new producer and thus it cannot be judged in the same way as established producers. The cases in which captive producers were excluded are different since in those cases the producers did not have any intention to sell in the domestic market. Significant investment had been made to create capacity which is comparable to the demand O-Acid in India.
- viii. There is no other known producer of product under consideration in India. Applicant is the new producer of the product under consideration in India with no past history of production in India. The petition satisfies the requirement of standing under the Rules. Further, the applicant constitutes domestic industry within the meaning of the Anti-Dumping Rules.
- ix. The petitioner has not bought any shares in any Chinese company in the recent period. The petitioner has a joint venture company in China. The company is however significant old and does not produce the product under consideration or Ofloxacin.
- x. The petitioner is not related to any importer in India or exporter from subject country
- xi. The petitioner has been importing the product under consideration for consumption in Ofloxacin. Petitioner has established capacities for captive purpose as well as for sale in merchant market. Petitioner had invested significant capital for production of the product concerned and had stopped importing the subject goods after commencement of their own production.
- xii. The Chinese producers reduced their prices to such an extent that the petitioner was forced to import the subject goods for the production of 'Ofloxacin', which too, is subject to separate anti-dumping investigations.
- xiii. The petitioner is a new producer and cannot be judged with the same benchmark as for an established producer. The petitioner is producing downstream product (Ofloxacin) which is also subject to antidumping investigation. Other cases where captive producers have been excluded are different as the producers therein did not even intend to sell goods in the domestic market. Imports have been made to be used in the downstream product.
- xiv. Rule 2(b) clearly provides discretion to the Authority and the submissions on this account are without basis.

## **D.2. Views of the opposing interested parties**

13. Following submissions have been made by the other interested parties with regard to standing and scope of domestic industry:
- i. Investigation has been initiated based on application by applicant which started manufacturing O-Acid in October 2015 and it is not clear whether the production is trial run or commercial production.
  - ii. Applicant cannot be treated as Domestic Industry for the reason that it is only a captive producer and not domestic seller. The applicant had produced \*\*\* MT of O-Acid and used the same for captive consumption and not sold in the domestic market, hence the production of O-Acid by the petitioner is just to meet the captive demand for production of Ofloxacin.
  - iii. The current installed capacity of O-Acid is sufficiently to meet the captive requirement of the applicant for manufacture of Ofloxacin. In a situation when the main target of the applicant is to meet the captive requirement, how they can be termed as domestic industry.
  - iv. The Applicant's investment is for captive consumption and not domestic sales. Captive producers have been excluded from the scope of DI under Final Findings No. 14/09/2015-DGAD dated 20th Oct, 2016, Anti-dumping investigation concerning imports of "Low Ash Metallurgical Coke" originating in or exported from Australia and China PR.
  - v. The present investigation is bad in law since the petitioner freely admits that it is also an importer of the subject goods from China PR. As per Rule 2(b) the producers that are also importers may be excluded from the purview of Domestic Industry. The petitioner has been importing the subject goods before and also after the commercial production of the subject goods by them, in fact the petitioner was not only importing goods prior to POI, but also during the POI and after the POI. Since Aarti Drugs Ltd. has imported the subject goods in order to get benefit of low priced imports, now Aarti Drugs Ltd. cannot claim that it has been adversely affected due to such low-priced imports.
  - vi. The petitioner has shares in a Chinese company and the fact has been suppressed from the Authority.
  - vii. The petitioner has claimed confidentiality with respect to production figures during the POI as well as petitioner's import from China PR it is not possible for the respondents to comment on the same. The petitioner appears to have shielded itself from any ill-effects of the alleged dumping, by benefiting from the purchase and sale of the alleged dumped goods. Thus there are sufficient grounds to dismiss the present petition.

## **D.3. Examination of the Authority**

14. The application has been filed by M/s. Aarti Drugs Ltd., Mumbai as a domestic producer of the product under consideration. It is undisputed that there is no other known producer of product under consideration in India and the applicant is a new producer of the product under consideration in India. Applicant has made fresh investment for production of the product under consideration. The capacity created by the domestic industry for production of product under consideration has been compared with the captive requirement of the applicant for production of Ofloxacin. It is noted that the applicant has installed capacity

of \*\*\* MT and its own requirement of the product is about \*\*\* MT. Further, the requirement for the product in the Country has been estimated as \*\*\* MT considering production of Ofloxacin as about \*\*\* MT. It is thus evident that the applicant has set up production capacities for O Acid far beyond its own requirement. Further, they have exhibited their clear intention to sell the goods to others in the market though without any success. Therefore it is clear that the production capacity set up by domestic industry are for their own use as well as for selling to other users in the market.

15. 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).
16. Regarding the question of eligibility of domestic Industry on account of imports, the Authority notes that the intent of the provisions laid down under Rule 2(b) of the Anti-Dumping Rules is not to debar a producer from the ambit of domestic industry merely because they have imported the subject goods from the subject country. The Authority finds it appropriate to consider the rationale and circumstances of such imports and accordingly examine whether or not the domestic producer should be treated as domestic industry in terms of AD Rules. It is important to assess the intent of such domestic producer and the situation under which such imports have been effected. As per the claim of the applicant, they were importing O-Acid before they commenced production of O-Acid for consumption in production of Ofloxacin. After commencement of their own production of O-Acid, applicant had stopped importing O-Acid. However, the exporters from China reduced the prices so significantly that the applicant was constrained to again import O-Acid from China to continue the production of downstream product (Ofloxacin) so as to remain competitive in that product, particularly when Ofloxacin also is being exported at dumped prices from China for which a separate investigation is going on. It was stated that applicant's operations for production of Ofloxacin would have become more unviable in case it had used all its own captive O-Acid for production of Ofloxacin. This is supported by the data on record that the DI reduced its import over a period of time and then completely stopped import of O-Acid after imposition of provisional duty. The Authority noted that the main focus of the applicant domestic industry is in production rather than imports and the allegedly dumped imports were not allowing the domestic industry to get

fully established in the market. Further, the imports made by the domestic industry have not been sold in the merchant market. Applicant has been constrained to import the product as a matter of self defence rather than a choice, hence, the applicant constitutes domestic industry within the meaning of the Anti-Dumping Rules.

17. After careful examination of the legal provisions and facts of the case, the Authority considers that the applicant is an eligible domestic producer in terms of Rule 2 (b). The production of the applicant accounts for entirety of Indian production of the like article. The Authority, therefore, determines that the applicant constitutes eligible domestic industry within the meaning of Rule 2 (b) of the Anti-Dumping Rules and the application satisfies the criteria of standing in terms of Rule 5 (3) of the Rules supra.

## **E. CONFIDENTIALITY**

### **E.1. Views of Domestic Industry**

18. Following submissions have been made by the domestic industry:
- i. The Chinese exporters have claimed excessive confidentiality. Even public domain information has been claimed confidential.
  - ii. The Chinese exporters have claimed information with regard to benefits and subsidies confidential, while publicly available information shows that the Chinese producers benefit from significant subsidies.
  - iii. Even when some information could be indexed, the Chinese producers have not provided the same.

### **E.2. Views of the opposing interested parties**

19. The submissions of various interested parties are summarized as follows:
- i. The non-confidential version of the Petition does not allow for a reasonable understanding of the allegations contained therein. The rights of defense of interested parties cannot be fully exercised, since significant data provided in the Petition is not properly indexed in the non-confidential version. The non-confidential version of the Petition fails to meet the standards laid down in Rule-7 of the Rules and Trade Notice No 1/2013 dated December 09, 2013 issued by the Designated Authority
  - ii. The Petitioner has claimed excessive confidentiality and filed an incomplete petition. “Format A, B, C1, C2, D and E”, and all these Formats have been claimed as confidential. A sufficient and suitable non confidential summary of Performa IVB, project reports relied by the petitioner, certificate of accuracy/ format F, estimations/comparisons and the basis of projections for optimization carried out by the petitioner must be provided.
  - iii. No data from the project reports has been made available, thus it is unclear whether the figures in the preliminary finding are derived from the project report or are a new construct altogether.

- iv. The petitioner did not provide any data pertaining to its economic parameters and Authority also redacted all data pertaining to capacity, production, capacity utilization, captive sales, closing stock as per actuals as well as projections. No confidentiality can be claimed with respect to the same.
- v. Conclusion and determination reached by the Authority such as constructed normal value and export prices have been kept confidential contrary to the specific jurisdiction declared by the Hon'ble Supreme Court in Reliance Industries v. Designated Authority.
- vi. The Authority has not kept DGCI&S data in public file and same has not been disclosed in the preliminary findings.

### **E.3. Examination by the Authority**

- 20. The various submissions made by the interested parties during the course of the present investigation with regard to confidentiality and considered relevant by the Authority were examined. 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 confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis was directed to provide sufficient non confidential version of the information filed on confidential basis. The Authority made available the non-confidential version of the evidences submitted by various interested parties in the form of public file.
- 21. The interested parties have raised arguments with regard to confidentiality of information. The Authority notes that the confidentiality claims of the interested parties are consistent with the practice being generally followed by the Authority. Wherever possible, the interested parties have provided non confidential version of the information. The domestic industry has provided indexed version of its various information contained in the confidential petition.
- 22. The CNV is confidential because it is calculated based on the NIP figures of the DI, the methodology for calculation of CNV has been mentioned in the relevant paras. The NEP has been calculated on the basis of data furnished by co-operative exporters and cannot be disclosed.
- 23. The import data relied upon by DI as per IBIS has been disclosed in their petition and has been kept in public file. As for DGCI&S data any interested party could have approached the Authority who would have issued authorization for procurement of detailed data from DGCI&S as per the terms & conditions. In this case none of the exporters approached the Authority for availing the data from DGCI&S.

## **F. MISCELLANEOUS ISSUES**

### **F.1.Views of Domestic Industry**

24. Following submissions have been made by the domestic industry:

- i. False and misleading statements have been made by the exporters in the questionnaire response regarding absence of any subsidies by the Chinese government since there are non-exhaustive list provided by the petitioner stating the programs that are being run by the Government of China wherein benefits are being provided to the exporters.
- ii. The current quantum of ADD recommended by the Designated Authority are low, inadequate to protect the domestic industry and therefore the petitioner requests the Designated Authority to kindly consider upward increase in the quantum of ADD.
- iii. The Authority has awarded two different duties in the name of two different channels in the preliminary findings for Jaingxi Chibang Pharmaceutical Co. Ltd; first when they exports the goods themselves and second when they export the goods through Zhejiang Chemicals Import & Export Co., Ltd. and Zhejiang Hengdian Apelo Imp. & Exp. Co., Ltd., which gives an undue, unintended leverage to the producer to attract a lower duty channel.

