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F. No. 14/06/2016-DGAD
Government of India
Ministry of Commerce & Industry
Department of Commerce
(Directorate General of Anti Dumping & Allied Duties)
4th Floor, Jeevan Tara Building, 5, Parliament Street, New Delhi 110001

Dated the 22nd December, 2017

Subject: Anti-dumping duty investigation on the imports of Ofloxacin originating in or exported from China PR.

A. BACKGROUND OF THE CASE

1. No. 14/06/2016-DGAD– M/s Aarti Drugs Ltd. (hereinafter referred to as ‘petitioner’) had filed an application (also referred to as petition) before the Designated Authority (hereinafter referred to as the Authority) in accordance with the Customs Tariff Act, 1975 as amended from time to time (hereinafter referred to as the Act) and Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped articles and for Determination of injury) Rules, 1995 as amended from time to time (hereinafter referred to as the AD Rules) for initiation of anti-dumping investigation concerning imports of “Ofloxacin” (hereinafter referred to as subject goods or product under consideration) originating in or exported from China PR (hereinafter referred to as the subject country).
2. Whereas, the Authority found that sufficient prima facie evidence of dumping of the subject goods originating in or exported from the subject country, ‘injury’ to the domestic industry and causal link between the dumping and ‘injury’ exists justifying initiation of an anti-dumping investigation and Authority initiated an investigation into the alleged dumping, and consequent injury to the domestic industry in terms of Rule 5 of the AD Rules, to determine the existence, degree and effect of the alleged dumping and, if so, to recommend the amount of antidumping duty, which if levied would be adequate to remove the ‘injury’ to the domestic industry.

B. GENERAL PROCEDURE

3. Procedure described below has been followed with regard to this investigation.
 - i. The Authority notified the Embassy of China 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. And whereas, the Authority on the basis of sufficient evidence submitted by the applicant to justify initiation of Anti-dumping duty investigation issued an Initiation Notification No. 14/06/2016-DGAD dated 4th October, 2016.

- iii. The Authority sent a copy of the initiation notification to the embassy of the subject country in India, known producers/exporters from the subject country, known importers/users in India, other Indian producers and the domestic industry as per the addresses made available by the applicants and requested them to make their views known in writing within 40 days of the initiation notification.
- iv. The Authority provided a copy of the non-confidential version of the application to the known producers/exporters and to the Embassy of China in India in accordance with Rule 6(3) of the Rules supra.
- v. The Embassy of China was also requested to advise the Chinese exporters/producers to respond to the questionnaire within the prescribed time limit. A copy of the letter and questionnaire sent to the producers/exporters was also sent to them along with the names and addresses of the known producers/exporters from China.
- vi. The Authority sent Exporter's Questionnaire and Market Economy Questionnaire to elicit relevant information to the following known producers/exporters in accordance with Rule 6(4) of the Rules:
 - a. Zhejiang Jingxin Pharmaceutical Co., Ltd.
 - b. Zhejiang Apeloa Kangyu Pharmaceutical Co., Ltd.
 - c. Zhejiang East-Asia Pharmaceutical Co. Ltd
 - d. Zhejiang Yongning Pharmaceutical Co.,Ltd.
 - e. JIANGSU GUOTAI INT'L GROUP HUATAI IMP.& EXP. CO LTD.
 - f. Zhejiang Medicines & Health Products Import & Export Co. Ltd.
 - g. Zhejiang Chemicals Import & Export Corporation.
 - h. China Sinopharm International Corporation
- vii. In response to the above, the following exporters/producers have responded or submitted questionnaire responses:-
 - a. Zhejiang East-Asia Pharmaceutical Co. Ltd
 - b. Zhejiang Medicines & Health Products Import & Export Co. Ltd
 - c. Zhejiang Apeloa Kangyu Pharmaceutical Co., Ltd.
- viii. None of the responding exporters have claimed market economy treatment. 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. 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:
 - a. Cipla Limited
 - b. Macleods Pharmaceuticals Ltd
 - c. J.B.Chemicals & Pharmaceutical Ltd.
 - d. Aristo Pharmaceutical Pvt Ltd
 - e. Sun Pharmaceutical Ind. Limited.
 - f. Medl Pharma Drug House.
 - g. FDC Ltd

- h. Medley Phannaceuticals Ltd
- i. Merck {India) Ltd.
- j. Cadila Healthcare Ltd.
- k. Alkem Laboratories Ltd.

- x. None of the importers have filed submissions or response to the Importer's questionnaire.
- xi. The Authority made available non-confidential version of the evidence presented by various interested parties in the form of a public file kept open for inspection by the interested parties.
- xii. The Authority sought information from Directorate General of Commercial Intelligence and Statistics (DGCI&S) for transaction-wise details of imports of subject goods for the past three years, and the period of investigations. The Authority has, relied upon the DGCI&S data for computation of the volume of imports and required analysis after due examination of the transactions.
- xiii. The Non-injurious Price (NIP) based on the optimum cost of production and cost to make & sell the subject goods in India based on the information furnished by the domestic industry on the basis of Generally Accepted Accounting Principles (GAAP) and Annexure III to the Anti-dumping Rules has been worked out so as to ascertain whether Anti-Dumping duty lower than the dumping margin would be sufficient to remove injury to the Domestic Industry.
- xiv. The Authority held an oral hearing on 31st 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.
- xv. The last date for issue of Final finding was 3rd October, 2017, however the same was extended for three months by Central Government in terms of Rule 17(1)(a) upto 3rd January, 2018.
- xvi. 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 25th 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.
- xvii. On the spot verification of the data of the domestic industry was carried out to the extent considered necessary. Only such verified information with necessary rectification, wherever applicable, has been relied upon for the purpose of this investigation.
- xviii. The Period of Investigation (POI) for the purpose of the present investigation is July, 2015- June, 2016 (12 months). The examination in the context of injury analysis covers the periods 2013-2014, 2014-2015, 2015-2016, and the POI.
- xix. The submissions made by the interested parties during the course of this investigation, wherever found relevant, have been duly addressed by the Authority.

- xx. Information provided by the interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has accepted the confidentiality claims wherever warranted and such information has been considered as confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non confidential version of the information filed on confidential basis.
- xxi. Wherever an interested party has refused access to, or has otherwise not provided necessary information during the course of the present investigation, or has significantly impeded the investigation, the Authority has considered such parties as non-cooperative and recorded the findings on the basis of the facts available.
- xxii. A Disclosure Statement was issued on 1.12.2017 containing essential facts under consideration of the Designated Authority, giving time up to 08.12.2017 to furnish comments, if any, on Disclosure Statement. The Authority has considered post disclosure comments received from interested parties appropriately.
- xxiii. ‘***’ in this Final Finding represent information furnished by an interested party on confidential basis and so considered by the Authority under the Rules.
- xxiv. The exchange rate for the POI has been taken by the Authority as Rs.66.84 = 1 US\$.

C. PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE

Views of the Domestic industry

- 4. The views of the domestic industry are as follows:
 - i. The product involved in the present investigation is Ofloxacin in all its form. Ofloxacin 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% Ofloxacin (the biologically active component) and 50% of its “mirror image” or enantiomer dextrOfloxacin.
 - ii. Ofloxacin is used to treat certain infections including bronchitis, pneumonia, and infections of the skin, bladder, urinary tract, reproductive organs, and prostate (a male reproductive gland). Ofloxacin is in a class of antibiotics called fluoroquinolones. It works by killing bacteria that cause infections.
 - iii. The subject good being a pharmaceutical product falls under Chapter 30 of the Act under sub-heading 30042034. However, the customs classification is indicative only and is in no way binding on the scope of the present investigation.
 - iv. There is no difference in Ofloxacin produced by the Indian industry and the product exported from the subject country. Ofloxacin produced by the Indian industry and imported from the subject country is comparable in essential product characteristics such as physical & chemical characteristics, manufacturing process & technology, functions & uses, product specifications, pricing, distribution & marketing and tariff classification of the goods. Consumers can use and are using the two interchangeably. The two are technically and commercially substitutable. Ofloxacin produced by the domestic industry

should be treated as like article to the Ofloxacin imported from the subject country in accordance with the Anti-dumping Rules.

Views of the opposing interested parties

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

Examination by the Authority

6. The product under consideration is “Ofloxacin”, a synthetic chemotherapeutic antibiotic with the chemical formula $C_{18}H_{20}FN_3O_4$. Ofloxacin is an off-white yellow crystalline powder. The normal commercial unit of measurement for the product under consideration is kilograms. It is quoted on the basis of weights, and sold in kilograms or MT universally.
7. Subject goods are classified under Chapter 30 of Customs Tariff Act, 1975 under the subheading 30042034. The customs classification is indicative only and is in no way binding on the scope of the investigations.
8. After considering the information on record, the Authority notes that there is no known difference in the subject goods produced by the domestic industry and that imported from the subject countries. The subject goods produced by the domestic industry and the subject goods imported from the subject country are comparable in terms of characteristics such as physical and chemical characteristics, manufacturing process and technology, functions and uses, product specifications, distribution and market & tariff classification of the goods and are like articles. The consumers are using the two interchangeably. Thus, for the purpose of present investigation the subject goods produced by the applicant in India are being treated as like article to the subject goods being imported from subject country.

D. SCOPE OF DOMESTIC INDUSTRY & STANDING

Views of the Domestic industry

9. Following submissions have been made by the domestic industry with regard to scope and standing of the domestic industry:
 - i. The petition was filed by M/s Aarti Drugs Ltd. Other producers of subject goods are Anuja Healthcare Ltd; Infinity Laboratories Ltd; Danopharm; Sun Pharmaceuticals Ind. Ltd.; Alkem Laboratories Ltd. and Godavari Drugs Ltd.
 - ii. Production of petitioner constitutes a major proportion in Indian Production and therefore, the petitioner should be treated as “domestic industry” within the meaning of the Rules.
 - iii. The petitioner has not imported the subject goods during the period of investigation, and further, is not related to any exporter or producer of the subject goods in China or any importer or user of the product under consideration in India within the meaning of Rule 2(b).

Views of the opposing interested parties

10. The opposing interested parties have stated that there is no documentary evidence to confirm the production figures claimed by Domestic Industry. Unless the total production figures of subject goods are conclusively determined; none of the domestic producer(s) will qualify as Domestic Industry.

Examination of the Authority

11. The Authority has estimated the production of Ofloxacin in India on the basis of O-Acid. The production of PUC requires O-Acid as the key raw material. The Authority has conducted and concluded a separate investigation into dumping of O-Acid wherein the petitioner had claimed that the petitioner is the sole (new) producer of O-Acid. There were/are no other producers of O-Acid in India. The claim of the petitioner with regard to production of O-Acid has remained unrefuted. Thus, production of Ofloxacin is either from imported O-Acid or from O-Acid produced by petitioner. Production figures of petitioner with regard to O-Acid and import of O-Acid into India has also been verified by the Authority. The Authority has considered that production of 1MT Ofloxacin requires consumption of ***MT O-Acid. This consumption figure has also been verified by the Authority. Thus, on the basis of consumption figures relating to O-Acid, as determined from imports of O-Acid in India, the Authority has quantified production of Ofloxacin in India. It is found that production of Ofloxacin in India during POI was ***MT.
12. The petitioner M/s Aarti Drugs Limited, is a producer of subject goods with a production of ***MT which is 58% of Indian production. They have not imported the subject goods nor are related to importers or exporters of subject goods in China PR. The Authority has verified the information submitted by the petitioner and concludes that the petitioner constitutes eligible domestic industry for the present purposes.
13. Other known producers have not participated in the present investigation. A reference was specifically made to known Indian producers seeking information, however only Danopharm Chemicals Pvt Ltd. had responded giving information about their production and supporting the petition. Nor any other interested party has provided any documentary evidence to dispute the claim of the petitioner. There is no opposition to the application. The Authority therefore concludes that production of petitioner constitutes a major proportion in Indian production. The petitioner therefore satisfies requirements of standing under the law.

E. MISCELLANEOUS ISSUES RAISED BY THE INTERESTED PARTIES

Views of the Domestic Industry

14. The domestic industry, in its submissions, has refuted the arguments of the interested parties and the submissions have been summarized as follows:

- i. Excessive confidentiality has not been claimed by the petitioner. The petitioner has provided sufficient reasoning to claim costing information as confidential. Further, confidentiality has been claimed on information not publically available.
- ii. The exporters have claimed most of the information as confidential and no proper summarization has been provided by them. The interested parties have not disclosed all such information that they are obliged to disclose under the Rules and practice being followed by the Designated Authority in this regard;
- iii. The petitioner has transferred captively produced raw material in accordance with statutory regulations of the country.
- iv. The petitioner had earlier filed combined petition for both Ofloxacin and O Acid. However, the Authority found it appropriate to consider the two as separate products and directed filing of separate applications. In any case, there is no bar in imposition of ADD on intermediary product and final product as injury is being established separately for the two.
- v. The imports are not allowing growth of the domestic industry in the Country to produce and sell the product under consideration to the extent of capacities and demand in the market. The inconsistency in production is on account of presence of significantly dumped goods in the market.
- vi. The price undertaking needs to be out rightly rejected on account of delay in making such offers and conduct of the party. The exporters have not submitted the information relating to normal value and cost of production which are critically required for effective monitoring of price undertaking. Moreover, any price undertaking in a product like the present will have to be linked to raw material prices, which is not provided, thus there are practical difficulties in accepting the undertaking. There are no published prices of major raw material, therefore, it is not possible to monitor the price variation in raw material and corresponding export prices. The exporter has not offered to link the prices to changes in the major raw materials. The concerned exporter has not co-operated in O-Acid investigation, which is attracting ADD, in such case the exporter can manipulate the price of O-Acid and get undue advantage in respect of Ofloxacin.. Hence, the Authority is requested to not accept the price undertaking offered by the exporter as per Rule 15 of AD Rules which confers discretion on the Authority to accept or not accept the price undertaking offered by the exporter.

Submissions of the opposing interested parties

15. The interested parties have raised several issues with respect to the present investigation, including methodologies of dumping determination adopted by the domestic industry in its petition and their injury claims, which are as below:
 - i. Excessive confidentiality has been claimed by the domestic industry and most of the vital data pertaining to the claims of dumping and injury have been kept confidential thereby denying the interested parties to meaningfully understand and comment upon them.

