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**F. No. 6/3/2022-DGTR
Government of India
Ministry of Commerce & Industry
Department of Commerce
Directorate General of Trade Remedies
4th Floor, Jeevan Tara Building, 5, Parliament Street, New Delhi – 110 001**

Dated: 29th September 2023

FINAL FINDINGS

Case No. A.D (OI)-03/2022

Subject: Anti-dumping investigation concerning imports of " Metronidazole" originating in or exported from China PR.

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F. No. 6/3/2022-DGTR: - 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, 1995 thereof, as amended from time to time (hereinafter referred as the ‘AD Rules’ or the ‘Anti-dumping Rules’ or the ‘Rules’);

A BACKGROUND OF THE CASE

2. Aarti Drugs Limited (“hereinafter referred to as the ‘applicant’ or the ‘domestic industry’) has filed an application before the Designated Authority (hereinafter referred to as the ‘Authority’), on behalf of the domestic industry, in accordance with the Customs Tariff Act, 1975 and the Anti-dumping Rules for the initiation of an anti-dumping investigation concerning imports of the “**Metronidazole**” (hereinafter also referred to as the ‘product

under consideration' or 'PUC', or the "subject goods") from China PR (hereinafter also referred to as the 'subject country').

3. The Authority, on the basis of sufficient *prima facie* evidence submitted by the applicant, issued a public notice vide Notification No. 6/3/2022-DGTR dated 30th September 2022, published in the Gazette of India – Extraordinary, initiating the subject investigation in accordance with Section 9 of the Act read with Rule 5 of the AD Rules, 1995 to determine the existence, degree and effect of alleged dumping of the subject goods and to recommend the appropriate amount of anti-dumping duties, which if levied, would be adequate to remove the alleged injury to the domestic industry.

B PROCEDURE

4. The following procedure has been followed with regard to this investigation:
 - a. The Authority notified the Embassy of the subject country in India about the receipt of the present anti-dumping application before proceeding to initiate the investigation in accordance with Rule 5(5) of the AD Rules, 1995.
 - b. The Authority issued a public notice dated 30th September 2022 published in the Gazette of India – Extraordinary, initiating the anti-dumping investigation concerning imports of the subject goods from the subject country.
 - c. The Authority sent a copy of the initiation notification dated 30th September 2022 to the Embassy of the subject country in India, the known producers and exporters from the subject country, the known importers/users of the subject imports and other interested parties, as per the information provided by the applicant. The interested parties were requested to provide relevant information in the form and manner prescribed in the initiation notification and make their submissions known in writing within the time limits prescribed in the initiation notification.
 - d. The Authority also provided a copy of the non-confidential version of the application filed by the applicant to the known producers/exporters, known importers/users and to the Embassy of the subject country in India in accordance with Rule 6(3) of the AD Rules, 1995 through its email dated 15th November 2022.
 - e. The Embassy of the subject country in India was also requested to advise the exporters/producers from the subject country to submit their responses to the questionnaire within the time limit prescribed by the initiation notification. The Embassy of the subject country was also sent a copy of the letter and questionnaire sent to the

producers/exporters along with the names and addresses of the known producers/exporters from the subject country.

- f. The Authority sent questionnaires to the known producers/exporters in the subject country in accordance with Rule 6(4) of the AD Rules, 1995.
- g. In response to the above notification, the following producer/exporter from the subject country has submitted the exporter questionnaire response:

Subject country	Producer/Exporter
China PR	M/s Hubei Hongyuan Pharmaceutical Technology Co., Ltd

- h. The producers/exporters from the subject country who have not submitted the questionnaire response or have not cooperated in the investigation have been treated as non – cooperative in the investigation.
- i. The Authority also sent questionnaires to the known importers/users of the subject goods in India calling for necessary information in accordance with Rule 6(4) of the AD Rules, 1995.
- j. No importers/users submitted the importer/user responses to the questionnaire issued by the Authority.
- k. On 18th September 2023, the Directorate received a letter from an importer and user industry, [***], seeking an opportunity to present its comments before the Authority and participate in the investigation. [***] further alleged that despite being a regular customer of the domestic industry, the domestic industry had deliberately left its name out of the anti-dumping application. It further sought an extension of the timeline for completion of the investigation. It is noted that [***] sought to participate at the fag end of the investigation. Trade remedial investigations comprise several stages, with each stage having its own timeline. The timeline for registration of interested parties has been long over. Further, the Directorate had taken all steps to publicise the initiation of the investigation, including publication of the notification in the Gazette of India as well as publicised the initiation of the investigation on its website. The investigation team also sent an email regarding the initiation of the investigation to all known imports and users as provided by the applicant in the application. Granting opportunity at this final juncture would prejudice the rights of other interested parties. The investigating team has also, through its detailed letter dated 21st September 2023 sent through email, informed [***] regarding the same.
- l. The Directorate General of Systems & Data Management (DG Systems) was requested to provide transaction-wise details of the imports of the subject goods for the past injury investigation period and the period of investigation. A request was also made to the Directorate General of Commercial Intelligence and Statistics (DGCI&S) to provide

transaction-wise details of the imports of the subject goods for the injury investigation period and the period of investigation. The same has been received by the Authority and has been considered in this final finding.

- m. In accordance with Rule 6(6) of the AD Rules, 1995 the Authority provided an opportunity to the interested parties to present their views orally regarding the subject investigation through a public hearing held via video conferencing on 8th February 2023. The interested parties who presented their views in the oral hearing, were requested to file written submissions of the views expressed orally, followed by rejoinder submissions, if any. The interested parties were further directed to share the non-confidential version of the written submissions submitted by them with the other interested parties.
- n. The non-injurious price (hereinafter referred to as the 'NIP') has been determined based on the cost of production and reasonable profits of 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 AD Rules, 1995 so as to ascertain whether anti-dumping duties lower than the dumping margin would be sufficient to remove injury to the domestic industry.
- o. The information submitted by the applicant has been examined and verified during on site-verification to the extent deemed necessary and has been relied upon for the present final finding.
- p. The examination and verification of the information submitted by the cooperating producers/exporters from the subject country were also carried out to the extent deemed necessary and have been relied upon for the purpose of the present final finding.
- q. The period of investigation (POI) for the purpose of the present investigation is 1st April, 2021 to 31st March 2022 (12 months). The injury period for the present investigation is 1st April 2018 – 31st March 2019, 1st April 2019 – 31st March 2020, 1st April 2020 – 31st March 2021 and the POI.
- r. The Authority made available the non-confidential version of the evidence presented by various interested parties on mutual basis in the manner prescribed through Trade Notice No. 01/2020 dated 10th April 2020. The information/submissions provided by the interested parties on a confidential basis were examined concerning the sufficiency of such confidentiality claims. On being satisfied as to the sufficiency of the confidentiality claims filed by the interested parties, the Authority has considered such information/submissions as confidential. In case of non-acceptance of confidentiality claims, the interested parties were directed to submit the non-confidential version of the same and circulate it to the other interested parties.
- s. The Authority has considered all the arguments raised and information provided by all