### **F.2.Views of the opposing interested parties**

25. The submissions of various interested parties are summarized as follows:

- i. The provisional duties cannot be imposed in cases of “Material Retardation” as per Section 9B (1)(b)(iii). It can be imposed only when dumping causes injury during POI and there is a further determination that duty is necessary to prevent injury during the investigation i.e. the requirement of preventing injury is in addition to and not in lieu of existing duty.
- ii. The Authority cannot continue with the investigation without first evolving and disclosing the methodology to examine material retardation to domestic industry. Incorporation of the US standard would enable the Authority to conduct a complete and efficient investigation.
- iii. Data in petition merely indicates normal start-up conditions. The injury alleged is caused due to operational inefficiencies and start up pangs, rather than any alleged dumping from China PR.
- iv. The Petitioner is a young establishment and its production and supply lines are not clearly established. Disrupting established lines, in the instance of such an essential commodity, would lead to adverse impacts on the user industry, i.e., health care industry. Even increasing the price of the product from the sole supplying country may hinder supply entirely and cause undue burden on the user industry and ultimately, on patients who are consumers of the product.
- v. The fact that Petitioner itself is unable to supply the subject goods in the market should not be an undue burden which must not be placed upon the importers of the subject goods. In fact, even the Petitioner is an importer of the subject goods. Moreover, price

factors and volume factors do not singularly dictate the levy of any anti-dumping measure.

- vi. No substantial evidence regarding material retardation has been provided by the applicant nor have been examined by the Authority in the Preliminary Findings. Petitioner has failed to establish the case of Material Retardation hence the present Anti-dumping investigation should be terminated with immediate effect.
- vii. There was a shutdown of the facilities of M/s Aarti Drugs Ltd due to order the Maharashtra Pollution Control Board (MPCB) since they are still embroiled in environmental issues and its facilities continue to face shut down. Thus the domestic supply is uncertain and unreliable.
- viii. There is no evidence presented to establish that the Exporters have in any way misled the Authority herein since no such subsidies have been received by the exporters. Moreover, the present investigation is not one for estimation of subsidies being granted, it is not possible to determinatively make any statements regarding the same for either the Petitioner or the Authority. The Respondents herein are not claiming MET, and therefore, even if any subsidies were received by the Respondents it would be irrelevant for the purposes of the present investigation.
- ix. There is nothing wrong in the Authority's determination of different duty margins for different trade channels since the Authority essentially identifies duties based on channel of trade, between producer and exporter, to India. Thus, any producer that receives a rate of duty in a duty table for direct exports, also automatically attracts the residual rate for using any other exporter. Moreover, claiming one unique duty for every producer and one unique duty for every exporter is completely at odds with the realities of trade as well as duty margin calculations since duty margins are determined by the Authority on the basis of the trade channel, including a producer and exporter. It would be unfair to penalize a producer for dumping on the part of its exporter and unfair to penalize an exporter for dumping on the part of its producer.
- x. The Authority is requested to consider recommendation of duties for a shorter, limited period of 18 months in order to enable the Domestic Industry to complete commercial production for some time and to provide further information allowing for a proper assessment of the Domestic Industry's position.

### **F.3. Examination by the Authority**

26. The miscellaneous submissions have been analysed as under:

- i. As regards the contention that provisional duties cannot be levied in material retardation case, it is noted that there is no bar under Custom tariff Act for imposition of provisional anti-dumping duty. "Injury" in terms of Section 9B (1)(b)(iii) includes all three forms of injury, i.e., material injury, threat of material injury and material retardation to the establishment of the domestic industry. Further, the case was also examined for existence of injury during the period of investigation which has been further analysed on month to month basis. As the industry was facing extreme situation regarding their existence, the Authority considered it necessary to impose provisional duty to prevent the injury being caused to the domestic industry. However, all the case facts have been

freshly examined and analysed for issuance of the final finding in the present investigation.

- ii. As regards the contention that investigation cannot be continued without first evolving and disclosing the methodology to examine material retardation, the Authority notes that there have been several cases on material retardation in past. Further, the initiation notification clearly laid down that the investigation concerns examination of material injury and material retardation to the establishment of the domestic industry and thus monthly performance of the domestic industry will be taken into consideration.
- iii. As regards the contention that domestic industry's production and supply line has not been established, the Authority notes that monthly analysis shows that the domestic industry could increase its production which has stabilized and capacity utilization of its plant can be further enhanced. However, the low priced imports have prevented the domestic industry from producing and selling the subject goods in the domestic market and thus demotivating from producing the goods. The decline in production and sales has consequently resulted into financial losses.
- iv. It is noted that there was no shut down of the plant during POI (July 15-June 16) however, as per the order of MPCB there was a shut down from 3.12.2016-3.02.2017 and 25.04.2017-18.05.2017, but they had sufficient inventories to keep the downstream plant running.
- v. On reexamination of the exporters' response and verification of the same, it is found that the producers are related or one unit is subsidiary of the other, in such a case the duties have been collapsed appropriately.

#### **G. MARKET ECONOMY TREATMENT, NORMAL VALUE, EXPORT PRICE AND DUMPING MARGIN.**

27. The Provisions pertaining to normal value are given in Section 9A(1)(c) of the Act and Annexure-I to AD Rules.

##### **G.1.Views of the Domestic industry**

28. Following submissions have been made by the domestic industry:

- i. China is a non-market economy country. None of the exporters satisfy each and every condition to qualify for grant of market economy status. The Chinese producers' cost and price cannot be relied upon for determination of normal value.
- ii. Normal Value cannot be determined on the basis of price or constructed value in a market economy third country for the reason that the relevant information is not publicly available. The applicant has not been able to procure such information from a producer in a market economy third country as the product is produced in China and India only. In fact, imports have also not been reported in the country from any other country
- iii. The normal value has been determined on the basis of cost of production in India; duly adjusted. Further, normated costs have been considered for determination of normal value and therefore abnormality of cost on account of fresh investment has been factored into while constructing normal value.

- iv. The applicant has relied upon transaction wise import data provided by IBIS for calculation of export price. The export prices being CIF value while the normal values being at ex-factory level, the export prices have been adjusted for, ocean freight, marine insurance, commission, inland freight expenses, port expenses, bank charges and VAT adjustment. The dumping margin from subject country is not only above *de minimis* levels, but also substantial.
- v. The questionnaire response by Yancheng Xinanzhou Pharmaceutical Co, Ltd and Jiangxi Dadi Pharmaceutical Limited Liability Co. should be rejected in absence of response from its related producer of O-Acid M/s Waigaoqiao Liantong Pharmaceutical Ltd.
- vi. Yancheng Xinanzhou Pharmaceutical Co, Ltd is a related producer to Jiangxi Dadi Pharmaceutical Limited Liability Co., 2,3,4,5 Tetraflourobenzoyl chloride a raw material was purchased from each other as well as other unrelated suppliers. Thus it is pertinent to ascertain that the purchase of raw material from its related party is at arms' length price.
- vii. It is seen in the preliminary findings that one exporter is exporting goods produced by multiple producers. Thus anti-dumping duty for common producers or exporters should collapse and there should be one unique duty for every producer and one unique duty for every exporter.
- viii. The Authority should determine month wise dumping margin and thereafter consider weighted average dumping margin in the Final findings.

## **G.2.Views of the opposing interested parties**

29. Following submissions have been made by domestic industry: :

- i. The application does not meet the evidentiary standard of Article 5.2 of the AD agreement and rule 5(2) of the AD rules since the petitioner has not provided any evidence of dumping. Export prices for 2014-15, 2015-16 and the POI are at the same level. This clearly shows that there is no “intensified dumping”.
- ii. Petition lacks information related to domestic prices in China PR. Even in the case of treatment of exporters based on China’s non-market economy status, it is still mandatory to examine the domestic prices in China PR.
- iii. The normal value has been constructed without any basis and no evidences have been disclosed in its construction of normal value. When constructing the normal value, the application should have contained relevant evidence about the constructed normal value. Instead, no details pertaining to the values or the basis of the same has been provided. The Petitioner has not mentioned any consumption norms, conversion costs or utilities costs, etc.
- iv. The ex-factory export price claimed by the applicant is on incorrect assumptions since most of the imports are made by end users directly. No commission is applicable in respect of export sales. Illegal adjustments have been made by the petitioner with respect to the export price which are unjustified and abnormally high. The non-confidential version of the application does not contain any reasonable basis or evidence about the deductions. adjustments and their basis cannot be confidential. Specifically,

the Petitioner has not even claimed confidentiality for the same. The petition does not provide a sufficient basis for the calculations and deprives the Respondents of the opportunity of full and proper rebuttal.

- v. Any comparison of the exporters' cost with that of the petitioner is unwarranted since the costing of the petitioner's product is vastly different from that of the imports from the subject country. Thus at least, the Authority must exclude the captive production and consumption of the petitioner from the ambit of DI production and domestic demand in order to ensure fair estimation and determination.
- vi. The petitioner claims to be a nascent industry while the respondents are well established players, thus the two are completely different entities with innumerable variations in every functional aspect. To equate the costs of two such entities is an absurd proposition without any substantial evidence or explanation.
- vii. The Authority Analysis of normal value in preliminary finding is deeply flawed. The Authority has adjusted the normal value for the subject goods exported by all the exporters in China by considering the optimum cost of production and after making additions for selling, general and administrative costs and providing profits at a redacted percentage. It failed to note the respondent's submissions regarding the import duties on inputs used for the manufacture of O-Acid that are inherent in the cost of production for the petitioner. The import duties on input goods must not be factored into cost of production while constructing the normal value and exporters consumption norm must only be considered for construction of the normal value. Moreover, The Authority must note that the customs duty applicable on the raw materials used for production of O-Acid is higher than the raw material on the imports of the finished goods.
- viii. M/s Inner Mongolia Yuanhong Fine Chemicals Co Ltd and M/s Zhejiang Yuanhong Medical and Chemical Technology Co. Ltd. are related producers of the subject goods and the same rate of duty must be determined for them.
- ix. Yancheng XinAnzhou and Jiangxi Dadi have duly reported their relation to the Authority. Purchase invoices from related suppliers as well as unrelated suppliers have been supplied to the Authority by Yancheng XinAnzhou and Jiangxi Dadi. The same have been shared with the Authority on a confidential basis. Sales/ purchases to both related and unrelated suppliers/purchasers is within the same price range. Therefore, the sales are clearly made at arm's length price. Moreover, as the Respondents are not claiming MET, the raw material prices of the Respondents are not relevant for the purposes of this investigation.
- x. No evidence has been adduced that Yancheng XinAnzhou and Jiangxi Dadi are related to another producer Taizhou Waigaoqiao Liantong Pharmaceutical Co. Ltd. who is also a manufacturer of O-Acid. The company has ceased operations in 2015 and its Company registration details for 2015 and 2016 read as "*operation status: shut down*".