- ii. The applicant has used captively produced raw material namely O-Acid and transferred it at a cost higher than the actual cost, which results in increase in the total cost of the subject goods. It was transferred at cost plus 10%.
- iii. The cost of O-Acid accounts for almost 85 per cent of the total cost of Ofloxacin. There is minimal value addition required for production of Ofloxacin. Authority shouldn't allow for imposition of anti-dumping duty on intermediary product O-Acid as well as final product- Ofloxacin.
- iv. The exporter M/s Zhejiang East Asia Pharmaceutical Co. Ltd has submitted price undertaking in terms of Rule 15 of the rules 1995 stating that they agree not to sell the subject goods to India at prices lower than USD as per final calculation of Designated Authority. They have further stated that company shall review the change of average import price of ended quarter under the subheading 30042034 compared to the average imports of the quarter prior to the ended quarter, if the price change is over 10%, the company could apply for the undertaking price shall be adjusted with the same price change ratio and if price change is not over 10%, the undertaking price shall remain the same. They further stated that the application of revised undertaking price and the calculation shall be telefaxed immediately to DGAD accompanied by a covering letter referring to this undertaking and the original documents will be forwarded to DGAD by express delivery.

Examination of the Authority

16. Various miscellaneous issues raised by the interested parties have been examined. As far as the issues raised by the interested parties and the domestic industry regarding the confidentiality claims are concerned, the Authority notes that to the extent possible and practicable the confidentiality claims of various parties submitting the information have been examined and confidentiality claims admitted on the basis of nature of information provided by the parties.
- i. The transfer pricing adopted by Domestic Industry was verified by the Authority. However, the Authority has adopted the transfer price of O Acid based on normatted cost of production of O acid (without any profit margin).
 - ii. The injury suffered in O-Acid and Ofloxacin have been separately examined, as the Authority has considered these two product as distinctly different articles.
 - iii. As regards imposition of ADD on intermediates and finished product, the Authority notes that there is no bar under the anti-dumping Rules which prevents simultaneous investigation and levy of duty on intermediaries and finished products.
 - iv. PRICE UNDERTAKING: Rule 15 relating to Suspension or termination of investigation on price undertaking provides that
 - (1) *The Designated Authority may suspend or terminate an investigation if the exporter of the article in question:*
 - (i) *furnishes an undertaking in writing to the Designated Authority to revise the prices so that no exports of the said article are made to India at dumped prices, or*

- (ii) *in the case of imports from specified countries undertake to revise the prices so that injurious effect of dumping is eliminated and the Designated Authority is satisfied that the injurious effect of the dumping is eliminated.*

Provided further that the designated authority shall complete the investigation and record its finding, if the exporter so desires, or it so decides.

- (2) *No undertaking as regards price increase under clause (ii) of the sub-rule (1) shall be accepted from any exporter unless the designated authority had made preliminary determination of dumping and the injury.*
- (3) *The designated authority may, also not accept undertakings offered by any exporter, if it considers that acceptance of such undertaking is impractical or is unacceptable for any other reason.*
- (4) *The designated authority shall intimate the acceptance of an undertaking and suspension or termination of investigation to the Central Government and also issue a public notice in this regard. The public notice shall, contain inter alia, the non-confidential part of the undertaking.*
- (5) *In cases where an undertaking has been accepted by the designated authority the Central Government may not impose a duty under sub-section (2) of section 9A of the Act for such period the undertaking acceptable to the designated authority remains valid.*
- (6) *Where the designated authority has accepted any undertaking under sub-rule (1), it may require the exporter from whom such undertaking has been accepted to provide from time to time information relevant to the fulfilment of the undertaking and to permit verification of relevant data :*

Provided that in case of any violation of an undertaking, the designated authority shall, as soon as may be possible, inform the Central Government of the violation of the undertaking and recommend imposition of provisional duty from the date of such violation in accordance with the provisions of these rules.

- (7) *The designated authority shall, suo motu or on the basis of any request received from exporters or importers of the article in question or any other interested party, review from time to time the need for the continuance of any undertaking given earlier.*

- v. M/s Zhejiang East Asia Pharmaceutical Co. Ltd, producer and exporter of subject goods from the subject country had shown willingness to give price undertaking. The price undertaking proposal given by the exporter was considered by the Authority. The domestic industry has strongly opposed the acceptance of price undertaking of the exporter. The Authority noted that the information relating to normal value and cost of production which are critically required for effective monitoring of price undertaking are not available as there are no published prices of major raw material. Also, the exporter has not offered to link the prices to changes in the major raw materials. Therefore it is not possible to monitor the price variation in raw material

and corresponding export prices. In view of administrative difficulty in monitoring of price undertaking, the Authority is not inclined to accept the request of the exporter. In any case, the anti dumping duty against M/s Zhejiang East Asia Pharmaceutical Co. Ltd is on injury margin in terms of lesser duty rules followed by the Directorate and their undertaking of a price which is less than the NIP is insufficient to remedy the injury caused to the Domestic industry. Therefore, the Authority rejects the price undertaking offered by the exporter.

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

17. The relevant provisions are given in Section 9A (1) (c) of the Customs Tariff Act, 1975 Annexure I of the Anti-dumping Rules

Views of the Domestic industry

18. The domestic industry inter alia submitted as follows:

- i. Petitioner has constructed normal value based on best available information. The interested parties have not provided any evidence to show availability of public information. It is also relevant to point that if any such information is publicly available, the interested parties are free to establish that the import price is not a dumped price.
- ii. Since the factum of dumping causing injury to the domestic industry is established based on investigation period, the conditions prevalent during the investigation period alone should be considered relevant, appropriate and necessary for the purpose.
- iii. The Chinese producers are required to be treated as non-market economy companies for the reason that the costs and prices in China do not reasonably reflect the market forces. Para 8 to Annexure-I specifies the parameters which should be considered for grant of market economy status. This also implies that unless these conditions are not fulfilled/satisfied, the Chinese costs and prices cannot be adopted.
- iv. The consideration of market economy status is based on parameters prevailing during investigation period. Since the reason for rejection of Chinese costs and prices is distortion in the costs and prices in China due to the factors listed in Para 8 to Annexure-I, it is the investigation period that is relevant to decide consideration of Chinese producers as market economy companies.
- v. Since Chinese companies have been denied market economy status for the reasons mentioned in Para 8 of Annexure-I till December, 2016, the Chinese producers are required to be treated as non-market economy companies till such time the investigation period includes the period specified in Accession Treaty protocol.
- vi. In the context of rule 2(b), it is well established legal position that the imports by a domestic producer or its relationship with an exporter or importer are examined with reference to the investigation period. If POI alone is relevant for standing purposes, POI alone should be relevant for normal value determination.
- vii. Chinese producers are required to be treated as companies operating under non-market economy environment and the Authority may proceed to determine the normal value on

the basis of Para 7 of Annexure-I.

- viii. Normal value could not 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 petitioner has claimed consideration of normal value on the basis of cost of production in India duly adjusted.
- ix. The dumping margin from China is not only significant, but also substantial, thus establishing existence of significant dumping of the product under consideration in India. The import volume of China has remained significant throughout the present injury period.

Views of the opposing interested parties

- 19. The following submissions of the importers, consumers, exporters and other interested parties have been filed with regard to normal value.
 - i. The CNV is not in conformity with law as -
 - a. Applicant has constructed the normal value based on price actually paid or payable in India for the like product, which is not appropriate.
 - b. Applicant being the importer of raw material, the Authority must compute Normal Value on basis of cost of imported O-Acid and not on the basis of normative cost of O-Acid produced by Applicant.