- the interested parties at this stage, to the extent the same are supported with evidence and considered relevant to the present investigation.
- t. The Authority circulated the disclosure statement containing all essential facts under consideration for making final recommendations to the Central Government to all interested parties on 19th September 2023. The interested parties were directed to file their comments on the disclosure statement by 25th September 2023.
 - u. The Authority has examined all post – disclosure comments made by the interested parties in these final findings to the extent deemed relevant. Any submission which was merely a reproduction of the previous submission and which had been adequately examined by the Authority have not been repeated for the sake of brevity.
 - v. ‘***’ in this document represents information furnished by an interested party on confidential basis and so considered by the Authority under Rules 7 of AD Rules, 1995.
 - w. The exchange rate for the POI (April 2021 - March 2022) adopted by the Authority for the subject investigation is 1 US \$= Rs. 75.37.

C PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE

5. The product under consideration (hereinafter also referred to as the “PUC”) as defined at the stage of initiation was as follows:

“3. The product under consideration is “metronidazole” originating in or exported from China PR.

[...]

5. Uses: The product is used in treatment of bacterial infections and parasitic infections. It is used in cases of amoebiasis [amoebic dysentery], trichomoniasis [STD], giardiasis [beaver fever], gingivitis [gum inflammation], acute ulcerative, anaerobic vaginosis [vaginal inflammation] caused by over growth of natural bacterial found in the tracts.

6. Tariff classification: The product under consideration is classified under Chapter 29 of the Customs Tariff Act, 1975 under subheading 293329 of the Tariff Classification. The product under consideration is imported under the HS Code 29332920. The classification is indicative only and is not binding on the scope of the investigation.”

C.1 Submissions made by the other interested parties

6. The other interested parties have made the following submissions with respect to the product under consideration:
 - a. The product under consideration has a history of anti-dumping duty imposed for more than 15 years.¹

C.2 Submissions made on behalf of the domestic industry

7. The following submissions have been made on behalf of the domestic industry with regard to the product under consideration:
 - a. The product under consideration is an anti-diarrhea and anti-microbial drug.² It is used in the treatment of bacterial infections and parasitic infections. It is used in cases of amoebiasis, trichomoniasis, post-operative infection after surgery, giardiasis, acute ulcerative and gingivitis, vaginosis treatment of infection caused by anaerobic micro formation.³
 - b. The product does not have any sub-category or sub-grades.⁴
 - c. The PUC is classified under Chapter 29 of the Customs Tariff Act, 1975 under the subheading 293329.⁵
 - d. The PUC is being imported under HS Code 2933 29 20.⁶ This code is prescribed for Metronidazole and Metronidazole benzoate, however, there are insignificant imports of Metronidazole benzoate.⁷
 - e. The basic customs duty applicable on the imports of the subject goods is 7.5%.⁸
 - f. The product manufactured by the applicant is 'like article' to the product being imported

¹ Written Submissions filed by Hubei Hongyuan Pharmaceutical Technology Co., Ltd., page 2 (hereinafter "*Written Submissions of Hubei*").

² Written Submissions filed by the Applicant, para 9 (hereinafter "*Written Submission of the Applicant*").

³ *Id.*, para 12.

⁴ *Id.*, para 9.

⁵ *Id.*, para 13.

⁶ Initiation Notification F. No. 6/3/2022-DGTR, "Initiation of anti-dumping investigation concerning imports of "Metronidazole" originating in or exported from China PR", 30th September 2022, (hereinafter "*Initiation Notification*") https://www.dgtr.gov.in/sites/default/files/Initiation%20Notification_%20Metronidazole%20-%20ENGLISH%20%281%29.pdf.

⁷ Application for imposition of Anti-Dumping Duty concerning imports of "Metronidazole" from China PR, filed by Aarti Drugs Limited, para 21 (hereinafter "*Application*").

⁸ Notification No. 50/2017 – Customs, dated 30th June 2017, issued by the Department of Revenue, Ministry of Finance, Government of India.

from the subject country.⁹

C.3 Examination by the Authority

8. The submissions made by the interested parties and the domestic industry with regard to the product under consideration have been examined and addressed hereunder:
9. The product under consideration in the present investigation is Metronidazole. It is an anti-diarrhea and anti-microbial drug, which is used in the treatment of bacterial infections and parasitic infections. It is used in cases of amoebiasis, trichomoniasis, post-operative infection after surgery, giardiasis, acute ulcerative and gingivitis, vaginosis treatment of infection caused by anaerobic micro formation.
10. The applicant has stated that the product is manufactured by condensing an intermediate compound, *viz.*, 2-Methyl 5-Nitro Imidazole with ethylene oxide in the presence of formic acid [85%] and sulphuric acid [98%]. Then an esterification reaction is carried out with methanol, which generates methyl formate [methyl methanoate]. This esterification reaction is mass precipitated with liquor ammonia @ [24%] to isolate the unreacted 2-MNI. This isolated 2-MNI is dried and reused in process. The washing mother liquor is transferred to a multiple-effect evaporator for recovery of ammonium sulphate and mix glycol. The filtered cake is transferred for separation, wherein caustic soda flakes and ice mix is used to isolate the crude metronidazole. The wet crude metronidazole is decolorized with the help of charcoal and is further crystallized to isolate metronidazole. This isolated metronidazole is filtered. The wet material is dried in the drier, unloaded and labelled as dry pure metronidazole.
11. The product under consideration is classified under Chapter 29 of the Customs Tariff Act, 1975 and is being imported under the HS code 2933 29 20. However, the said customs classification is only indicative in nature, and is in no way binding on the scope of the present investigation.