### **G.3.Examination by the Authority**

30. At the stage of initiation, the Authority proceeded with the presumption that China PR is a non-market economy country. Upon initiation, the Authority advised the producers/exporters in China to respond to the notice of initiation and provide information

relevant to determination of their market economy status. The Authority sent copies of the MET questionnaire to all the known producers/ exporters for rebutting presumption of non-market economy in accordance with criteria laid down in Para 8(3) of Annexure-I to the Rules. The Authority also requested Government of China to advise the producers/exporters in China to provide the relevant information.

31. The Authority notes that the known Chinese producers/exporters and the Government of China have been adequately notified about the requirement of submission of information in the form and manner prescribed and adequate opportunity was also granted to them to make their submissions in this regard. A number of producers/exporters have responded to the present investigation. However, none of them claimed MET. Further, none of the interested parties have provided any other alternative basis, as defined in the Rules, on which normal value can be determined.
32. In view of the above position and in the absence of rebuttal of non-market economy claim by any Chinese exporting company, the Authority considers it appropriate to proceed with para-7 of Annexure-I to the Rules for determination of normal value.
33. The responses furnished by exporters have been examined which contains details regarding exports during 2013 to 2016 and POI. The submission made by exporters that export prices have remained at the same level for the entire injury period is not correct which is clear from their information submitted to the Authority in various appendices. Further, it is also clear as per DGCI&S data (transaction by transaction data obtained) that the export prices have gone up during the injury period as compared to base year and then have dropped during the POI.
34. Applicant contended that the product under consideration is not produced in many countries. In fact, there is very limited production of the product under consideration globally. Entirety of imports of the product under consideration in India over the injury period was from China. There is no publicly available information with regard to cost or price of the product in market economy third countries. Thus, in the absence of any reliable price and cost details for the subject goods in any market economy third country, the Authority has constructed normal value in China on the basis of cost of production in India; duly adjusted. The concern of exporter regarding duty on imported raw materials has also been kept into consideration while calculating CNV. The DI is procuring the raw material namely, 2,3,4,,5-Tetra Fluoro Benzoyl Chloride (TFBC), Ethyl 3-(N, N-Dimethylamino) Acrylate and Alaninol from the subject country on payment of applicable import duties. For the calculation of CNV; domestic price (i.e. landed value of these raw materials) has been taken as base and then landing charges, custom duty, custom cess, ocean freight and insurance are deducted to arrive at FOB price and the same has been taken as the raw material prices.
35. It is noted that the applicant is a new producer of the product in the Country and therefore its actual cost of production may be high due to low production. However, the Authority

has not considered its actual cost of production. The Authority has determined cost of production of the applicant, as it would be if it had been operating at a reasonable level of capacity utilization. Accordingly, the Authority has determined the Normal Value for the subject goods exported by all exporters in China by considering the optimum cost of production and after making additions for selling, general & administrative costs and providing profit at \*\*\*%.

### **Export price for all exporters in China**

36. Following producers/exporters from subject country have filed exporter questionnaire response and have provided information giving details of export price.

- i. Jaingxi Chibang Pharmaceutical Co. Ltd (Producer & Exporter)
- ii. Jiangxi Dadi Pharmaceutical Limited Liability Co. (Producer)
- iii. Yancheng Xinanzhou Pharmaceutical Co, Ltd (Producer- related to Jiangxi Dadi Pharmaceutical Limited Liability Co)
- iv. Zhejiang Yuanhong Medical & Chemical Technology Co. Ltd (Producer)
- v. Inner Mongolia Yuanhong Fine Chemical Co. Ltd (Producer – related to Zhejiang Yuanhong Medical & Chemical Technology Co. Ltd )
- vi. Zhejiang Hengdian Apelo Imp & Exp Co. Ltd (Exporter)
- vii. Zhejiang Chemicals Import & Export Co. Ltd(Exporter)
- viii. Zhejiang Xingyang Import & Export Co. Ltd(Exporter)
- ix. Zhejiang Ueasy Business Service Co. Ltd(Exporter)
- x. Zhejiang Medicines & Health Products Co., Ltd. (Exporter)
- xi. China Sinopharm International Corporation(Exporter)
- xii. Shanghai Changyu Chemical Technology Co. Ltd (Exporter)
- xiii. Dreamland Creation Inc. (trader of subject goods)

37. The responses have been appropriately examined as under for determination of dumping margin.

### **Jiangxi Chibang Pharmaceutical Co., Ltd. (Producer) along with traders M/s. Zhejiang Chemical Import & Export Co., Ltd., and Zhejiang Hengdian Apelo Imp. & Exp. Co., Ltd.**

38. From the response filed by M/s Jiangxi Chibang Pharmaceutical Co., Ltd. (Chibang), Authority notes that Chibang is a producer as well as exporter of the subject goods. During the POI, Chibang exported the subject goods directly and also through two unrelated trading companies namely M/s Zhejiang Chemicals Import & Export Co., Ltd. and M/s Zhejiang Hengdian Apelo Import & Export Co. Ltd.. Both exporter companies have filed responses separately. Adjustment towards inland freight, ocean freight, handling and customs charges, insurance, credit cost, and bank charges have been claimed by the producer and exporters and the same have been allowed by the Authority. The VAT is not charged on direct exports and from indirect exports on adjustment of 4% has been made. Accordingly, the export price has been determined for direct exports of M/s Jiangxi

Chibang and indirect exports through exporters at ex-factory level is shown in the Dumping Margin Table below.

**Jiangxi Dadi Pharmaceutical Limited Liability Company (Producer) and Yancheng XinAnzhou Pharmaceutical Co. Ltd., (Producer) along with exporters/traders Zhejiang Chemical Import & Export Co. Ltd., Zhejiang Ueasy Business Service Co. Ltd., Zhejiang Xingyang Import & Export Co.Ltd., Zhejiang Hengdian Apeloa Import & Export Co. Ltd.**

39. From the response filed by Jiangxi Dadi Pharmaceutical Limited Liability Company and Yancheng XinAnzhou Pharmaceutical Co., Ltd., the Authority notes that Yancheng XinAnzhou is a subsidiary of Jiangxi Dadi Pharmaceutical and both are the producers of the subject goods in China PR. During the POI, they have sold the subject goods to four unrelated trading companies for exports to India namely, M/s Zhejiang Chemicals Import & Export Co. Ltd., M/s Zhejiang Ueasy Business Service Co. Ltd., M/s Zhejiang Xingyang Import & Export Co. Ltd. and M/s Zhejiang Hengdian Apeloa Imp. & Exp. Co. Ltd. All the exporter companies have filed responses separately. Adjustment towards inland freight, ocean freight, handling and customs charges, insurance, credit cost, VAT adjustment and bank charges have been claimed by the producer and exporters and the same have been allowed by the Authority. Accordingly, the export price has been determined for Yancheng XinAnzhou at ex-factory level as shown in the Dumping Margin Table below.

**Zhejiang Yuanhong Medical & Chemical Technology Co. (Producer) and Inner Mongolia Yuanhong Fine Chemical Co., Ltd. (Producer) along with exporters/traders Dreamland Creation Inc., Ltd., Zhejiang Ueasy Business Service Co., Ltd., Shanghai Changyu Chemical Technology Co., Ltd., Zhejiang Medicines & Health Products Import & Export Co., Ltd., Zhejiang Chemical Import & Export Co., Ltd., Zhejiang Xingyang Import & Export Co., Ltd., and China Sinopharm International Corporation**

40. From the response filed by Inner Mongolia Yuanhong Fine Chemical Co. Ltd. and Zhejiang Yuanhong Medical & Chemical Technology Co. Ltd, the Authority notes that Inner Mongolia is a subsidiary of the Zhejiang Yuanhong, both are producers of subject goods and have exported the subject goods through several traders namely, Dreamland Creation Inc. Ltd., Zhejiang Ueasy Business Service Co. Ltd., Shanghai Changyu Chemical Technology Co. Ltd., Zhejiang Medicines & Health Products Import & Export Co. Ltd., Zhejiang Chemical Import & Export Co. Ltd., Zhejiang Xingyang Import & Export Co. Ltd., and China Sinopharm International Corporation. M/s Dreamland Creation Inc. have not exported goods to India but only supplied goods to other exporters. All exporting/trading companies have filed responses separately. Adjustment towards inland freight, ocean freight, handling and customs charges, insurance, credit cost, VAT adjustment and bank charges have been claimed by the producer and exporters and the same have been allowed by the Authority. Accordingly, the export price has been determined at ex-factory level as shown in the Dumping Margin Table below.