Examination by the Authority

- 20. The Authority had sent copies of exporter's questionnaire and questionnaire on market economy treatment (MET) to exporters in China PR. However, no producer/exporter has claimed MET. In view of the above, the Authority considers it appropriate to proceed with para-7 of Annexure I to the Rules for determination of normal value in case of China PR.
- 21. As regards the claim of opposing interested parties that normal value in China may be determined by considering the import price of like article from the market economy third country to India, it is noted that no information has been provided in this regard by any party. Therefore, the Authority has proceeded in accordance with the Rules.
- 22. In view of the above, the Authority has constructed normal value having regard to para-7 of Annexure-I for the purpose of present investigation. The normal value for the subject goods imported from China into India has been constructed considering optimum consumption of major raw materials as per information provided by the domestic industry, conversion cost, interest, SGA expenses, etc. at the levels allowed for the domestic industry along with a reasonable profit on the cost of production. The cost of raw material been taken based on O-Acid imported from China after the landed value has been duly adjusted for customs duty, cess, landing charges, ocean freight and ocean insurance to arrive at FOB price and then this FOB price of raw material was used for working out CNV.

Export price for all exporters in China

23. Following producers/exporters from subject country have filed exporter questionnaire response and have provided information giving details of export price:
- i. Zhejiang East-Asia Pharmaceutical Co. Ltd.
 - ii. Zhejiang Apelo Kangyu Pharmaceutical Co.Ltd
 - iii. Zhejiang Medicines & Health Products Import & Export Co. Ltd.
24. The responses have been appropriately examined and verified to the extent possible for determination of dumping margin.
25. From the responses filed by M/s Zhejiang East-Asia Pharmaceutical Co. Ltd and Zhejiang Apelo Kangyu Pharmaceutical Co. Ltd, the Authority notes that they are producer as well as exporter of the subject goods. During the POI, Zhejiang East-Asia and Zhejiang Apelo Kangyu has exported the subject goods directly. 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. Accordingly, the export price has been determined at ex-factory level is shown in the Dumping Margin Table below.
26. Zhejiang Medicines & Health Products Import & Export Co. Ltd. have submitted exporter questionnaire response. On examination it is found that they are only the exporters and not the producers of the subject goods. They are exporting to India as well as other countries. As per appendix 2 details they have exported five consignments to India. The same were procured from various unrelated producers in China and then exported to India. Only one of the producers involved namely Zhejiang East-Asia Pharmaceutical Co. Ltd. has filed response, however, other producers have not filed responses. In view of the absence of producers' response for the said exports, the Authority has decided to not consider M/s Zhejiang Medicines & Health Products Import & Export Co. Ltd for individual dumping margin.

Dumping Margin

27. Considering the normal value and export price 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	NEP	Dumping Margin		
		USD/Kg	USD/Kg	USD/Kg	(%)	Range
1	Zhejiang East-Asia Pharmaceutical Co. Ltd	***	***	***	***	20-30
2	Zhejiang Apelo Kangyu Pharmaceutical Co.Ltd	***	***	***	***	1-10
3	Any other	***	***	***	***	25-35

G. INJURY AND CAUSAL LINK

28. The Authority notes that the application for imposition of antidumping duty has been filed by M/s Aarti drugs Ltd. In terms of Rule 2(b) of the Rules the petitioner has been treated as the domestic industry for the purpose of this investigation. Therefore, for the purpose of this determination the cost and injury information of the petitioner, constituting the domestic industry as defined in Rule 2(b), has been examined.

Views of Domestic Industry

29. The domestic industry has submitted as follows with regard to injury and causal link:
- i. The imports have been significant over the injury period in absolute terms as well as in relation to total imports, production and consumption, The dumped imports from the subject country have entered the Indian ports in significant volumes in the recent period.
 - ii. Decline in imports is due to production of O-Acid in the country, which led to more domestic production of the product under consideration, the volume of imports in fact would have been much lower, but for dumping of O-Acid and Ofloxacin in the Country, faced with possibility of loosing Indian market with the capacity building in the Country, the exporters became aggressive in a bid to damage the domestic industry and compete inter-se to retain the market share in India, by resorting to price war in the Indian market, as is evident from the steep decline in the prices.
 - iii. There is the steep decline in the import prices of Ofloxacin in the investigation period with the commencement of production of O Acid by the petitioner, thus forcing the domestic industry to import O acid inspite of having sufficient captive capacities and also transfer it at highly un-remunerative prices to the other unit.
 - iv. Price undercutting was positive in 2013-14, 2014-15 and negative in 2015-16 and POI. The negative price undercutting in the POI is for the reason that while the petitioner has no option but to react to price offers given by the Chinese producers and therefore the petitioner's prices reflect the prices offered by the Chinese producers in competition to imports, the actual landed price in that month reflects orders booked in the past.
 - v. There is significant price depression over the period. The price depression caused by the dumped imports have had significant injurious adverse price effect on the performance of the domestic industry, which requires urgent action by imposition of anti dumping duty in order to curb dumping and consequent injury to the domestic industry.
 - vi. Capacity utilization of the domestic industry has declined over the injury period. Presence of dumped imports is not allowing the domestic industry to fully utilize their capacity and maximize its production and sales despite existence of significant demand and capacities in the Country.
 - vii. Petitioner came up with additional plant with enhanced capacity, and though the production and sales volume have increased, capacity utilization has declined. The increased production and sales merely reflect the additional capacities that have now come up and are at the cost of financial losses.

- viii. The inventory levels are high in POI as compared to 2014-15 and 2015-16. Domestic industry was able to increase its production with additional plant facility.
- ix. Market share held by the domestic industry as well as Indian producers as a whole has increased over the injury period. Though the market share of imports from the subject country has declined, it has remained significant over the injury period.
- x. Productivity of the domestic industry has increased commensurate with the increase in production.
- xi. The domestic industry has shown positive growth in terms of production, sales, capacity utilization and market share. However, the growth of the domestic industry in terms of profits, return on investment and cash profits was severely negative due to the presence of dumped imports
- xii. The growth of the domestic industry became negative with regard to a number of price parameters. Presence of dumped imports in ultimate as well as penultimate stage is causing price injury to the domestic industry.
- xiii. As regards O Acid causing injury, in view of dumping of O acid in the market, the petitioner had to import O Acid from the subject country and not utilize its own production. Thus, to this extent the injury cannot be attributed to dumping of O acid. In any case, assuming that dumping of O Acid has also caused injury to the petitioner, the same does not break the causal link between dumping and injury caused by the imports of Ofloxacin.
- xiv. The domestic industry has very insignificant exports, and export is not the target market for the petitioner. Furthermore, segregated information for the domestic operations has been provided, hence, export performance cannot be a cause of injury to the domestic industry.