C.3.1 Product under consideration and like article

12. The applicant has claimed that the article manufactured by them and the subject goods imported from the subject countries are comparable in terms of physical and chemical characteristics, manufacturing process and technology, functions and uses, product specifications, pricing, distribution and marketing and tariff classification of the goods. The two are technically and commercially substitutable. The consumers have used and are using the two interchangeably. The other interested party has not disputed the applicant's claim

⁹ Application, para 34.

with respect to the goods manufactured by the domestic industry being a ‘like article’ to the subject goods. The Authority, therefore, holds that the goods produced by the domestic industry are ‘like article’ to the subject goods imported from the subject countries in terms of Rule 2(d) of the AD Rules, 1995.

C.3.2 Scope of the PUC

13. No party has disputed the definition of the product under consideration as proposed by the applicant and as defined by the Authority at the stage of the initiation of the investigation.¹⁰ It is further noted that the product under consideration defined in the present investigation is similar to the product under consideration defined in previous investigations concerning ‘metronidazole’.¹¹ In view of the above, the Authority confirms the scope of the PUC as defined at the stage of initiation.

D SCOPE OF DOMESTIC INDUSTRY AND STANDING

D.1 Submissions made by the other interested party

14. The following submissions have been made by the other interested party with regard to the scope of the domestic industry and its standing:
- a. The applicant cannot be considered as an eligible domestic industry under Rule 2(b) of the Rules since it has imported the subject goods from the subject country during the POI.¹²
 - b. In the 2nd Sunset Review investigation concerning imports of ‘Metronidazole’ from China PR, the Authority therein had excluded the applicant from the scope of the domestic industry under similar circumstances where the applicant had imported Metronidazole from China PR under a duty exemption scheme.¹³

¹⁰ Initiation Notification, para 3.

¹¹ Final Findings No. 17/1/99 dated 14th July 2000, “Anti-dumping investigation concerning imports of Metrodinazole from China PR”, para 3, https://www.dgtr.gov.in/sites/default/files/Final-Finding_24.pdf; Final Findings (Sunset Review) No. 15/9/2003-DGAD dated 5th April 2006, “Anti-dumping (Sunset Review) investigation concerning imports of Metronidazole originating in or exported from China PR”, para 5, https://www.dgtr.gov.in/sites/default/files/adfin_metronidazole_SSR_china.pdf; Final Findings No. 15/18/2010-DGAD dated 29th June 2012, “Sunset Review of anti-dumping duty imposed concerning imports of ‘Metronidazole’ originating in or exported from China PR – Final Findings, para 13, https://www.dgtr.gov.in/sites/default/files/adfin_SSR2_metronidazole_chinaPR.pdf.

¹² Written Submissions of Hubei, page 5.

¹³ *Id.*, pages 5 & 6.

- c. The application filed by the applicant for the 3rd sunset review of the previous investigation on Metronidazole was also rejected by the Authority on the grounds that it had imported Metronidazole from China PR under advance licenses.¹⁴
- d. The other interested party claimed that the High Court of Delhi, in Writ Petition No. 7464/2017, had ordered for the termination of the previous investigation (3rd SSR) concerning Metronidazole since the applicant was not an eligible ‘domestic industry’.¹⁵
- e. The facts of the previous investigations concerning Metronidazole are similar to the instant investigation. Since Aarti Drugs Limited was not considered as an eligible petitioner during the two previous sunset review investigations, they should not be considered as an eligible ‘domestic industry’ for the purpose of the present investigation.¹⁶
- f. The applicant is also related to a producer of the subject goods in China PR. The applicant continues to hold investments in the Chinese entity and was previously involved in joint venture with the Chinese entity.¹⁷

D.2 Submissions made on behalf of the domestic industry

15. The following submissions have been made by the applicant with regard to the scope of the domestic industry and its standing:
 - a. Apart from the applicant, there is one other domestic producer of the product under consideration in India.¹⁸
 - b. The applicant accounts for [***]%of the total domestic production of the product under consideration in India.¹⁹
 - c. The applicant has imported the PUC during the POI in volumes that are not significant in comparison to its production of the like article in India.
 - d. The applicant has made imports under the advance authorization scheme for the production of Metronidazole Benzoate in order to meet its export obligations.²⁰ The entire imports made by the applicant have been captively consumed and not sold in the domestic market.²¹
 - e. The determinations pertaining to the eligibility of a ‘domestic industry’ under Rule 2(b)

¹⁴ *Id.*, page 6.

¹⁵ Written Submissions of Habei, page 7.

¹⁶ *Id.*, page 7.

¹⁷ *Id.*, page 7.

¹⁸ Application, para 25.

¹⁹ Application, annexure “standing”.

²⁰ Application, para 36.

²¹ *Id.*

is case-specific, company-specific, period-specific and situation-specific.²² Therefore, there is no reason to link the conclusions made by the Authority in previous investigations.

- f. In the previous investigations, the volume of imports made by the applicant was very high, and amount to about ***% of its total production. However, in the instant investigation, the applicant has imported a miniscule volume of the subject goods, which amounts to about ***% of its total production.²³
- g. In the previous investigation, the applicant had imported [***]MT of Metronidazole from China PR, whereas, in the present investigation, the applicant has imported only [***]MT.²⁴
- h. Rule 2(b) is an exclusion-based definition and not an inclusion-based definition. The Authority, may exclude the applicants from the scope of the domestic industry only if there are cogent reasons justifying its exclusion.²⁵
- i. A domestic producer, under Rule 2(b) of the AD Rules, is automatically included within the scope of the ‘domestic industry’, and its exclusion must be specifically justified.²⁶
- j. The applicant has contended that in multiple investigations,²⁷ the Authority had not excluded a domestic producer from the definition of the ‘domestic industry’ where import volumes of such domestic producer in relation to its total production is very low.²⁸
- k. The claim of the other interested party that the applicant was excluded from the scope of the domestic industry in the 3rd SSR of the previous investigation is factually incorrect since the applicant was considered as a ‘domestic industry’ by the Authority therein.
- l. The claim of the other interested party that the High Court of Delhi, in relation to the previous investigation, had held that the applicant is ineligible to be considered as a ‘domestic industry’ is false and misleading.²⁹

²² Written Submissions of the applicant, para 11.