## Dumping Margin

41. Considering the normal value and export price as above, the dumping margin for all exporters of the subject goods from the subject country is determined as below:

DUMPING MARGIN TABLE

S.No	Producer	Exporter	CNV USD/Kg	NEP USD/Kg	Dumping Margin USD/Kg	Dumping Margin (%)	Dumping Margin Range
1	Jiangxi Chibang Pharmaceutical Co., Ltd	Jiangxi Chibang Pharmaceutical Co., Ltd	***	***	***	***	15-25
2	Jiangxi Chibang Pharmaceutical Co., Ltd	i.Zhejiang Chemicals Import & Export Co., Ltd. ii. Zhejiang Hengdian Apelo Imp.& Exp. Co., Ltd.	***	***	***	***	35-45
3	i.Jiangxi Dadi Pharmaceutical Limited Liability Company and/or ii.Yancheng XinAnzhou Pharmaceutical Co., Ltd.	i.Zhejiang Chemicals Import & Export Co., Ltd. ii.Zhejiang Hengdian Apelo Imp.& Exp. Co., Ltd. iii.Zhejiang Ueasy Business Service Co., Ltd. iv.Zhejiang Xinyang Import & Export Co., Ltd.	***	***	***	***	30-40
4	i.Zhejiang Yuanhong Medical & Chemical Technology Co., Ltd and/or ii. Inner Mongolia Yuanhong Fine Chemical Co., Ltd	i. Zhejiang Medicines & Health Products Co., Ltd ii.China Sinopharm International Corporation iii.Zhejiang Chemicals Import & Export Co., Ltd. iv.Zhejiang Xinyang Import	***	***	***	***	25-35

		& Export Co., Ltd. v. Shanghai Changyu Chemical Technology Co., Ltd					
5	Any other producer not mentioned at Sr. No. 1-4 above	Any other exporter or any other combination not mentioned above	***	***	***	***	50-60

## **H. METHODOLOGY FOR INJURY DETERMINATION AND EXAMINATION OF INJURY AND CAUSAL LINK**

### **H.1. Views of Domestic Industry**

42. Following submissions have been made by the domestic industry with regard to injury and causal link:
- i. Demand for the product under consideration has been positive so far, with increasing production of Ofloxacin.
  - ii. The petitioner commenced full scale commercial production of the subject goods from Oct 2015 and the goods so produced were consumed captively. Till Oct 2015, entire demand was being met by the Chinese imports. With the production of the product under consideration by the petitioner, market share of the imports declined and that of the petitioner increased. However, with the price reduction by the Chinese producers, the market share of imports increased once again and that of the domestic industry declined from 86% in Dec, 2015 to 41% in June, 2016.
  - iii. In spite of having a capacity to fulfil the demand, the Applicant is not able to utilize its capacity fully because the price of imported goods is much lesser than the price of domestically produced subject goods. In fact, the price of imported subject goods was even lower than the price of raw materials cost of the domestic industry.
  - iv. There was a steep decline in the import price, particularly after Oct., 2015. In fact, the decline is far more, if the import price is considered in US\$. The decline is very sharp from January, 2016 and the Chinese producers have reduced their prices drastically in order to regain their market resultantly the imports increased from Feb, 2016 onwards.
  - v. If the import price is compared with the cost of production on account of raw materials and utilities alone, it would be seen that the import prices have been even below the costs on account of raw materials and utilities.
  - vi. Applicant commenced commercial production in 2015-16. The applicant placed advertisements in leading trade journal (Chemical Weekly) informing that the applicant is offering the product under consideration in the market. The applicant however received no response from the consumers. When the material is available in the market at a price below the costs, it is quite natural that the consumers are not at all interested

- in buying the product from the Indian market. As a result, the domestic industry could utilize its production only for captive use.
- vii. The domestic industry, which commenced commercial production in Oct., 2015 had to thereafter suspended production in Jan 2016. Inventories in Dec., 2015 reached very high levels leading to suspension of production in Jan., 2016. Further, production even during Feb, 2016 remained low.
  - viii. Chinese producers are also resorting to dumping of downstream product namely Ofloxacin in the Indian market. Therefore, dumping of both the products in the Country is preventing the domestic industry from using its own production to the extent of its own requirements.
  - ix. Domestic industry achieved capacity utilisation of \*\*\*% in Dec., 2015 and thereafter \*\*\*% in March, 2016. The domestic industry is however unable to regularly keep this production level in view of dumping in the Country
  - x. Given dumping of Ofloxacin in the market, evidently the applicant would not have got better prices for Ofloxacin from the market and would have been forced to absorb the entire loss. While the applicant is already suffering financial losses in Ofloxacin, the applicant would have suffered higher and significant financial losses, had the applicant based its entire operations on its own production of O-Acid.
  - xi. Examination of projected profitability and actual profitability shows that the applicant suffered significant losses in the captive sales and would have suffered significant financial losses had the applicant sold the product at prices aligned to the current import prices.
  - xii. The applicant has made fresh investment in the manufacturing of O-Acid. However, the performance of the product is very adverse. Despite commencement of commercial production, the domestic industry is not able to produce and sell the product to the extent of its abilities because of dumping of the product under consideration in the Country.
  - xiii. The Petitioner was earlier importing entire volumes of O-Acid for consumption in the production of Ofloxacin. Petitioner has now started producing O-Acid. However, the Petitioner has to import O-Acid even after commencement of production of O-Acid due to dumping of O-Acid and Ofloxacin.
  - xiv. If the Petitioner would have produced the entire volume O-Acid required for manufacturing Ofloxacin in house the profitability would have been far more severe had the petitioner not used imported subject goods partially.
  - xv. The Authority can assess performance of the domestic industry to the extent of existence of domestic industry. The Petitioner has provided information for the relevant period. However, considering and appreciating that the relevant period is less than three years period, the Petitioner has undertaken monthly and then quarterly analysis to establish its case.
  - xvi. Growth of the domestic industry in terms of all parameters has remained poor. Being a new company, the domestic industry had expected much better growth in both volume and price parameters. Dumping of the product in the Country is however adversely affecting the growth of the domestic industry in the market.

- xvii. While the test of material injury or a threat of material injury can be applied to an existing domestic industry. In the case of domestic industry yet to be fully established, the test to be applied is that of material injury to the extent of existence and material retardation to the establishment of industry to the extent of targeted performance.
- xviii. In the instant case, the petitioner has commenced commercial production in Oct., 2015. Therefore, the Authority may consider (a) actual performance so far to establish effect of dumping, (b) potential situation in order to establish threat of material injury and (c) whether dumping of the product under consideration is materially retarding the establishment of the domestic industry in India.
- xix. Imports in absolute terms and in relative terms are at significantly high level during the POI.
- xx. Transfer price of the subject goods for captive consumption in production of Ofloxacin, is below the NIP of the Domestic Industry. This is resulting in undercutting of prices of the domestic industry and causing depressing effect of the prices in the domestic market.
- xxi. The imports from the subject country are undercutting the prices of the domestic industry and causing price depression.
- xxii. The Domestic Industry is not into exports and there is no trade restrictive practice thus the claimed injury is only on account of domestic operations. Moreover, the performance of the other products being produced and sold by the domestic industry is not the cause of injury since the information provided is only for the subject goods.
- xxiii. The Authority has recognized and differentiated the valuation of captive procurement between cost of production and market price. The term “at period of investigation rates” in annexure III has been explained by the Authority in the affidavit filed before the Delhi High Court and the Authority has also put a clarification on the website where the Authority had clearly stated that the captive inputs are considered for the purpose of NIP determination reflected in the audited books of account viz cost of production, market value etc. and if such record value such captive inputs at its cost of production, 22% return on capital employed is added. Further, if such captive input is valued at market price then nothing is added towards the investment made in captive plants.

## **H.2. Views of opposing interested parties**

43. Following submissions have been made by the other interested parties with regard to injury and causal link:
- i. It is clear from the petition that applicant has not sold any goods in the domestic market; they are themselves importing huge volumes. Since applicant has not sold product domestically, there is no question of selling it at low prices. No domestic sales means no sales realization thus conclusions with regard to consequent impact of the imports on domestic industry in terms of price undercutting, price suppression and depression, deterioration in respect of parameters such as profits, return on capital employed is baseless.
  - ii. There is no mention of either a non-injurious price or a calculation thereof to support the allegation of price underselling and injury. The elements to establish price injury

have not been established or clearly alleged by the Petitioner. Even the preliminary findings the Authority did not reveal the methodology for NIP since annexure III of the AD Rules lays down the procedure for construction of NIP by considering past three years' period and POI, since in the present case the petitioner had not been in existence for such a long time at the time of initiation, the Authority cannot consider the past three years. Thus it is crucial to reveal and elaborate on the procedure adopted in the present case to establish NIP of the petitioner. The Authority is duty bound to consider such evidentiary shortcoming while initiating the present investigation and failure to do so is a violation of Article 5.3 of the ADA.

- iii. No material retardation to the establishment of the domestic industry or causal link is established in the present case. There is no injury, as alleged, to the DI and their economic parameters appear to be improving, regardless of imports from the subject country.
- iv. Imports did not increase in relative terms. Clearly, since the Petitioner's sales increased from 0 MT to 126 MT in 2015-16 and therefrom to 220 MT in the POI, it is evident that the relative figures of growth of domestic production/sales clearly outshine the relative figures of growth of imports. Thus the imports are not impeding the growth of the domestic industry
- v. The Petitioner has claimed to be an embryonic industry with no history of production. Thus, the Authority has drawn conclusions of deterioration where no comparative figures exist.
- vi. While determining the cost of production of the Applicant, extra-ordinary costs must be excluded. In the present investigation, the domestic producer is a nascent industry. Therefore, considering their actual cost of production in the NIP calculation will provide skewed result.
- vii. The alleged injury is due to high costs for raw materials in India.
- viii. The petitioner prices are not reflective of average prices of raw material since the petitioner has not carried out production throughout the year and has procured raw material for only some select month. Thus It is important to disregard the petitioner's raw material prices and consider international prices for the raw materials.
- ix. The demand of subject goods in India during POI was 524 MT and Domestic Industry cannot cater to the prevailing demand in India hence imports from other countries have to take place and it is inevitable by all means in order to fulfill the demand.
- x. The commercial production of subject goods by the petitioner started only in the year of 2015-16, so they cannot claim for injury before that period, hence the claim made by petitioner seems unrealistic and should be rejected.
- xi. The transfer pricing by the applicant from O-Acid to Ofloxacin cannot be the basis for calculation of price undercutting as DGAD as a long-term practice never accepted transfer pricing for price undercutting determination. Moreover, in order to show injury in case of AD proceedings in respect of Ofloxacin, the petitioner has deliberately inflated the transfer price of O Acid.
- xii. The transfer price of O-Acid to Ofloxacin facility is based on Excise Valuation, thereby including all costs of production and a 10% profit margin. The DI cannot incur losses if it bases its valuation on excise valuation.