Views of the opposing interested parties

30. The exporters have made following submissions and/or comments with regard to injury and causal link-
- i. The landed value of subject goods is well above the Net Sales Realization of the Applicant for the subject goods. The import prices have increased during the period of investigation as compared to the base year by about 10%. So imports can't be causing price injury to the Applicant.
 - ii. There is significant decline in imports of Ofloxacin, both in absolute terms and/or relative to production or consumption in India. Domestic sales of other producers have increased manifold in comparison to the petitioner. This can be attributed to decrease in prices due to domestic competition. Especially considering the fact that imports have declined in the said period.
 - iii. The Applicant has not claimed price underselling on account of alleged dumped imports. Accordingly, there is no documentary evidence on record to substantiate that imports are taking place below NIP of subject goods.
 - iv. The landed value of subject goods is corresponding to cost of sales for subject goods. On the contrary the Applicant failed to maintain their selling price in line with increase in cost of sales, despite landed value of subject goods remained at higher price.

- v. There is overall improvement in performance of the Applicant. There is growth in production, domestic sales, capacity utilization, profits (before tax) and return on capital employed. Applicant has enhanced the production capacity on consistent basis; therefore, there is no adverse impact on growth of the Applicants.
- vi. Injury to the Applicant is on account of exports of Ofloxacin by the Applicant. Authority must segregate injury suffered by Applicant on account of such exports.
- vii. Domestic Industry has imported O-Acid before commencement and even after commencement of production, hence proving that there is no consistent production to meet domestic demand.
- viii. Injury suffered by Applicant on account of imports of O-Acid in India must be segregated for the purpose of determination of injury margin concerning imports of Ofloxacin. The Applicant is a multi-product company, produces O-Acid and Ofloxacin in common production facilities. Therefore, the segregation of injury on account of different products is all the more important
- ix. Authority must consider international price or import price of O-Acid for computation of NIP for subject goods.
- x. Applicant has failed to raise domestic selling price due to inferior quality of domestic product. Indian users of subject goods are not willing to buy the subject goods from indigenous manufacturers on account of sub-standard quality of goods.
- xi. Calculation of return by adopting 22% uniformly on both the components of capital employed is totally incorrect and needs to be reviewed.

Examination by the Authority

31. The Authority has taken note of submissions made by various interested parties.
- i. The statement of exporters regarding volume of imports is correct to the extent that the quantity of exports during POI is less than the quantity in the base year (2013-14). The sale of Domestic Industry has increased 46% and as that of other Indian producers by 102%.
 - ii. The export of subject goods by the Domestic Industry are only ***MT as against domestic sale of 343 MT during POI. The segregated information for the domestic operations has been examined for determination of injury and hence the minor export performance has not affected the analysis in any way.
 - iii. The domestic industry contention that there was significant decline in the import price of O-Acid and Ofloxacin from China, due to an aggressive market strategy from the Chinese producers with the particular intent to injure the petitioner has been examined in following paras. It is noted that the price of Ofloxacin is even lower than the normatted price of raw materials required for manufacture of Ofloxacin. The Authority is privy to the import prices and domestic prices of O-Acid in view of a recently concluded investigation against import of O-Acid and it is noted that the Ofloxacin has been exported to India by the Chinese exporter at prices which is lower than the prices of O-Acid.

- iv. The injury suffered on account of O-Acid and Ofloxacin has been analysed separately under two different investigations as has been contended by the opposing interested parties.
32. Transfer pricing of raw materials 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 had conducted and concluded a separate investigation into dumping of O-Acid. Information filed by the interested parties in the matter of O-Acid has also been considered wherever relevant and appropriate for the purpose of present investigation. The Authority had determined NIP for the domestic industry in respect of Ofloxacin and O-acid separately. The transfer price adopted by the Authority is the normatted cost of production of O Acid (without any profit margin) which is below the transfer price claimed by the petitioner. Therefore, the contention of the opposing parties regarding the competition of import price of O-Acid has been addressed.
33. The AD Rules require the Authority to examine injury by examining both volume and price effect. A determination of injury involves an objective examination of both (a) the volume of the dumped imports and the effect of the dumped imports on prices in the domestic market for the like article and (b) the consequent impact of these imports on domestic industry. With regard to the volume of dumped imports, the Authority is required to consider whether there has been a significant increase in the dumped imports, either in absolute terms or relative to production or consumption in India. With regard to the effect of the dumped imports on prices the Authority is required to consider whether there has been a significant price undercutting by the dumped imports as compared with the price of like product in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases which otherwise would have occurred to a significant degree.
34. As regards the consequent impact of dumped imports on the domestic industry, Para (iv) of Annexure II of Antidumping rules states as under:-
(iv) 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 the margin of dumping; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital investments.
35. It is not necessary that all parameters of injury show deterioration. Some parameters may show deterioration; while some may show improvement. The Designated Authority considers all injury parameters and thereafter concludes whether the domestic industry has suffered injury due to dumping or not.

36. The Authority has examined the injury to the domestic industry in accordance with the Antidumping Rules and considering the submissions made by the other interested parties. The analysis herein below ipso facto deals with the submissions made by the domestic industry and interested parties.

Assessment of Demand

37. For this purpose, demand or apparent consumption of the product in India is taken as the sum of domestic sales of the Indian producers and imports from all sources. Share of imports from the subject country in demand/consumption in India determined by the Authority is as under-

Particulars	Unit	2013-14	2014-15	2015-16	POI
Imports from Subject Country	MT	346	398	273	320
Imports from Other Country	MT	0	0	0	1
Sales of Domestic Industry	MT	304	383	425	443
Sale of other Indian Producers	MT	170	315	328	343
Total	MT	820	1,096	1,026	1,107

38. The Authority notes that demand has increased over the injury period and imports have declined compared to base year. The sale of other Indian producers has doubled during POI as compared to the base year, whereas, Domestic Industry has shown a growth of 46%.

Volume Effect of Dumped Imports - Import Volumes and Share of Subject Country

39. 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. The Authority has examined the volume of imports of the subject goods from the subject country and other countries based on the transaction-wise import data provided by DGCI&S data. The import volumes of the subject goods and share of the dumped import during the injury investigation period are as follows:

Particulars	Unit	2013-14	2014-15	2015-16	POI
Subject Country	MT	346	398	273	320
Other Country	MT	0	0	-	1
Total	MT	347	398	273	321
Import Price	Rs/Kg	2200	2252	2607	2415
Share of imports in total imports					
Subject Country	%	100%	100%	100%	99.69%
Other Country	%	0%	0%	0%	0.31%
Subject Country Imports in relation to					
Indian Production	%	77%	56%	36%	39%
Consumption	%	42%	36%	27%	29%

40. It is seen that as compared to base year, imports increased in 2014-15, declined thereafter in 2015-16, and once again increased during the POI. Further, the data was examined for post POI to check the trend and it is noted that the import during 2016-17 was 223 MT @ Rs.1775/Kg. Almost entirety of imports are from the subject country. Imports in relation to production and consumption are also significant in the POI.

Price Effect of the Dumped imports on the Domestic Industry

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

“With regard to the effect of the dumped imports on prices as referred to in sub-rule (2) of rule 18 the Designated Authority shall consider whether there has been a significant price undercutting by the dumped imports as compared with the price of like product in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increase which otherwise would have occurred to a significant degree.”

42. The impact of dumped imports on the prices of the domestic industry has been examined with reference to the price undercutting, price underselling, price suppression and price depression, if any.

a) Price Undercutting

43. In order to determine whether the imports are undercutting the prices of the domestic industry in the market, the Authority has compared landed price of imports with net sales realization of the domestic industry. In this regard, a comparison has been made between the landed value of the product from subject country and selling price of the domestic industry, net of all rebates and taxes, at the same level of trade. The prices of the domestic industry were determined at ex-factory level.