²³ Written Submission of the applicant, para 12.

²⁴ Rejoinder of the applicant, para 18.

²⁵ Written submissions of the applicant, para 16.

²⁶ Written Submission of the applicant.

²⁷ Anti-dumping investigation concerning imports of Carbon Black used in rubber applications originating in or exported from Australia, China PR, Iran, Malaysia, Russia and Thailand; Anti-Dumping investigation concerning imports of “Glazed/Unglazed Porcelain/ Vitrified tiles in polished or unpolished finish with less than 3% water absorption”, originating in or exported from China PR; Anti-dumping investigation concerning imports of Flat base Steel Wheels originating in/exported from China PR (some parameters); Anti-dumping investigation concerning imports of D (-) Para Hydroxy Phenyl Glycine Base (PHPG Base) originating in or exported from the European Union; Anti-dumping investigation concerning imports of Styrene Butadiene Rubber SBR of 1500 series and 1700 series originating in or exported from European Union, Korea RP & Thailand; Anti-dumping investigation involving imports of PVC Flex Films originating in or exported from China PR.

²⁸ Rejoinder of the application, paras 15 & 16.

²⁹ Rejoinder of the applicant, para 19.

m. It is false to state that a related company of the applicant is producing the subject goods in the subject country since the previous joint venture between the Chinese entity and the applicant has expired. Further, there is no direct or indirect control exercised by either of the companies in the other company – in terms of appointment of board members. The two companies hold separate books of accounts and the applicant has reduced its investments in the Chinese entity, etc.³⁰

D.3 Examination of the Authority.

16. The submissions made by the applicant and the other interested party with regard to the product under consideration have been examined and addressed hereunder. The following issues have been raised by the applicant and the other interested party with respect to the applicant's standing:

- i Whether the imports of the subject goods made by the applicant during the POI and the applicant's investment in a Chinese producer of the subject goods disqualify it from being considered as a 'domestic industry' in terms of Rule 2(b)?
- ii Whether the application requires the conditions under Rule 5(3) of the AD Rules?

D.3.1 Whether the imports of the subject goods made by the applicant during the POI and the applicant's investment in a Chinese producer of the subject goods disqualify it from being considered as a 'domestic industry' in terms of Rule 2(b)?

17. In the instant investigation, the applicant has admittedly imported [***]MT of the subject goods from China PR.³¹ The applicant has also admitted that it was previously involved in a joint venture with a Chinese producer of the subject goods, viz. Huanggang Yinhe Aarti Pharmaceutical Co. Ltd., and continues to hold investments in the said entity.³² It is also pertinent to note that in previous anti-dumping investigations concerning imports of Metronidazole from China PR, the Authority had excluded the applicant (Aarti Drugs Ltd.) from the scope of the 'domestic industry' in terms of Rule 2(b) of the AD Rules since the applicant had imported the subject goods during the POI.³³

18. The other interested party, namely Hubei Hongyuan Pharmaceutical Technology Co. Ltd., has contended that on account of the imports made by the applicant and in light of the conclusions of the Authority in previous investigations concerning Metronidazole, the

³⁰ Rejoinder of the applicant, para 20.

³¹ Rejoinder of the applicant, para 18.

³² Application, para 37.

³³ Final Findings No. 15/18/2010-DGAD dated 29th June 2012, "Sunset Review of anti-dumping duty imposed concerning imports of 'Metronidazole' originating in or exported from China PR – Final Findings", para 5, https://www.dgtr.gov.in/sites/default/files/adfin_SSR2_metronidazole_chinaPR.pdf.

applicant is ineligible to constitute a ‘domestic industry’ in terms of Rule 2(b) of the AD Rules.³⁴ Hubei has further contended that the applicant is related to a Chinese producer of the subject goods since it holds investments in the said entity, and this must disqualify the applicant from the scope of the ‘domestic industry’.³⁵

19. The applicant has argued that mere imports made by domestic producers does not automatically disqualify such domestic producers from the scope of the ‘domestic industry’.³⁶ According to the applicant, Rule 2(b) requires the Authority to consider whether there are any justifiable reasons to *exclude* a producer from the scope of the domestic industry, and not whether such producer must be *included*. The applicant has contended that as per Rule 2(b), domestic producers automatically fall under the definition of the ‘domestic industry’, and they may be excluded only if sufficient reasons exist to justify their exclusion.³⁷ The applicant submits that the other interested party has not provided valid reasons to justify the exclusion of the applicant.
20. The applicant has further submitted that unlike in previous investigations, wherein the applicant had imported [***%] of its total production (amounting to [***]MT) of the subject goods, during the POI for the present investigation, the applicant has only imported [***%] of its total production (amounting to [***]MT).³⁸ The applicant has also consistently stated that it has imported the subject goods under advance authorisation licenses in order to meet its export obligations. It has been claimed that all imports of the subject goods made by the applicants have been captively consumed in the production of the exported product, and have not been cleared in the domestic market.³⁹
21. With respect to the applicant’s investment in a Chinese producer of the subject goods (Huanggang), the applicant has stated that the joint venture between the two companies has expired and currently no such joint venture exists. Further, it has been stated that the applicant does not exercise any legal or operational control over the Chinese producer. The applicant has submitted that it has not reported the Chinese producer as a related entity in its annual reports, it has continuously been reducing its investments in the Chinese producer, the two companies do not have consolidated books of accounts, the Chinese producer is only shown as a long-term investment in the books of accounts of the applicant, the Chinese producer has not directly exported any material in the Indian market, and the applicant does not hold any position the board of directors and has not appointed any board members of

³⁴ Written submissions of Hubei, pages 5 & 6.

³⁵ *Id.*, page 7.

³⁶ Written submissions of the applicant, para 16.

³⁷ Written submissions of the applicant, para 16.

³⁸ Rejoinder of the applicant, para 18.