- xiii. Thus there is no base for comparison of the sale price in the domestic market and captive consumption.
- xiv. The applicant has made misleading statement about sales and sales policy, since the applicant does not have any domestic sales how can they have any such policy. Moreover, at one part of the petition it has been claimed that the company could not sell the subject goods in domestic market and on the contrary, it has been claimed that the company has made sales to big customers.
- xv. Domestic industry appears to be performing sufficiently well, given that the market has been historically import driven and shifting demand in a pharmaceutical market is difficult in any case. Moreover, there is no injury as per the petitioner's economic parameters.
- xvi. The Authority in the preliminary finding has disregarded the lowered volume of imports from China as a relevant factor, instead it appears to presume that the fact of domestic production automatically means that the same would substitute imports in the domestic market. The presumption is legally untenable.
- xvii. There is no volume effect arising from the volume of the imports from China. The imports reduced in absolute term from 583 MT in 2015-16 to 524 MT in the POI, a mere three months later. More over the imports from china reduced in relation to the production of the domestic industry as well as in relation to the Indian consumption. Domestic Industry in merely 8 months of commercial production has gained 48% of the domestic market.
- xviii. No examination can be undertaken on price effect as there is no reasonable "selling price" against which a comparison can be made for establishing either price undercutting or price suppression/depression. Moreover, the examination of price underselling is not a price effect examination but a computation of injury margin.
- xix. The injury assessments carried out in the preliminary finding is on the basis of captively consumed quantity of the subject goods and self-imports made by the domestic industry, such an approach leads to distortion of facts.
- xx. The monthly analysis of the profit, cash profit and PBIT figures, all figures remain positive throughout the POI. Thus, it is unclear how the Petitioner is claiming losses at all.
- xxi. The Authority must identify the captive consumption as well as the merchant sales, and consider the competition between these products and the imports under consideration.

### **H.3.Examination by the Authority**

- 44. The Authority has taken note of various submissions of the Domestic Industry and the opposing interested parties on injury to the domestic industry and has analyzed the same considering the facts available on record and applicable laws. The injury analysis made by the Authority hereunder ipso facto addresses the various submissions made by the interested parties.

45. As regards the impact of the dumped imports on the domestic industry. Para (iv) of Annexure-II of the AD 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.”*

46. For the examination of the impact of imports on the domestic industry in India, the Authority has considered such further indices having a bearing on the state of the industry as production, capacity utilization, sales quantum, stock, profitability, net sales realization, the magnitude and margin of dumping etc. in accordance with Annexure II(iv) of the Rules supra.

47. As already highlighted in the initiation notification, the domestic industry has alleged that dumping of PUC in India is materially retarding the establishment of the domestic industry. Since the domestic industry is a new industry and commenced production only in October, 2015, and is yet to be fully established the Authority has also undertaken examination of (a) actual performance to the extent of its existence and (b) material retardation to the domestic industry.

48. **Transfer Pricing of PUC and NIP:** As the domestic industry is also the producer and captive user of the raw material, the issue of transfer pricing while calculating non injurious price has been especially examined by the Authority. The Authority notes that investigations in respect of dumping of Ofloxacin and O-Acid are being conducted simultaneously. The Authority has determined NIP for the domestic industry in respect of both Ofloxacin and O-acid. The Authority has also carefully examined imports of O-acid by the petitioner and finds that the weighted average of landed price of import of O-acid by the petitioner is below the NIP of O-Acid determined by the Authority. Further, the Authority has compared the normated cost of production of O-Acid of the petitioner with the landed price of import of O-Acid by the petitioner. It is found that the landed price of import is below normated cost of production of the petitioner. Further, the examination of data indicate that the prices of O-acid have dropped more significantly during the April 15 to July 17 as compared to the raw material prices used for manufacture of O-acid during the same period, indicating an intention to export O-acid at dumped prices. The petitioner has resorted to imports even when it has got its own manufacturing facilities because of higher cost of production as compared with the landed price of import. Thus, dumped imports of O-Acid has forced the petitioner to import O-Acid for production of Ofloxacin.

## **Assessment of Demand**

49. The Authority has defined, for the purpose of the present investigation, demand or apparent consumption of the product in India as the sum of domestic sales of the applicant and imports from all sources. While there are no merchant sales by the applicant in the POI, the applicant has captively consumed the product and the same has been considered for assessment of consumption of the product in the Country. The demand so assessed is given in the table below:

Particulars	Unit	2013-14	2014-15	2015-16	POI (July 2015-June 2016)
Subject Country	MT	427	516	583	524
DI domestic Sales	MT	0	0	126	224
Other Indian Producers	MT	0	0	0	0
Demand/ consumption					
Including captive consumption	MT	427	516	709	748

50. The Authority notes that the demand for the product under consideration has increased over the injury period and a substantial jump in demand is noted during 2015-16.

### **A. Volume Effects of Dumped Imports**

#### **i. Import volumes and market share in imports**

51. With regard to the volume of the dumped imports, the Authority is required to consider whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in India. For the purpose of injury analysis, the Authority has relied on the transaction wise import data procured from DGCIS. The year wise and month wise import data from the subject country and other countries are given in the tables below

#### **Yearly Imports**

Particulars	UOM	2013-14	2014-15	2015-16	POI
China	MT	427	516	583	524
Other Countries	MT	0	0	0	0
Total	MT	427	516	583	524

52. Analysis of annual imports of the product under consideration from subject country shows that the imports have increased over the injury period but decreased during the POI on account of commencement of production of the subject goods by the domestic industry. There are no imports from any other country except from subject country.

53. The Authority has also analysed volume of imports and import price on monthly basis. The information submitted by applicant shows that there is decline in import price. The decline has been very sharp from January 2016 onwards. The domestic industry commenced full scale commercial production of the product under consideration in Oct., 2015 which led to the decline in imports. However, Chinese producers reduced their prices drastically in order to regain the market and imports increased from February, 2016 onwards.

**Monthly Imports and Import Price**

Month	Imports (MT)	Import Price (Rs/Kg)
Jul-15	96	2344
Aug-15	52	2300
Sep-15	85	2320
Oct-15	29	2404
Nov-15	22	2198
Dec-15	4	2237
Jan-16	16	2022
Feb-16	60	2057
Mar-16	39	2019
Apr-16	8	2045
May-16	66	2017
Jun-16	45	2077

**ii. Market share in Demand**

54. The market share including and excluding captive consumption is analyzed as under:

	UOM	2013-14	2014-15	2015-16	POI
Subject Country- China	MT	427	516	583	524
DI domestic Sales	MT	0	0	126	224
Other Indian Producers	MT	0	0	0	0
Demand including captive	MT	427	516	709	748
Demand excluding captive	MT	310	244	583	524
Market share of imports					
Including captive consumption	%	100%	100%	82%	70%
Excluding captive consumption	%	100%	100%	100%	100%

55. It is clear from the table above that entirety of imports are from China. Domestic industry has submitted that despite several attempts made by them to offer subject goods in the market by placing advertisements in chemical weekly and approaching various customers, the domestic industry have not been able to make any sale in the domestic market. Therefore, applicant could utilize its production only for captive use and hence had to curtail the production to that extent thereby the imports prevented the domestic industry from achieving its projected target of sales.

56. The market share of imports and domestic industry in total demand has been further analyzed on monthly basis as below:

### **Monthly analysis of Imports**

Period	China Market Share %	DI Market Share %
POI	70	30
Jul-15	100	0
Aug-15	100	0
Sep-15	98	2
Oct-15	77	23
Nov-15	50	50
Dec-15	14	86
Jan-16	40	60
Feb-16	91	9
Mar-16	48	52
Apr-16	26	74
May-16	65	35
Jun-16	59	41

57. As regards demand and market share including captive consumption is concerned, share of imports fell from 100% before commencement of commercial production by the domestic industry to 70% in the POI. It is however noted from the monthly analysis of the market share that the domestic industry was able to sharply increase its market share after commencement of the production. However, with the reduction in the prices by the Chinese producers, the market share of Chinese suppliers increased once again and that of domestic industry fell. Market share of domestic industry reached 86% in Dec., 2015. The same however declined thereafter to 41% in June, 2016.

#### **B. Price Effect of the Dumped imports on the Domestic Industry**

58. With regard to the effect of the dumped imports on prices, the Designated 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 products in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree. The impact on the prices of the domestic industry on account of the dumped imports is required to be seen by considering price undercutting, price underselling, price suppression and price depression, if any. The Authority considers, for the purpose cost of production, Net Sales Realization (NSR), the Non-injurious Price (NIP) of the Domestic industry and landed cost of imports from the subject country. However, in the instant case, where a new producer has commenced commercial production for a product which was not being produced before and where the Authority is investigating whether dumped imports are materially retarding establishment of the domestic industry in the market, the Authority notes that the effect of dumped imports on the domestic industry is required to be considered by considering the prices at which the product has been sold by the domestic industry or offered for sale, optimum cost of production, and NIP of the domestic industry and compare the same with the landed price of imports.

59. Price undercutting has been assessed by comparing the landed price of imports with the price at which the product has been sold by the domestic industry or offered for sale in India. It has been stated that the applicant has offered the product to the consumers at a price, which is below the cost of production, NIP and landed price of imports. Further, the applicant has transferred the subject goods for captive consumption in production of Ofloxacin. The landed price of imports is materially below the price at which the subject goods have been transferred for production in Ofloxacin. Further, such transfer price is below the NIP of the domestic industry. Subsequent to the commencement of commercial production, the Chinese producers have further reduced the prices significantly. It is thus seen that the landed price of imports remained significantly below the level of cost, selling price offered by the domestic industry and NIP of the domestic industry. The imports are thus undercutting the prices of the domestic industry in the market and are having significant depressing effect on the prices in the domestic market. It is further noted that the import price is even lower than the raw material cost of the domestic industry.
60. The undercutting has been 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 has considered the transfer price as the optimum price, which has been verified from the records as the cost of production of O-acid, i.e. NIP before return.

#### UNDERCUTTING

S. No.	Particulars	Quantity (MT)	Value (Rs. in Lakhs)	Unit price (Rs/Kg)	LV (Rs/Kg)	Transfer Price (Sale Price) (Rs/Kg)	Undercutting (In Rs/Kg)	Undercutting (%)	Undercutting (Range)
1	Total Imports	524	11,502	2,196	2,358	***	***	***	1-10
2	Imports by DI	***	***	***	2,504	***	***	***	(5)-5
3	Imports excluding DI	***	***	***	2,262	***	***	***	5-15

#### UNDERSELLING

S. No.	Particulars	Quantity (MT)	Value (Rs. in Lakhs)	Unit price (Rs/Kg)	Landed Value (Rs/Kg)	NIP (Rs/Kg)	Under selling (In Rs/Kg)	Under selling	Under selling (Range)
1	Total Imports	524	11,502	2,196	2,358	***	***	***	5-15
2	Imports by DI	***	***	***	2,504	***	***	***	1-10
3	Imports excluding DI	***	***	***	2,262	***	***	***	15-25

61. It is seen that there is positive and significant undercutting and underselling in total imports as well as excluding imports by the domestic industry. The Domestic Industry who is also an importer to the extent of 40% of total imports is importing at higher prices as compared to other importers/users leading to alleged dumping and undercutting and underselling.