Particulars	Unit	China
Landed Price	Rs/Kg	2,415
Net Selling Price	Rs/Kg	***
Price Undercutting	Rs/Kg	***
Price Undercutting	%	***
Price Undercutting	Range	1-10

44. The Authority notes that the price undercutting is positive. Domestic Industry has stated that they are constrained to match import prices. However, this is not conclusive indication of forced pricing as they could be facing competition from other Indian producers who hold almost equal market as Domestic Industry.

b) Price Underselling

45. The Authority has also examined price underselling suffered by the domestic industry on account of dumped imports from the subject country. For this purpose, the cost of sales

determined for the domestic industry has been compared with the landed price of imports. The landed price of imports considered for the purpose of price undercutting has also been adopted for the purpose of determining price underselling. Comparison of weighted average cost of sales of the domestic industry with weighted average landed price of imports are as follows:

Particulars	Unit	China
Non injurious price	Rs/Kg	***
Landed Value	Rs/Kg	2,415
Injury Margin	Rs/Kg	***
Injury Margin	%	***
Injury Margin	Range	10-20

46. It is noted that the landed price of imports were below the non-injurious price of the domestic industry. The Authority notes that the domestic industry has suffered price underselling during the investigation period on account of imports of the subject goods from the subject country.

c) Price Suppression and Depression

47. In order to determine whether the dumped imports are depressing the domestic prices or whether the effect of such imports is to suppress prices to a significant degree and prevent price increases which otherwise would have occurred, the Authority considered the changes in the costs and prices over the injury period. The position is shown as per the Table below.

Particulars	Unit	2013-14	2014-15	2015-16	POI
Cost of Sales	Rs/Kg	***	***	***	***
Trend	Index	100	104	112	120
Selling Price	Rs/Kg	***	***	***	***
Trend	Index	100	106	110	108

48. It is noted that, both, cost of sales increased every year during the injury period and the POI. However, selling price of the domestic industry increased till 2015-16 but declined in the POI. It is also noted that selling price were below the level of cost of sales throughout the injury period, except for 2014-15. Thus, imports were having suppressing and depressing effect on the domestic prices in the domestic market.

Impact on Economic Parameters of the Domestic Industry

49. Annexure II to the Anti-dumping Rules requires that determination of injury shall involve an objective examination of the consequent impact of these imports on domestic producers of like product. The Rules further provide that the examination of the impact of the dumped imports on the domestic industry should include an objective and unbiased evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including actual and potential decline in sales, profits, output, market share, productivity,

return on investments or utilization of capacity; factors affecting domestic prices, the magnitude of the margin of dumping; actual and potential negative effects on cash flow, inventories, employment, wages, growth and the ability to raise capital investments. An examination of performance of the domestic industry indicates that the domestic industry has suffered material injury. The various injury parameters relating to the domestic industry are discussed below:

a) Capacity, Production, Capacity Utilization and Sales

50. The performance of the domestic industry with regard to production, domestic sales, capacity & capacity utilization is as follows:

Particulars	Unit	2013-14	2014-15	2015-16	POI
Capacity	MT	400	480	660	720
Trend	Index	100	120	165	180
Production	MT	***	***	***	***
Trend	Index	100	139	153	171
Capacity Utilization	%	***	***	***	***
Trend	Index	100	116	93	95
Sales volume	MT	304	383	425	443
Trend	Indexed	100	126	140	146

51. It is noted that the petitioner has enhanced its capacity over the injury period. Production and sales of the domestic industry has increased as a natural consequence of domestic industry increasing capacity and also starting production of the raw material, i.e., O Acid. However, domestic industry is still not able to utilise its full capacity despite having demand. The other Indian producers have also increased their production and sales which has doubled during POI as compared to the base year. The domestic Industry and other Indian producers together hold 71% of the total Indian demand. Of the various Indian producers, M/s Danopharm Chemical Pvt. Ltd. has submitted the support letter, but others have neither supported nor opposed the petition.

b) Profits, Return on Capital Employed and Cash Profit

52. The cost of sales, selling price, profit/loss, cash profits and return on investment of the domestic industry as per certified C-I is as follows:

Particulars	Unit	2013-14	2014-15	2015-16	POI
Cost of Sales	Rs/Kg	***	***	***	***
Trend	Indexed	100	104	112	120
Selling Price	Rs/Kg	***	***	***	***
Trend	Indexed	100	106	110	108
Profit/ (Loss) per unit	Rs/Kg	(***)	***	(***)	(***)
Trend	Indexed	(100)	24	(317)	(1,072)
Profit/ (Loss) – Total	Rs.Lacs	(***)	***	***	***
Trend	Indexed	(100)	31	(451)	(1,584)

Cash Profit	Rs.Lacs	(***)	***	(***)	(***)
Trend	Indexed	(100)	166	(454)	(2,319)
Profit before Interest and Tax	Rs.Lacs	***	***	(***)	(***)
Trend	Indexed	100	233	(31)	(555)
Return on Investment	%	***	***	(***)	(***)
Trend	Range	5-15	5-15	(5)-5	(25)-(15)

53. The Authority notes that the domestic industry earned profits only in 2014-15 and then started incurring significant financial losses from 2015-16 onwards. The losses have further increased in the POI.

54. Profit before interest, cash profits and return on capital employed has also witnessed the same trend. ROI is at significantly negative level in the POI.

c) Market Share in Demand

55. The effects of the dumped imports on the market share in demand of the domestic industry have been examined as below:

Particulars	Unit	2012-13	2013-14	2014-15	POI
Imports from – China	%	42	36	27	29
Imports from Other Country	%	0	0	0	0
Sales of Domestic Industry	%	37	35	41	40
Sale of other Indian Producers	%	21	29	32	31

56. The Authority notes that the market share of the domestic industry and other Indian producers increased during the entire injury period. However, import of subject goods still holds a significant market share despite domestic industry having sufficient capacity to cater to the domestic demand. It is thus seen that dumping of the product may be impacting the market share of the domestic industry. The fact that the other Indian producers have increased their market share is also relevant for assessing the share of Domestic Industry.

d) Employment, Wages and Productivity

57. The position with regard to employment, wages and productivity is as follows:

Particulars	Unit	2013-14	2014-15	2015-16	POI
No. of Employees	Nos.	***	***	***	***
Trend	Index	100	115	117	117
Wages	Rs Lacs	***	***	***	***
Trend	Index	100	152	200	206
Productivity per employee	Kg/No	***	***	***	***
Trend	Indexed	100	121	131	147
Productivity per day	Kg/Day	***	***	***	***
Trend	Indexed	100	139	153	171

58. The Authority notes that employment level during POI has increased as compared to base year and so has the level of wages which could be on account of increasing capacity and production. Further, productivity per day and per employee has also increased over the injury period and POI. However, this is not indicative of impact of dumping and consequent injury.

e) Inventory

59. The data relating to inventory of the subject goods are shown in the following table:

Particulars	Unit	2013-14	2014-15	2015-16	POI
Opening Stock	MT	***	***	***	***
Closing Stock	MT	***	***	***	***
Average Stock	MT	15	4	4	19
Trend	Index	100	26	30	129