³⁹ Application, para 36; *see also* written submissions of the applicant, para 10.

the Chinese entity.⁴⁰

22. The Authority recalls that under Rule 2(b) of the AD Rules, 1995, a domestic producer may be excluded from the scope of the ‘domestic industry’ if it is an importer of the subject goods from the subject country, or it is related to any exporters or importers of the alleged dumped goods.⁴¹ The use of the word ‘may’ in Rule 2(b) of the AD Rules, 1995 suggests that the Authority has the discretion to even include the domestic producers that are also importers of the subject goods into India within the scope of the ‘domestic industry’, or that are related to exporters or importers of the subject goods.
23. In the case of *Gujarat Fertilizers & Chemicals Ltd.*,⁴² the High Court of Calcutta observed that the question of whether a domestic producer which has imported the subject goods is disqualified from the scope of ‘domestic industry’ under Rule 2(b) of the AD Rules must be examined based on the nature of activities carried out by the domestic producer with respect to the imports made by it. In the above case, the Calcutta High Court held that the producer therein, which had imported 15% of its total production of the subject goods, qualifies as the domestic industry since such imports were made merely to meet its customers’ demands. The High Court observed that the domestic producer was not carrying on the business of import exclusively for trading purposes, and therefore there was no reason to exclude it from the scope of ‘domestic industry’ under Rule 2(b) of the AD Rules. Further, in *Century Plyboards*,⁴³ the Gauhati High Court, relying on the WTO Panel decision of *EC – Fasteners (China)*,⁴⁴ held that under Rule 2(b) of the AD Rules, the Authority has some discretion “... to include the producers related to the exporters or importers of the dumped article or the importers themselves in the concept of “domestic industry”.”⁴⁵
24. The applicant has imported lower volumes of the subject goods (in absolute and relative terms) during the present investigation as compared to previous investigations. Further, as stated by the applicant, all of its imports of the subject goods have been made under the advance authorisation licenses to meet its export obligations. The applicant continues to be

⁴⁰ Rejoinder of the applicant, para 20.

⁴¹ Rule 2(b) of the AD Rules, 1995 reads as under:

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

⁴² *State of Gujarat Fertilizers & Chemicals Ltd. v. Designated Authority and Ors.*, 2012 SCCOnLine Cal 8071.

⁴³ *Century Plyboards (I) Ltd. v. Union of India and Ors.*, 2022 SCCOnLine Gau 643.

⁴⁴ WTO Panel Report, *European Commission - Definitive Anti-Dumping Measures on Certain Iron or Steel Fasteners from China (DS 397)*, adopted on 28 July 2011, [WT/DS397/R](#)

⁴⁵ *Century Plyboards*, 2022 SCCOnLine Gau 643, para 54.

engaged in the production and sales of the product under consideration in India. The nature of the applicant appears to be that of a producer of the subject goods, and the applicant does not appear to be in the business of carrying on imports exclusively for trading purposes. In the light of the principle laid down by the High Court of Calcutta in the case of *Gujarat Fertilizers & Chemicals Ltd.*,⁴⁶ the Authority holds that the imports made by the applicant during the period of investigation does not disqualify it from being considered as a 'domestic industry' in terms of Rule 2(b) of the AD Rules.

25. With respect to the applicant's relation to a producer of the subject goods in the subject country (Huanggang Yinhe Aarti Pharmaceutical Co. Ltd.), the applicant has submitted that it has not reported Huanggang as a related entity in its annual reports, it has continuously been reducing its investments in Huanggang, the two companies do not have consolidated books of accounts, Huanggang is only shown as a long-term investment in the books of accounts of the applicant, Huanggang has not directly exported any material in the Indian market, and the applicant does not hold any position in the board of directors and has not appointed any board members of Huanggang.⁴⁷ The applicant has also provided a letter wherein it has submitted that it has only a [***%] stake in Huanggang Yinhe Aarti Pharmaceutical Co. Ltd. and does not exercise any control over the management of the said company.⁴⁸ The letter further states that there are no common directors, senior management personnel or key managerial persons between the two companies. Further the letter states that the shareholding by the applicant does not give it any rights to appoint any of the board members of Huanggang.
26. In light of the decision of the Gauhati High Court in *Century Plyboards*,⁴⁹ the Authority holds that the applicant's relation to a producer of the subject goods in the subject country does not disqualify the applicant from being considered as a 'domestic industry' in terms of Rule 2(b) of the AD Rules.
27. The Authority therefore holds that the applicant constitutes a 'domestic industry' in terms of Rule 2(b) of the AD Rules.

D.3.2 Whether the application requires the conditions under Rule 5(3) of the AD Rules?

28. As per Rule 5(3) of the AD Rules, an application for anti-dumping investigation must be made 'by or on behalf of the domestic industry'. The 'standing' requirement of Rule 5(3) of the AD Rules has the following two conditions:

⁴⁶ *State of Gujarat Fertilizers & Chemicals Ltd.*, 2012 SCCOnLine Cal 8071.

⁴⁷ Rejoinder of the applicant, para 20.

⁴⁸ Letter from Aarti Drugs Ltd, dated 27th July 2023.

⁴⁹ *Century Plyboards (I) Ltd. v. Union of India and Ors.*, 2022 SCCOnLine Gau 643.

- i the domestic producers supporting the application must account for not less than 25% of the total domestic production of the product under consideration in India;⁵⁰ and
- ii the application must be supported by producers whose collective output constitutes more than 50% of the total production of the like article produced by that portion of the domestic industry expressing either support for or opposition to the application.⁵¹

29. The applicant has stated that apart from it, M/s. Unichem Laboratories is also engaged in the production of the product under consideration in India.⁵² The applicant has submitted that M/s. Unichem Laboratories does not sell the PUC in India, and its entire production of the PUC is meant for export operations.⁵³ The following table enumerates the production figures of the domestic producers of the like article as considered at the stage of initiation:

SN	Name of the domestic producer	Status of the producer	Production Volumes*	Production share*	Production share range
1	Aarti Drugs Limited	Applicant	*** MT	***%	80-85%
2	Unichem Laboratories	Neutral	*** MT	***%	15-20%
3	Total		*** MT	***%	100%

*Figures during the period of investigation (i.e. April 2021 to March 2022)

30. It is seen that the applicant's share in total domestic production was more than 25% of the eligible domestic production during the POI. Thus, the first limb of the requirement laid down in Rule 5 (3) (a) is fulfilled. With respect to the second condition, it is noted that the volume of only such domestic producers is to be taken into account who have either expressed support or opposition to the application. As the other eligible producer has not expressed opposition to the application at the stage of initiation, it can be concluded that the application is supported by domestic producers whose collective output constitute more than 50% of the production among the producers which had expressed either it "support or opposition" to the application. Thus, the requirement of the second limb of Rule 5 (3) of the AD Rules, 1995 was also fulfilled.