**C. Economic parameters of the domestic industry**

**i. Production, Capacity Utilization, Sale Volume & Inventories**

62. Since the applicant is a new producer and commercial production started only in October 2015, the Authority has undertaken a monthly analysis of production, capacity utilisation and sales for the POI as shown in the table below and compared it with their projections/targeted performance:

Period	As per Actuals					As per projections		
	Capacity (MT)	Production (MT)	Capacity Utilization (%)	Sales (captive) (MT)	Closing Stock (MT)	Production (MT)	Capacity utilization %	Sales (including captive) (MT)
Jul-15	***	***	***	-	***	***	***	***
Aug-15	***	***	***	-	***	***	***	***
Sep-15	***	***	***	***	***	***	***	***
Oct-15	***	***	***	***	***	***	***	***
Nov-15	***	***	***	***	***	***	***	***
Dec-15	***	***	***	***	***	***	***	***
Jan-16	***	-	***	***	***	***	***	***
Feb-16	***	***	***	***	***	***	***	***
Mar-16	***	***	***	***	***	***	***	***
Apr-16	***	***	***	***	***	***	***	***
May-16	***	***	***	***	***	***	***	***
Jun-16	***	***	***	***	***	***	***	***
Q1	***	***	***	***	***	***	***	***
Q2	***	***	***	***	***	***	***	***
Q3	***	***	***	***	***	***	***	***
Q4	***	***	***	***	***	***	***	***
POI	***	***	***	***	***	***	***	***

63. It is seen that

- a. The domestic industry has capacity sufficient to cater to the demand for the product in the Country.
- b. Production started in August, 2015 and was commercialised in October, 2015. Thereafter, production increased till December, 2015. They stated that inventories increased till December, 2016 even with the captive consumption. Therefore, they reduced their production during subsequent months.

- c. The Authority noted that the producer is using the goods captively, hence they themselves are responsible for build up of inventory if any.
- d. The domestic industry had projected \*\*\*% of capacity utilization and \*\*\* MT of production and sales in its first year of operation. However the domestic industry's production, sales and capacity utilization have remained significantly below the projected levels and, in fact, could not even reach half of what was envisaged by the applicant.

ii. **Profit/Loss, Return of Investment**

64. The petitioner has given details of the cost of sales. The same have been compared with the sales realisation, which in this case is the transfer price of the subject goods to the other plant for manufacture of Ofloxacin. The profits earned and cash profit etc. by the domestic industry were as follows:

Month	Cost of Sales	Sales realisation (Transfer Price)	Profit	Cash profit	PBIT	Capital employed	ROI
	Rs/Kg	Rs/Kg	Rs/Kg	Rs/Kg	Rs/Kg	Rs/Kg	%
Jul-15	-	-	-	-	-	-	-
Aug-15	***	-	-	-	-	--	-
Sep-15	***	-	-	-	-	-	-
Oct-15	***	***	(***)	(***)	(***)	***	(***)
Nov-15	***	***	(***)	(***)	(***)	***	(***)
Dec-15	***	***	(***)	(***)	(***)	***	(***)
Jan-16	***	***		***	***	***	***
Feb-16	***	***	(***)	(***)	(***)	***	(***)
Mar-15	***	***	(***)	(***)	(***)	***	(***)
Apr-15	***	***	(***)	(***)	(***)	***	(***)
May-15	***	***	(***)	(***)	(***)	***	(***)
Jun-15	***	***	(***)	(***)	(***)	***	(***)
Q1	***	***		***			
Q2	***	***	(***)	(***)	(***)	***	(***)
Q3	***	***	(***)	(***)	(***)	***	(***)
Q4	***	***	(***)	(***)	(***)	***	(***)
POI	***	***	(***)	(***)	(***)	***	(***)

65. It is noted that

- a. The domestic industry intended to do merchant sales, however, they have only captively consumed the product. In the absence of merchant sales, profits, cash profits and ROI have been determined considering the transfer price.
- b. The domestic industry is suffering significant financial losses in captive transfers of the product. Consequently, the cash flow and ROI is also significantly negative.

c. The transfer price for captive consumption were kept at par with \_the cost of production of the subject goods. The Chinese producers reduced the prices for the product, which further led to significant financial losses, negative ROI and negative cash flows from the captive consumptions.

66. It is further noted that the domestic industry had projected profits in its very first year of operation i.e. 2016. However, the domestic industry is not even able to realize its cost of production in view of presence of significantly dumped subject goods in the market, and have huge losses.

iii. **Productivity, employment and wages**

67. From the monthly information given below, the Authority notes that Productivity in terms of productivity per day as well as per employee shows a declining trend towards the end of the Period of Investigation. Further wages paid have marginally increased

Month	No of employees	Production in MT	Productivity/ employee	Productivity/ Day	Wages
Jul,15	***	-			***
Aug,15	***	***	***	***	***
Sep,15	***	***	***	***	***
Oct,15	***	***	***	***	***
Nov,15	***	***	***	***	***
Dec,15	***	***	***	***	***
Jan,16	***	-	-	-	***
Feb,16	***	***	***	***	***
Mar,16	***	***	***	***	***
Apr,16	***	***	-	-	-
May,16	***	***	***	***	***
Jun,16	***	***	***	***	***
Q1	***	***	***	***	***
Q2	***	***	***	***	***
Q3	***	***	***	***	***
Q4	***	***	***	***	***
POI	***	***	***	***	***

iv. **Magnitude of Dumping**

68. The dumping margin in respect of the producers/exporters from the subject country is significant for the Period of Investigation.

v. **Growth**

69. The Authority notes that despite being a new producer in the Country with significant capacities and demand for the product in the Country, the domestic industry has negative growth in terms of all major economic parameters. The imports have prevented the domestic industry from establishing itself.

vi. **Ability to raise capital investment**

70. Despite fresh investment in India in a product having sufficient demand in the Country, the performance of the domestic industry is adverse. The negative profitability, return on investment along with abysmal market share indicates that the ability of the domestic industry to raise capital investments for the sector is seriously affected due to the dumped imports from the subject country.

vii. **Factors Affecting Domestic Prices**

71. Imports are at a price materially below the cost of production and NIP of the domestic industry. Since the only competition to the domestic industry is import and the domestic industry is new producer in the Country, it is the import price that is solely responsible for the prices offered by the domestic industry.

viii. **Overall assessment of Injury**

72. The examination of the imports of the subject goods and performance of domestic industry clearly shows that the import of the product under consideration are significant despite commencement of production by the domestic industry. The imports are at a price materially below cost of production and NIP of the domestic industry, thus resulting in significant undercutting. With regard to consequent impact of the dumped imports on the domestic industry, it is seen that the domestic industry could not sell its product in the domestic market despite repeated attempts in view of availability of significantly dumped imports in the market. Even when domestic industry started production and utilization of the new facilities created at modest level, production and capacity declined materially after reaching some levels. Decline in production and capacity utilisation was due to inability of the domestic industry to sell the product in the market. The consumers are unwilling to buy from the domestic industry due to availability of the dumped material from China. The domestic industry is suffering significant financial losses, cash losses and negative return on investments.

**I. OTHER KNOWN FACTORS & CAUSAL LINK**

73. Having examined the existence of material injury and retardation to the establishment of nascent injury, volume and price effects of dumped imports on the prices of the domestic industry, other indicative parameters listed under the Indian Rules and Agreement on Anti-Dumping have been examined by the Authority to see whether any other factor, other than the dumped imports could have contributed to injury to the domestic industry.

(a) **Volume and prices of imports from third countries**

74. It is noted that the imports from subject countries constitute 100% of imports into India thus there is no question of imports from other countries causing injury to the domestic industry.

**(b) Contraction in demand:**

75. The demand of the product under consideration has not declined. Thus, contraction in demand is not a possible reason for the injury suffered by the domestic industry. In fact, domestic industry is a new producer for a product hitherto not produced in the Country.

**(c) Changes in the pattern of consumption: -**

76. The pattern of consumption with regard to the product under consideration has not undergone material change and therefore could not have been the cause for the material injury suffered by the domestic industry.

**(d) Trade restrictive practices**

77. The Authority notes that there is no trade restrictive practice, which could have contributed to the injury to the domestic industry.

**(e) Developments in technology: -**

78. The Authority also notes that technology for production of the product has not undergone any change. Developments in technology are, therefore, not a factor of injury.

**(f) Export performance:**

79. The applicant has not exported the product under consideration. Hence, claimed injury to domestic industry cannot be attributed to exports.