60. The Authority notes that level of inventories with the domestic industry is not too significant.

f) Magnitude of Dumping

61. It is noted that imports from the subject country are entering Indian market at dumped prices and the margin of dumping is above de-minimus and significant.

g) Ability to raise capital investment

62. Petitioner has enhanced capacities, however they are not able to utilise it to the fullest and are incurring losses. They claim that this will affect their ability to raise capital for further expansion, however, the Authority notes that Domestic Industry are also manufacturing several other drugs, therefore, it is difficult to conclude based on the performance of the subject goods.

h) Growth

63. The data relating to growth of the domestic industry on year to year basis has been examined. The Authority notes that growth in terms of production, and sales volume is positive though on a declining trend. The selling price, PBIT, and ROI are also showing a declining trend and have become negative during POI. The capacity utilisation, which has shown decline, is not indicative of any direct injury because the Domestic Industry has increased its installed capacity consistently during the entire injury period and POI.

i) Factors Affecting Domestic Prices

64. The examination of the import prices from the subject country, change in the cost structure, competition in the domestic market, factors other than dumped imports that might be affecting the prices of the domestic industry in the domestic market has been undertaken. The data shows that the landed value of imported subject goods from the subject country is below the selling price and the non-injurious price of the domestic industry, causing price

undercutting and price underselling in the Indian market. The Authority notes that the prices of the product under consideration in general should move in tandem with the prices of key raw materials and the domestic industry has been fixing its prices considering these input prices and landed price of imports. Domestic industry has claimed that they are forced to align its prices to the market prices, which are dictated by the prices offered by the foreign producers/exporters from the subject country. Thus, the landed value of subject goods from the subject country is an important factor for determination of domestic prices. The Authority notes that the Domestic Industry is getting affected by the import of subject goods at dumped prices as well as the other Indian producers, who have significantly increased their production and sales during POI as compared to the base year. The domestic Industry and other Indian producers together hold 71% of the total Indian demand and hence the domestic prices are on account of all the players in the market.

Other Known Factors & Non-Attribution Analysis

65. The Authority has examined other factors listed under the Antidumping Rules which could have contributed to injury to the domestic industry for examination of causal link between dumping and material injury to the domestic industry.
66. **Imports from third countries:** The Authority has examined import data of the subject goods as obtained from DGCI&S on transaction-wise basis and notes that almost entirety of imports are from subject country.
67. **Contraction in demand:** The demand for the subject goods has increased. Thus, any decline in demand has not caused injury to the domestic industry.
68. **Trade restrictive practice:** There is no trade restrictive practice which could have contributed to the injury to the domestic industry.
69. **Developments in technology:** The existing technology and process adopted by the domestic industry is comparable with foreign producers as regards production of the final product. The petitioner recently enhanced capacities.
70. **Changes in pattern of consumption:** The pattern of consumption with regard to the product under consideration has not undergone any change. Change in the pattern of consumption is unlikely to contribute to the injury to the domestic industry.
71. **Export performance:** The domestic industry has very insignificant exports, and export is not their target market. Furthermore, segregated information for the domestic operations has been examined for determination of injury, hence, export performance cannot be a cause of injury to the domestic industry.

72. **Productivity of the domestic industry:** The Authority notes that the productivity of the domestic industry has increased. Deterioration in productivity is not a cause of injury to the domestic industry.

73. **Performance of the domestic industry with respect to other products:** The performance of other products being produced and sold by the domestic industry has not affected the assessment made by the Authority of the domestic industry's performance. The information considered by the Authority is with respect to the product under consideration only. It has been argued by other interested parties that Production of O Acid is causing injury to the domestic industry. It is noted in this context that O Acid was transferred to Ofloxacin plant as per statutory regulation. The transfer price of O-Acid has been normatted and taken into account for injury analysis in the present investigation against Ofloxacin and hence injury on account of O Acid cannot be attributed to Ofloxacin. In any case, there is sufficient causal link between the dumping of subject goods by subject country and injury caused to the domestic industry.

FACTORS ESTABLISHING CAUSAL LINK

74. Analysis of the performance of the domestic industry over the injury period shows that the performance of the domestic industry has deteriorated on some parameters due to dumped imports from subject country. Causal link between dumped imports and the injury to the domestic industry is established on the following grounds:

- i. Volume of dumped imports declined and then again increased in the POI and is significant despite enhancement of capacities by the domestic industry and other Indian producers.
- ii. Price reduction caused by the dumped imports have forced the domestic industry to reduce its prices;
- iii. The price depression effect of dumped imports from subject country has resulted in significant increase in financial losses of the domestic industry.
- iv. Financial losses and negative return on capital employed are primarily a result of dumped imports;
- v. The growth of the domestic industry has declined in terms of a number of economic parameters.
- vi. The Authority has determined non-injurious price for the domestic industry. For this purpose the Authority has considered best consumption norms of the raw materials & utilization. It is seen that the price underselling is positive and significant.
- vii. The Authority has segregated and excluded injury suffered by the domestic industry due to other factors, in accordance the provisions of Annexure-III to the Rules.

H. MAGNITUDE OF INJURY AND INJURY MARGIN

75. 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 imports from the subject country for determination of injury margin during the POI and the injury margin so worked out is as under. The Authority has

determined NIP for the domestic industry in respect of both Ofloxacin and O-acid. Further, the Authority has carefully examined the transfer price used by the petitioner in determining cost of production, profit and NIP of the PUC. Further, this transfer price adopted by the petitioner has been compared with the NIP of O-Acid determined by the Authority and import price of O-acid into the country. The Authority has considered a transfer price much below actual cost of production of O-Acid incurred by the petitioner, therefore the allegation of enhanced value of captive raw material for ofloxacin production has been duly taken care of.

S.No	Producer/Exporter	NIP	LV	Injury Margin		
		USD/Kg	USD/Kg	USD/Kg	(%)	Range
1	Zhejiang East-Asia Pharmaceutical Co. Ltd	***	***	***	***	15-25
2	Zhejiang Apelo Kangyu Pharmaceutical Co. Ltd	***	***	***	***	5-15
3	Any other	***	***	***	***	25-35

76. It is seen that the injury margin for the subject country is positive and substantial.

I. POST DISCLOSURE COMMENTS

77. 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:

Submissions of Domestic Industry

78. The Domestic Industry made the following submissions:

- i. There is no difference in Ofloxacin produced by the Indian industry and the product exported from the subject country, and the production of the petitioner constitutes a major proportion of total Indian production.
- ii. Constructed normal value has been determined on the basis of non-injurious price determined for the domestic industry. It is submitted that the actual cost of production needs to be considered and not the notional cost for construction of normal value.
- iii. Imports increased in 2014-15, declined thereafter in 2015-16, and once again increased during the POI. Imports are undercutting the prices of the like article of the domestic industry. Imports have suppressing and depressing effect on the prices of the domestic industry in the market, consequently leading the domestic industry into losses.
- iv. The performance of the domestic industry in terms of profits, cash flows and return on investments has significantly deteriorated
- v. The performance of the domestic industry has improved in terms of sales volume, production, capacity utilization, and market share. However, despite this, the

- performance of the domestic industry significantly deteriorated in terms of profits, cash flows and return on investments.
- vi. A normal business situation is that profits, cash flows and return on investments improve with the improvement in sales volume, production, capacity utilization, and market share. An abnormal business situation is deterioration in profits, cash flows and return on investments with the improvement in sales volume, production, capacity utilization, and market share. The abnormal business situation is created by dumping practices.
 - vii. The form of anti-dumping duty should be fixed quantum of anti-dumping duty and the duty should be imposed in terms of US\$.
 - viii. The claim of the interested party is that if the company has sold a product captively, there cannot be a profit or a loss in the product. The argument is grossly misplaced. It has been clarified in this regard that the petitioner has done valuation of all the captive sales of O-Acid consistent with the statutory requirements in the country.
 - ix. The claim that injury has been caused on account of O Acid and the same needs to be segregated is misplaced, it is submitted that the injury has been determined separately for both the products [O Acid and Ofloxacin] as per the records maintained by the company.