⁵⁰ Proviso to Rule 5(3)(a) of the AD Rules, which reads as under:

Provided that no investigation shall be initiated if domestic producers expressly supporting the application account for less than twenty-five per cent of the total production of the like article by the domestic industry, and

⁵¹ Explanation to Rule 5(3) of the AD Rules, which reads as under:

Explanation. - For the purpose of this rule the application shall be deemed to have been made by or on behalf of the domestic industry, if it is supported by those domestic producers whose collective output constitute more than fifty per cent of the total production of the like article produced by that portion of the domestic industry expressing either support for or opposition, as the case may be, to the application.

⁵² Application, para 30.

⁵³ *Id.*

31. Accordingly, the Authority holds that the applicant constitutes ‘domestic industry’ within the meaning of Rule 2(b) of the AD Rules, 1995 and considers that the application satisfies the criteria of standing in terms of Rule 5(3) of the AD Rules, 1995.

E CONFIDENTIALITY

32. With regard to the confidentiality of the information/data submitted by the interested parties, Rule 7 of the AD Rules provides as follows:

Confidential information: (1) Notwithstanding anything contained in sub-rules (2), (3) and (7) of rule 6, sub-rule (2) of rule 12, sub-rule (4) of rule 15 and subrule (4) of rule 17, the copies of applications received under sub-rule (1) of rule 5, or any other information provided to the designated authority on a confidential basis by any party in the course of investigation, shall, upon the designated authority being satisfied as to its confidentiality, be treated as such by it and no such information shall be disclosed to any other party without specific authorization of the party providing such information.

(2) The designated authority may require the parties providing information on confidential basis to furnish non-confidential summary thereof and if, in the opinion of a party providing such information, such information is not susceptible of summary, such party may submit to the designated authority a statement of reasons why summarization is not possible.

(3) Notwithstanding anything contained in sub-rule (2), if the designated authority is satisfied that the request for confidentiality is not warranted or the supplier of the information is either unwilling to make the information public or to authorise its disclosure in a generalized or summary form, it may disregard such information.”

33. No interested party has made any submission with regards to the confidentiality. The information and data submitted by the interested party and the domestic industry on a confidential basis was examined with regard to the 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 the other interested party. Wherever required, parties providing information on a confidential basis were directed to provide a sufficient non-confidential version of the information filed by them on a confidential basis. Parties were directed to share the non-confidential version of their submissions through e-mails.

MARKET ECONOMY TREATMENT (MET), NORMAL VALUE, EXPORT PRICE & DETERMINATION OF DUMPING MARGIN**F MARKET ECONOMY TREATMENT (MET) AND NORMAL VALUE****F.1 Submissions of the other interested party**

34. The other interested party has made the following submissions with respect to the market economy treatment of China PR:⁵⁴
- a. China's Accession Protocol to the WTO expired on 11th December 2016, and therefore China PR should be treated as a market economy.
 - b. In *EC – Fasteners (China)*, the Appellate Body has held that China PR automatically obtains a market-economy status upon the expiry of Article 15 of China's Accession Protocol to the WTO.
 - c. The WTO Agreement and China's Accession Protocol to the WTO must be interpreted in good faith and based on the principle of '*pacta sunt servanda*'. India has an obligation to grant market-economy status to China PR after the expiry of Article 15 of China's Accession Protocol.
 - d. Various other jurisdictions such as EU and USA have treated China as a market-economy country after the expiry of Article 15 of China's Accession Protocol.
 - e. The intention of the framers of the Agreement was to restrict the non-market economy status of China PR to 15 years only.
 - f. The understanding of the EU and the USA at the time of negotiating China's accession to the WTO was that the non-market economy treatment of China would be in place only for 15 years.
 - g. Regardless of how China PR is classified in the domestic laws of India, there is an international obligation to treat China PR as a market-economy country.

F.2 Submissions of the domestic industry

35. The domestic industry has made the following submissions with respect to the market

⁵⁴ Written Submissions of Hebei, pages 17 to 22.

economy treatment of China PR:⁵⁵

- a. Even though Article 15(a)(ii) of China's Accession Protocol to the WTO has expired 15 years from the date of China's accession to the WTO, Article 15(a)(i) of the Accession Protocol continues to remain in force, and permits the treatment of China as a non-market economy.
- b. The Chinese producers must establish, with evidence that market economy conditions exist in their country for their claim of market-economy treatment to be accepted.
- c. The domestic selling price of Chinese producers/exporters must not be accepted unless it can be established that the cost and domestic prices are appropriate, and reasonably reflect the cost and price of the product under consideration.
- d. Domestic cost and prices cannot be adopted in a situation where there is state interference in determination of costs and prices.
- e. Domestic costs and prices cannot be adopted unless the responding exporters establish that the prices of major inputs substantially reflect the market value. In a situation where Chinese producers claim that raw material prices are substantially lower than Indian and international raw material prices, it must be concluded that prices of inputs reported by the responding exporters are distorted.
- f. Domestic cost and prices cannot be adopted unless the responding exporter establish that their books are audited in line with Chinese GAAP and international accounting standards.
- g. An examination must be made about the appropriateness of the costs claimed by the responding exporters.
- h. There is no reasonable information available as to the price of the subject goods in a market economy third country or price from such third country to other countries, including India. Therefore, the normal value may be constructed on the basis of cost of production with reasonable addition for selling and general administration, and profits.