**(g) Performance of other products being produced and sold by the domestic industry:**

80. Claimed injury to the domestic industry is on account of product under consideration.

**J. MAGNITUDE OF INJURY AND INJURY MARGIN**

81. The non-injurious price of the subject goods produced by the domestic industry as determined by the Authority in terms of Annexure III to the AD Rules has been compared with the landed value of the exports from the subject country for determination of injury margin during the POI and the injury margin so worked out is as under:

**INJURY MARGIN TABLE**

S.No	Producer	Exporter	NIP USD/Kg	Landed Price USD/Kg	Injury Margin USD/Kg	Injury Margin (%)	Injury Margin Range
1	Jiangxi Chibang Pharmaceutical Co., Ltd	Jiangxi Chibang Pharmaceutical Co., Ltd	***	***	***	***	10-20
2	Jiangxi Chibang Pharmaceutical Co., Ltd	Zhejiang Chemicals Import & Export Co., Ltd. Zhejiang Hengdian Apelo Imp.& Exp. Co., Ltd.	***	***	***	***	20-30
3	M/s. Jiangxi Dadi Pharma Ltd	Zhejiang Chemicals Import & Export Co., Ltd.	***	***	***	***	10-20

	Liability Company and/or M/s. Yancheng XinAnzhou Pharmaceutical Co., Ltd.	Zhejiang Hengdian Apelo Imp.& Exp. Co., Ltd. Zhejiang Ueasy Business Service Co., Ltd. Zhejiang Xingyang Import & Export Co., Ltd.					
4	M/s. Zhejiang Yuanhong Medical & Chemical Technology Co., Ltd and/or M/s. Inner Mongolia Yuanhong Fine Chemical Co., Ltd	Zhejiang Medicines & Health Products Co., Ltd China Sinopharm International Corporation Zhejiang Chemicals Import & Export Co., Ltd. Zhejiang Xingyang Import & Export Co., Ltd. Shanghai Changyu Chemical Technology Co., Ltd	***	***	***	***	5-15
5	Any other producer not mentioned at Sr. No. 1-4 above	Any other exporter or any other combination not mentioned above	***	***	***	***	25-35

82. The injury margin is positive and substantial against all the responding producers and exporters.

#### **K. POST DISCLOSURE COMMENTS**

83. The post disclosure submissions have been received from the interested parties. The issues raised therein have already 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:

#### **Views of the Domestic industry**

84. The Domestic Industry made the following submissions:

- i. The scope of PUC needs to be widened to include Ofloxacin Ester. Ofloxacin Ester is nothing but O-Acid in a different form. Prior to imposition of provisional duties Ofloxacin Ester was never imported into India. The imports began only to avoid the provisional duty. Cost of converting Ofloxacin Ester to O-Acid is insignificant and within a span of 3 months since imposition of duty, 142 MT of Ofloxacin Ester has been imported. The same could not have been foreseen and included in the description and/or the scope of the product in the original application.
- ii. There are no other producers of O-Acid in the country, apart from petitioner. The petitioner is not related to an importer in India or exporter from subject country, but had to import the PUC for production of Ofloxacin which is a downstream product

and is also subject to AD investigation. The Chinese are dumping O-Acid even below normated costs of O-Acid. The Authority has rightly considered the petitioner as eligible domestic producer.

- iii. Authority has awarded two different margins in view of two different channels for Jaingxi Chibang Pharmaceutical Co. Ltd. – first when they export the goods themselves and second when they export the goods through Zhejiang Chemicals Import & Export Co., Ltd. and Zhejiang Hengdian Apelo Imp. & Exp. Co., Ltd., which gives an undue, unintended, unwarranted leverage to the producer to attract a lower duty channel.
- iv. Imports in absolute terms and in relative terms are at significantly high level in the POI. Import prices are on a declining trend from July 2015 to June 2016. The decline has been very sharp from January 2016 onwards.
- v. Landed price of imports remained significantly below the level of cost, selling price offered by the domestic industry and NIP of the domestic industry.
- vi. With reduction in the prices by Chinese producers, the market share of imports increased once again and that of DI fell. The DI could not sell the product to outside consumers in the domestic market, as the Chinese producers reduced the prices further.
- vii. Cash flow and ROI is significantly negative. The Chinese producers reduced the prices, which further led to significant financial losses, negative ROI and negative cash flows from the captive sales. The negative profitability, return on investment along with abysmal market share indicates the ability of the DI to raise capital investments is affected due to the dumped imports.
- viii. The plant setup had enough capacity to cater to captive demand and merchant market. DI has not been able to sell goods in the merchant market despite several attempts. DI is precluded from utilising the production even for captive purposes because of dumping.
- ix. The petitioner did not sell goods in domestic market because of absence of orders. Focus of industry is equally on producing and selling in the merchant market. Repeated attempts were made to sell in the market by directly approaching the consumers through emails as also placing advertisements publicly. DI could not succeed in selling the product because of dumped goods in the market. Without any merchant sale of subject goods, the level of inventories kept on increasing, as captive requirements were far below the production and capacities.
- x. Because of low priced imports none of the consumers came forward to buy the goods. In absence of merchant sales, selling price to be considered is the one used for captive transfers. Valuation has been done of all captive sales of O-Acid consistent with the statutory requirements. DI has sold O-Acid to Ofloxacin plant and further since the valuation is consistent with the statutory regulations, profitability can be determined by considering such captive sales. The information relating to captive sales both in terms of volume and value are credible enough in as much as the company has paid excise duty on this basis, has valued its captive sales on this basis in the books of accounts.

- xi. Monthly analysis conducted by DA shows that the imports started declining with increase in production by DI. Import prices started declining further without decrease in costs. This forced DI to regulate production. Share of DI reached 86% in Dec., 2015. The same declined to 41% in June, 2016. A detailed project report was submitted. It has been shown that performance of the DI is below projected levels. The DI projected profits in first year of operation. However, DI has suffered huge losses. The optimized cost and NIP determined by DA clearly shows the effect of dumped imports on DI.
- xii. Fixed antidumping duty should be imposed. Customs port authorities lack a mechanism to ensure correctness of import price reported by an importer. Neither feasible nor practicable for the port authorities to verify the import price.
- xiii. Provisional duty is at present expressed in terms of US\$. Request the same to be continued in the final determination. Rupee has depreciated significantly. Depreciation of INR has impacted the costs of the raw materials, utilities and other costs.

#### **Views of the opposing interested parties**

85. The submissions of various interested parties are summarized as follows:

- i. Treatment of China as non-market economy after December, 2016, is in violation of China's accession protocol. The Accession Protocol expired on 11<sup>th</sup> Dec, 2016 and after that no country will be able to derogate from the standard rules on determination of normal values while dealing with imports from China.
- ii. Aarti Drugs Ltd. cannot be treated as DI as they are captive producers and not sellers in the merchant market. The DI Production began in Aug, 2015 with commercial production starting only in Oct, 2015. The petitioner has installed capacity only for captive consumption and the current installed capacity is not enough to meet even the captive requirement of the DI. In another case, the Authority noted that Neelachal Ispat Nigam Ltd., uses its substantial production for captive use to the tune of 82.28% as per the available information for the year 2014-15 while the remaining percentage is sold off in the merchant market. Therefore, it was considered as captive producer and excluded from the purview of the domestic industry. Admitted by DI that first advertisement was made in March 2016 and no serious efforts were made to sell the subject goods. It is not the intent of the DI but the actual facts that are important. With ADD the DI wants to kill downstream producers and create a monopoly.
- iii. The petitioner is not capable enough to cater to the domestic market and so the imports are inevitable. It can be seen that the demand was much more than what the petitioner produced and that too was used 100% only for captive consumption. It can be said that the petitioner is not competing with the product in domestic market. And since the petitioner is not competing directly there can be no injury or material retardation due to subject goods. The country's demand in the POI stood at about 748 MT. Thus the Authority's estimate of the country's requirement at 700 MT considering ofloxacin production as about 800 MT is completely incorrect. The data shows that the demand for O-Acid, year on year, has been growing by about 20%. Therefore, the Petitioner's

captive needs during the POI were at \*\*\* MT but, given the trend on demand are likely to have increased, by about 20% within the following one year period. Therefore, the presumption that the Petitioner has established capacities to meet “market demand” and not just for self-consumption is not borne by the facts of the present case. Even if the Petitioner has excess capacities and is likely to sell the subject goods in the domestic market, even then, it must be excluded on the grounds that it is predominantly a captive consumer.

- iv. Injury is not being caused to the DI as the goods are being transferred at a profit i.e; cost + 10%. The Petitioner has admitted that O-Acid produced by it was captively consumed by it in the production of Ofloxacin. Thus, there is necessity of looking at the transfer price of O-Acid to Ofloxacin unit. The transfer price of any entity may only be considered when the same can be established to be an arms-length transaction. The Authority must represent its analysis, if any, pertaining to the reliability of the transfer price used by the Authority
- v. The claims of return on capital employed have been inflated. NIP determined by DA is highly inflated and not based on real situations
- vi. The Authority’s simultaneous assessment of material injury and material retardation to the Petitioner is legally untenable. It is evident that the Act uses the word “or” to indicate disjunctive, separate legal bases. In such a case, the Authority cannot read “or” to mean “and”. Reference made to American jurisprudence, as laid down in the case of Laminated Woven Sacks from China. “As the Commission has previously recognized, under the statute, material retardation and material injury/threat thereof are mutually exclusive standards. In previous Commission determinations, if a domestic industry is established, then it no longer qualifies as a “nascent” industry, and instead, the analysis turns on the issues of material injury or threat thereof.
- vii. Petitioner, who continued to import goods well after beginning commercial production, has shielded itself from any ill-effects of the alleged dumping by benefitting from the purchase and sale of the allegedly dumped goods. It is now a fact established by the Authority that the Petitioner’s own imports were made at an injurious price to the Petitioner’s O-Acid business and therefore, any injury attributable to its own imports is self-inflicted and must be separated and distinguished by the Authority in its injury assessment of the Petitioner.
- viii. An assessment of trend of import volumes over the injury period in absolute terms when there are no domestic production leads to a situation of prejudice. The Respondents herein are prejudiced by virtue of data for past periods when the Petitioner was not producing any volume of goods and has only recently commissioned its facilities. In such a time, the Petitioner’s own imports also grew and so did the overall imports into India
- ix. Instead of considering merely the trend of values of imports from China PR, Authority should also consider the trends of the values of raw materials. Another column of data, consisting of the raw material prices, would be better representative of the trends of the import-prices under consideration.
- x. The price decline for imports has occurred in November, 2015. Such a price decline is independent of and unrelated to the Petitioner’s production activity or commercial

production. Thereafter, the prices marginally went up in December, 2015 and then declined January, 2016 onwards. However, somehow, the Authority has correlated that these price variations are attributable to concerted dumping on the part of the Chinese producers / exporters.