Views of the opposing interested parties

79. The submissions of various opposing interested parties are summarized as follows:
- i. The Authority cannot deny an individual dumping margin to the supply chain where the producer is Zhejiang East-Asia Pharmaceutical Co. Ltd. and the exporter is the Respondent herein, i.e., Zhejiang Medicines & Health Products Import & Export Co. Ltd. as both these parties have been cooperative and have participated fully in the present investigations.
 - ii. China Chamber of Commerce for Import & Export of Medicines and Health Products (CCCMHPIE), has not been mentioned in the disclosure statement issued as a party to have filled submission in the present matter.
 - iii. Treatment of China as NME after December, 2016, is in violation of China's accession protocol. India no longer has legal basis to calculate normal value of Chinese products using non market methodology. The Authority should grant market economy status to china; conduct normal value calculation in accordance with article 2 of AD agreement and apply the data on costs and prices provided by the Company for determination of normal value
 - iv. Higher cost has been considered for O-Acid, the raw material. The raw material has been produced by the petitioner and captively consumed for Subject goods and transferred at cost plus 10% which results in a higher cost. The import price of O-Acid should be considered.
 - v. The claim of increased exports from China is factually incorrect and false. Rather the imports have shown a decline. There is no increase in imports in absolute terms but a decline of 31%; there is no increase in imports in relation to demand but a decline of 21%; there is no increase in imports in terms of sales of DI but a decline of 61%

- vi. The claims of return on capital employed have been inflated. NIP determined by DA is highly inflated and not based on real situations because as per para 4 of Annexure III of AD rules the elements of cost of production are required to be examined for NIP. A reasonable return (pre-tax) on average capital employed, reasonableness of interest cost may be examined, providing 22% ROCE is incorrect because debt portion of capital employed which attracts 10-12% interest rate is provided at 22%; This in turn results in providing more than 22% return on net worth portion of capital employed; During recession such high return is incorrect. 22% ROCE gives undue advantage and protection to DI. 41% margin on equity cannot be termed as reasonable

Examination by the Authority

80. 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 cost of raw material, the Authority notes that the transfer price of O Acid based on normatted cost of production of O acid (without any profit margin) has been adopted by the Authority.
 - ii. As regards the calculation of NIP, the Authority notes that NIP and cost of production has been determined as per Annexure III of Custom Notification No. 15/2011-customs (N.T) dated 1st March 2011 and the provisions of the rules and the uniform practice followed in the Directorate for the calculations.
 - iii. As regards the individual dumping margin to Zhejiang Medicines & Health Products Import & Export Co. Ltd., the Authority reiterates that the response was examined and on examination it is found that they are only the exporters and not the producers of the subject goods. They are exporting to India as well as to other countries. As per appendix 2 details they have exported five consignments to India. The same were procured from various unrelated producers in China and then exported to India. Only one of the producers involved namely Zhejiang East-Asia Pharmaceutical Co. Ltd. has filed response, which is only 9 % of their total exports to India. This is an incomplete response and hence the Authority has decided to not consider M/s Zhejiang Medicines & Health Products Import & Export Co. Ltd for individual dumping margin.
 - iv. As regards the segregation of injury assessment of O acid, the Authority clarifies that there are two separate investigations in the directorate of O-acid and another is Ofloxacin, the injury analysis is done separately by the Authority on the basis of the facts of each case.
 - v. As regards the claim of the exporters from China, the Authority had sent copies of exporter's questionnaire on market economy treatment (MET) to exporters in China PR. However, no producer/exporter has claimed MET. In view of the above, the Authority considers it appropriate to proceed with para-7 of Annexure I to the Rules for determination of normal value in case of China PR.
 - vi. As regards the construction of normal value, the Authority reiterates that the normal value is constructed having regard to para-7 of Annexure-I for the purpose of present investigation, which is also mentioned in para 5 of this Finding. It has been constructed

considering optimum consumption of major raw materials as per information provided by the domestic industry, conversion cost, interest, SGA expenses, etc. at the levels allowed for the domestic industry along with a reasonable profit on the cost of production. The cost of raw material been taken based on O-Acid imported from China after the landed value has been duly adjusted for customs duty, cess, landing charges, ocean freight and ocean insurance to arrive at FOB price and then this FOB price of raw material was used for working out CNV.

- vii. The submissions made by China Chamber of Commerce for Import & Export of Medicines and Health Products (CCCMHPIE), were examined and duly considered and appropriately addressed in the Disclosure Statement as well as the present finding.

J. CONCLUSIONS

81. 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.
 - iv. The fact that other Indian producers are growing at a good pace is also relevant in the context of the investigation. However, except M/s Danopharm Chemicals Pvt. Ltd., no other producer has either supported or opposed the petition. Further the fact that anti dumping duties have been recommended for 3 years on one of the major raw material (O-Acid) at the behest of the Domestic Industry in a separate investigation recently is also relevant for the outcome of this investigation.

K. INDIAN INDUSTRY'S INTEREST & OTHER ISSUES

82. 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.

L. RECOMMENDATION

83. 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 aspects of dumping, injury and causal link. 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 in the form and manner described hereunder for a period of 3 years only.
84. 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, for 3 years from the date of notification to be issued in this regard by the Central Government, so as to remove the injury to the Domestic Industry. Accordingly, the antidumping duty equal to the amount indicated in Col No.8 of the table below is recommended to be imposed on all imports of the subject goods originating in or exported from the subject country for 3 years.

Duty Table

S. N	Tariff Item*	Description of Goods	Country of Origin	Country of Export	Producer	Exporter	Amount	UOM	Currency
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
1	3004 20 34	Ofloxacin	China PR	China PR	Zhejiang East-Asia Pharmaceutical Co. Ltd	Zhejiang East-Asia Pharmaceutical Co. Ltd	6.86	KG	USD
2	3004 20 34	Ofloxacin	China PR	China PR	Zhejiang Apelo Kangyu Pharmaceutical Company Limited	Zhejiang Apelo Kangyu Pharmaceutical Company Limited	2.58	KG	USD
3	3004 20 34	Ofloxacin	China PR	China PR	Any other combination other than S.N 1 & 2	Any other combination other than S.N 1 & 2	9.48	KG	USD
4	3004 20 34	Ofloxacin	China PR	Any	Any	Any	9.48	KG	USD
5	3004 20 34	Ofloxacin	Any	China PR	Any	Any	9.48	KG	USD

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

85. Landed value of imports for the purpose of this Notification shall be the assessable value as determined by the Customs under the Customs Act, 1962 (52 of 1962) and includes all duties of customs except duties under sections 3, 3A, 8B, 9 and 9A of the said Act.
86. 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