F.3 Examination by the Authority

36. It is noted that Hubei Hongyuan Pharmaceutical has argued for treatment for China PR as a market economy country. The argument is based on the premise that with the expiration of Article 15 (a) (ii) of China's Accession Protocol on 11th December 2016, WTO members (including India) are under an obligation to treat China PR as a market economy country. Hubei has placed reliance on the WTO Appellate Body Report in *EC – Fasteners*⁵⁶ to

⁵⁵ Application, paras 41 to 48

⁵⁶ Appellate Body Report, *European Communities – Definitive Anti-Dumping Measures on Certain Iron or Steel*

substantiate its claim. The Authority notes that Hubei's reliance on the Appellate Body's Report in *EC – Fastener* is misconceived. The question before the Appellate Body in that dispute did not pertain to the computation of normal value but rather related to the computation of export price.⁵⁷

37. Article 15 of China's Accession Protocol to the WTO provides as follows:

"Article VI of the GATT 1994, the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ("Anti-Dumping Agreement") and the SCM Agreement shall apply in proceedings involving imports of Chinese origin into a WTO Member consistent with the following:

(a) In determining price comparability under Article VI of the GATT 1994 and the Anti-Dumping Agreement, the importing WTO Member shall use either Chinese prices or costs for the industry under investigation or a methodology that is not based on a strict comparison with domestic prices or costs in China based on the following rules:

(i) If the producers under investigation can clearly show that market economy conditions prevail in the industry producing the like product with regard to the manufacture, production and sale of that product, the importing WTO Member shall use Chinese prices or costs for the industry under investigation in determining price comparability;

(ii) The importing WTO Member may use a methodology that is not based on a strict comparison with domestic prices or costs in China if the producers under investigation cannot clearly show that market economy conditions prevail in the industry producing the like product with regard to manufacture, production and sale of that product.

(b) In proceedings under Parts II, III and V of the SCM Agreement, when addressing subsidies described in Articles 14(a), 14(b), 14(c) and 14(d), relevant provisions of the SCM Agreement shall apply; however, if there are special difficulties in that application, the importing WTO Member may then use

Fasteners from China, [WT/DS397/AB/R](#), adopted 28 July 2011

⁵⁷ *Id.*, para 288: *"We do not consider that the references in paragraph 15(a)(i) and (ii) to producers having to show that "market economy conditions prevail ... with regard to the manufacture, production and sale" of a product means that paragraph 15(a) permits any derogations also with respect to the determination of export prices. We reach this conclusion because, when producers are not able to show that market economy conditions prevail (including with regard to the sale of the product), paragraph 15(a) makes it clear that all an importing WTO Member is allowed to do as a consequence is to "use a methodology that is not based on a strict comparison with domestic prices or costs in China"."* (emphasis supplied)

methodologies for identifying and measuring the subsidy benefit which take into account the possibility that prevailing terms and conditions in China may not always be available as appropriate benchmarks. In applying such methodologies, where practicable, the importing WTO Member should adjust such prevailing terms and conditions before considering the use of terms and conditions prevailing outside China.

(c) The importing WTO Member shall notify methodologies used in accordance with subparagraph (a) to the Committee on Anti-Dumping Practices and shall notify methodologies used in accordance with subparagraph (b) to the Committee on Subsidies and Countervailing Measures.

(d) Once China has established, under the national law of the importing WTO Member, that it is a market economy, the provisions of subparagraph (a) shall be terminated provided that the importing Member's national law contains market economy criteria as of the date of accession. In any event, the provisions of subparagraph (a)(ii) shall expire 15 years after the date of accession. In addition, should China establish, pursuant to the national law of the importing WTO Member, that market economy conditions prevail in a particular industry or sector, the nonmarket economy provisions of subparagraph (a) shall no longer apply to that industry or sector."

38. The treatment of China PR as a non – market economy does not solely stem from Article 15 (a) (ii) – which Hubei has claimed to have expired on 11th December 2016 – but also flows from the remaining text of Article 15 i.e., subparagraph (a), as well as the broader rules set forth in Article VI of GATT 1994⁵⁸ and Article 2.2.1.1 of the WTO Anti-Dumping Agreement. As per the current international framework emerging from Article 15 of China's Accession Protocol, read with GATT Article VI and Article 2.2.1.1 of the Anti-Dumping Agreement, there are no restrictions in treating China PR as an NME. It is noted that although Article 15 (a)(ii) has expired, Article 2.2.1.1 of the Anti-Dumping Agreement read with the Article 15(a)(i) of China's Accession Protocol to the WTO indicate that producers/exporters from China PR may be required to prove that market economy conditions exist in China PR. Paragraph 8 of Annexure I to the AD Rules stipulates that any country that has been determined to be, or has been treated as a non-market economy

⁵⁸ See Second *Ad Note* to GATT Article VI from Annex I, which reads as under:

2. It is recognized that, in the case of imports from a country which has a complete or substantially complete monopoly of its trade and where all domestic prices are fixed by the State, special difficulties may exist in determining price comparability for the purposes of paragraph 1, and in such cases importing contracting parties may find it necessary to take into account the possibility that a strict comparison with domestic prices in such a country may not always be appropriate.

country, is presumed to be a non-market economy. Exporters from such country may rebut such a presumption by providing information/evidence stipulated in paragraph 8(3) of Annexure-I to the AD Rules in the form of a response to the supplemental questionnaire issued by the Authority. Therefore, the burden is on the other interested party to prove that Market Economy Conditions prevail in the subject country.