- xi. As regards positive undercutting, it is important for the Authority to note that a majority- almost 70% or more of the imports of the subject goods into India are made by the Petitioner itself. It is also important to note that as the singular, largest consumer of O-Acid in India, it is the Petitioner itself that dictates the prices of such imports.
- xii. The Authority's observations that the "import price is even lower than the raw material cost of the domestic industry" is also inappropriate. The raw materials are imported at high duties by the Petitioner and therefore, the costs of its raw materials under consideration are, themselves, rather high.
- xiii. The Authority has redacted all data pertaining to the Petitioner's capacity, production, capacity utilization, captive sales, closing stock as per actuals as well as projections. No confidentiality can be claimed with respect to the same. The Authority must provide the data pertaining to these factors of the Petitioner. At the least, indexed data pertaining to the same should have been supplied to the Respondents herein.
- xiv. A majority of the subject imports are made by the Petitioner themselves. Therefore, the Petitioner's resort to importation has self-inflicted the adverse effects on the Petitioner's production, sales and capacity utilization. Throughout the monthly analysis of the profit, cash profit and PBIT figures, all figures remain positive throughout the POI. Thus, it is unclear how the Petitioner is determined to be in "financial losses" by the Authority.
- xv. At paragraph 64, of the Disclosure it is stated that the Petitioner is suffering "significant financial losses in captive transfers of the product". Thereafter, the Authority has also made it clear that the transfer pricing of the Petitioner was based on cost of production. Therefore, when the Authority has relied on the costs of production of O-Acid, then there cannot be a claim of financial losses. Even where no profits are being made, there would not be any financial loss situation owing to the fact that the Petitioner has priced its transfer of raw material O-Acid to its Ofloxacin unit on the basis of costs of production of the same.
- xvi. The normal value constructed for the Respondents must be adjusted to exclude any import duties chargeable to the Petitioner. This is because the normal value in China PR would not include any such duty component.
- xvii. A benchmark price based duty which would ensure protection for the domestic industry without compromising the rights of the importers / users may be considered in the present case
- xviii. Petitioner has been in commercial production for merely 9 months of the selected period of investigation, meaning thereby that the Authority's determination is based on 9 months of the Petitioner's performance only. In the given circumstances, the Authority may recommend, if at all, the imposition of duties for a period less than five years.

### **J.3.Examination by the Authority**

86. It is noted that the issues raised at post disclosure stage have already been examined by the Authority in above relevant paragraphs, however for the sake of the clarity of the submissions they are addressed as below:
- i. As regards the extension of scope of PUC, the Authority reiterates that inclusion of ester form of O-Acid cannot be considered under the present investigation at this stage of the proceedings. In case the domestic industry considers that the product is being imported in circumvention of the antidumping duty recommended on imports of O-Acid, it is free to file a separate application for investigation under anti-circumvention law.
  - ii. As regards duty imposition against the exporter for two different channels of exports to India, the Authority notes that a detailed verification of documents concerning Net ex-factory export Price and Landed Value was undertaken and it is found that the dumping margin and injury margin is different when the subject goods are exported through two different channels. Therefore, the Authority considers it appropriate to indicate different duty for the two channels.
  - iii. As regards the eligibility of petitioner as Domestic Industry, the Authority has already determined the same in para 16 & 17 of the present finding. The Authority has examined the issue of imports made by the petitioner and the issue of captive consumption in details after the detailed examination and due consideration of facts/data/documents considered relevant by the Authority. The Authority holds them eligible as Domestic Industry in terms of Rule 2(b) of the Rules.
  - iv. As regards the capacity of DI to cater to the domestic market demand, the Authority notes that the detailed examination has been done by the Authority in para 63 of the finding where after the analysis the Authority determined that the domestic industry has capacity sufficient to cater to the demand for the product in the Country. Therefore, it is clear that the production capacity set up by domestic industry are for their own use as well as for selling to other users in the market.
  - v. As regards the transfer price, the Authority notes that after the detailed analysis the Authority has determined the transfer price as detailed in para 48 of the finding where the Authority has determined NIP for the domestic industry after considering all the facts and data available in respect of both Ofloxacin and O-acid. Further, the Authority has compared the normatted cost of production of O-Acid of the petitioner with the landed price of import of O-Acid by the petitioner and found that the landed price of import is below the normatted cost of production of the petitioner.
  - vi. As regards the status of non market economy to China, the Authority notes that the initiation notification and Period of investigation was prior to the date of accession protocol. Further, the details as given by exporter were examined in the light of relevant provisions and a decision was taken by the Authority as mentioned in the para 30 - 32 above.
  - vii. The Authority notes that the initiation notification clearly laid down that the investigation is for a petitioner who is a new industry. The Authority examined the material injury during the period of 9 months of POI for which

production/costing/financial data was available for the petitioner. Further, the Authority examined the material injury on the basis of monthly performance of the domestic industry.

- viii. As regards the normal value, the Authority notes that the normal value has been constructed excluding the import duty as already mentioned in para 34 of the findings.
- ix. As regards the self-inflicted injury to the Domestic Industry by alleged dumped imports, the Authority notes that the imports made by the domestic industry have not been sold in the merchant market. Applicant has been constrained to import the product as a matter of self defense rather than a choice.
- x. As regards the claims of confidentiality, the Authority notes that the confidentiality claims of the interested parties are consistent with the practice being generally followed by the Authority. Wherever possible, the interested parties have provided non confidential version of the information. The domestic industry has provided indexed version of its various information contained in the confidential petition.
- xi. As regards the import price, the Authority notes that the analysis of volume of imports and import price has been done on monthly basis. The information submitted by applicant shows that there is decline in import price. The decline has been very sharp from January 2016 onwards. The landed price of imports remained significantly below the level of cost, selling price offered by the domestic industry and NIP of the domestic industry. The imports are thus undercutting the prices of the domestic industry in the market and are having significant depressing effect on the prices in the domestic market. It is further noted that the import price is even lower than the raw material cost of the domestic industry.
- xii. As regards the the monthly analysis of the profit, cash profit and PBIT figures, the Authority notes that the domestic industry had projected profits in its very first year of operation i.e. 2016. However, the domestic industry is not even able to realize its cost of production in view of presence of significantly dumped subject goods in the market, and have huge losses.
- xiii. As the Domestic Industry is a new industry for production of O-acid and the costing/production data of only 9 months of the selected period of investigation is available, the Authority has decided to impose a duty for three years only so that the impact of anti dumping duties on the health of the Domestic Industry and the response of the users can be established in this period. Also a complete set of data/information will be available by the time the case is ready for review, if Domestic Industry so desires at the relevant point of time.
- xiv. As regards the determination of NIP, the Authority notes that it has been determined by adopting the verified information/data relating to the cost of production for the period of investigation in respect of the Domestic Industry. The NIP for the Domestic Industry has been determined in terms of the principles outlined in Annexure III to the Anti-Dumping Rules

## **L. CONCLUSIONS**

87. 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 concludes that:
- i. The product under consideration has been exported to India from the subject country below its normal value, resulting in dumping.
  - ii. The Domestic Industry has suffered material injury due to dumping of the product under consideration from the subject country.
  - iii. The material injury has been caused by the dumped imports from the subject country.

## **M. INDIAN INDUSTRY'S INTEREST & OTHER ISSUES:**

88. 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. It is recognized that the imposition of anti-dumping duties might affect the price levels of the downstream products 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 antidumping 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. Imposition of anti-dumping measures would not restrict imports from the subject country in any way, and therefore, would not affect the availability of the product to the consumers

## **N. RECOMMENDATIONS**

89. 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 links. Having initiated and conducted the investigation into dumping, injury and the causal link thereof in terms of the AD Rules and having established positive dumping margins as well as material injury to the Domestic Industry caused by such dumped imports, the Authority is of the view that imposition of antidumping duty is required to offset dumping and injury. Therefore, the Authority considers it necessary to recommend imposition of definitive anti-dumping duty on imports of subject goods from the subject country for 3 years in the form and manner described hereunder.
90. Having regard to the lesser duty rule followed by the Authority, the Authority recommends imposition of Definitive 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, definitive antidumping duty equal to the amount indicated in Col 8 of the table below is recommended to be imposed for 3 years from the date of provisional anti-dumping duty on the imports of the subject goods, originating in or exported from China PR as notified vide Customs Notification No. 35/2017-Customs (ADD) dated 13.7.2017.

### Duty Table

SN	Sub Heading or Tariff Item*	Description of Goods	Country of origin	Country of Export	Producer	Exporter	Duty Amount	Unit of Measure	Currency
1	2	3	4	5	6	7	8	9	10
1.	29419030 29152990 29163990 29183090 29189900 29349900 29411090 29419090 29420090	O-Acid or Ofloxacin Acid	China PR	China PR	Jiangxi Chibang Pharmaceutical Co., Ltd	Jiangxi Chibang Pharmaceutical Co., Ltd	4.91	Kg	US\$
2.		O-Acid or Ofloxacin Acid	China PR	China PR	Jiangxi Chibang Pharmaceutical Co., Ltd	i.Zhejiang Chemicals Import & Export Co., Ltd. ii. Zhejiang Hengdian Apelo Imp.& Exp. Co., Ltd.	7.50	Kg	US\$
3.		O-Acid or Ofloxacin Acid	China PR	China PR	i.Jiangxi Dadi Pharmaceutical Limited Liability Company and/or ii.Yancheng XinAnzhou Pharmaceutical Co., Ltd.	i.Zhejiang Chemicals Import & Export Co., Ltd. ii.Zhejiang Hengdian Apelo Imp.& Exp. Co., Ltd. iii.Zhejiang Ueasy Business Service Co., Ltd. iv.Zhejiang Xingyang Import & Export Co., Ltd.	4.90	Kg	US\$
4.		O-Acid or Ofloxacin Acid	China PR	China PR	i.Zhejiang Yuanhong Medical & Chemical Technology Co., Ltd and/or ii. Inner Mongolia Yuanhong Fine Chemical Co., Ltd	i. Zhejiang Medicines & Health Products Co., Ltd ii.China Sinopharm International Corporation iii.Zhejiang Chemicals Import & Export Co., Ltd. iv.Zhejiang Xingyang Import & Export Co., Ltd. v. Shanghai Changyu Chemical Technology Co., Ltd	4.16	Kg	US\$
5.		O-Acid or Ofloxacin Acid	China PR	China PR	Any combination other than mentioned in Sl No-1 to 4 above		8.55	Kg	US\$

6.		O-Acid or Ofloxacin Acid	China PR	Any country other than China PR	Any	Any	8.55	Kg	US\$
7.		O-Acid or Ofloxacin Acid	Any country other than China PR	China PR	Any	Any	8.55	Kg	US\$

\* Custom classification is only indicative and the determination of the duty shall be made as per the description of PUC

91. The landed value of imports for this purpose shall be the assessable value as determined by the customs under Customs Tariff Act, 1962 and applicable level of custom duties except duties levied under Section 3, 3A, 8B, 9, 9A of the Customs Tariff Act, 1975.

92. 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**