39. The Authority has a consistent practice of treating China PR as a Non-Market Economy. It is noted that since the responding producer/exporter from China PR has not filed a response to MET/Supplementary questionnaire to dispute the presumption that market economy conditions exist in China PR, the normal value computation is required to be done as per the provisions of paragraph 7 of Annexure I of the Rules, which reads as under:

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

40. It is noted that paragraph 7 of Annexure-I to the AD Rules stipulate three methods of constructing the normal value for Non-Market Economies: (a) on the basis of price or constructed value in a market economy third country; (b) export price from a third country to other countries, including India; and (c) on any other reasonable basis. The Authority notes that under the provisions of paragraph 7 of Annexure-I to the AD Rules, the normal value must first be determined on the basis of the price or constructed value in a surrogate country, or the price of the exports from such country to other countries, including India. However, when such basis is not possible, only then the Authority can determine the normal value on any other reasonable basis, including the price paid or payable in India.⁵⁹

41. It is to be noted that no information/evidence has been provided by the parties for the

⁵⁹ See *Shenyang Matsushita S. Battery Co. Ltd. v. Exide Industries Ltd. & Ors.*, (2005) 3 SCC 39, paragraph 7.

construction of the normal value on the basis of the first and the second methods. There is no data available with respect to the price or constructed value of the subject goods produced in a market economy third country. Further, the HS code under which the PUC is being imported also includes other products which are not covered in the scope of the PUC. Therefore, extrapolating the export price of the subject goods from third country to other countries is not possible since the export data for the relevant HS code under which the PUC is being imported also includes other products which are not covered in the scope of the PUC. There is also no public data available with the Authority to determine the normal value from the above two methods. In the absence of the above information/evidence, it is not possible for the Authority to determine normal value on the basis of the first or second method. Therefore, the Authority has decided to construct normal value based on the third method, i.e., on any other reasonable basis including the price actually paid or payable in India. The Authority has constructed the normal value on the basis of the price paid or payable in India.

G EXPORT PRICE

G.1 Export price for Hubei Hongyuan Pharmaceutical

42. Based on the information furnished in the exporter questionnaire response, the Authority notes that Hubei is a producer and exporter of the subject goods from China PR. Hubei has exported 199 MT of the subject goods directly to its unrelated customers in India during the POI. Hubei has provided the relevant information in the form and manner required and has claimed adjustments on account of ocean freight, insurance, inland transportation, port and other related expenses, credit costs and bank charges. The Authority has undertaken desk verification of the information submitted by Hubei to examine its claims and accordingly, the claims have been allowed. The net export price at ex-factory level for Hubei has been determined after allowing the due adjustments and the same is mentioned in the dumping margin table below.

G.2 Export price for all other producers/exporters from China PR

43. The normal value and export price for all producers from China PR have been determined on the basis of available facts and the same is mentioned in the dumping margin table below.

H DETERMINATION OF DUMPING AND DUMPING MARGINS**H.1 Submissions of the domestic industry**

44. The domestic industry has made the following submissions with respect to the determination of dumping and dumping margins:
- a. Inclusion of April to September 2021 for dumping and injury analysis is inappropriate since there was low dumping in April 2021 to September 2021 as compared to October 2021 to March 2022.⁶⁰
 - b. The dumping margin should be determined by comparing the weighted average normal value to the transaction wise export price.⁶¹
 - c. Annexure-1 of the AD Rule and Article 2.4.2 of the Anti-Dumping Agreement permit the Authority to calculate the dumping margin by comparing the weighted average normal value to the prices of individual export transactions if it is found that a pattern of export prices differ significantly among different purchasers, regions or time periods, and if an explanation cannot be provided as to why such differences cannot be taken into account.⁶²
 - d. Till 2020-21, the net adjusted CIF price (CIF price of base year adjusted with raw material prices) of imports was lower than the actual import price.⁶³
 - e. The Chinese producers had increased their prices more than the change in raw material prices and were not dumping in the domestic market. However, in the first half of 2021-22, both the raw material cost and import price increased, but the increase in import price was not in line with an increase in raw material cost.⁶⁴
 - f. In the first half of 2021-22, the dumping margin was positive, however, because the volume of imports was low during this period, the imports were not having any material impact on the prices of the domestic industry.⁶⁵
 - g. In the second half of 2021-22, the export price had declined when the raw material price had increased, and the dumping margin has intensified. This shows that there is a pattern of export prices which differs sharply among different time periods.⁶⁶
 - h. From almost no aggressive pricing in the first half, the exporters have resorted to aggressive

⁶⁰ Written submissions of the applicant, para 17.

⁶¹ *Id.*, para 18.

⁶² Written submissions of the applicant, paras 18 to 20.

⁶³ *Id.*, para 23.

⁶⁴ *Id.*, para 23.

⁶⁵ *Id.*

⁶⁶ *Id.*, para 24.

dumping in the second half of 2021-22.⁶⁷

- i. The difference in pattern of export prices between different the first and the second half of the POI cannot be addressed by an average-to-average determination since the export prices did not move in tandem with the raw material prices.⁶⁸
- j. There is a substantial difference in dumping margin in the first half of the POI as compared to the second half of the POI.⁶⁹
- k. The applicant referred to the Appellate Body⁷⁰ decision, and investigations conducted by the US-Department of Commerce⁷¹ and the EU⁷² to argue that in case there is a pattern of export prices which differ significantly among different time periods, the investigating authority may resort to comparing the weighted average normal value to each transaction of export price, regardless of the reasons for such patterns.⁷³
- l. The applicant referred to the order of Ld. CESTAT in *Kothari Sugars & Chemicals Ltd. v. Designated Authority*, wherein it was held that if volume of imports at a particular price level is sufficient enough to have adverse impact on domestic selling prices, the same should be taken into account and given due weightage in the analysis.⁷⁴
- m. In *US – Differential Pricing Methodology*,⁷⁵ the Panel has permitted investigating authorities to use zeroing methodology while comparing the weighted average normal value to transaction wise export prices.⁷⁶

⁶⁷ *Id.*, para 24.

⁶⁸ *Id.*, para 25.

⁶⁹ *Id.*, para 27.

⁷⁰ Appellate Body Report, *United States – Certain Methodologies and Their Application to Anti-Dumping Proceedings Involving China*, [WT/DS471/AB/R](#) and Add.1, adopted 22 May 2017, DSR 2017:III, p. 1423; Appellate Body Report, *United States – Anti-Dumping and Countervailing Measures on Large Residential Washers from Korea*, [WT/DS464/AB/R](#) and Add.1, adopted 26 September 2016, DSR 2016:V, p. 2275.

⁷¹ Issues and Decisions Memorandum for the *Antidumping Duty Investigation of Large Residential Washers from the Republic of Korea (A-580-868)*, United States Department of Commerce.

⁷² Commission Regulation (EC) No. 355/2006 of 28 February 2006 *imposing a provisional anti-dumping duty on imports of side-by-side refrigerators originating in the Republic of Korea*; Council Regulation (EC) No 1050/2002 of 14 June 2002 *imposing a definitive anti-dumping duty and collectively definitively the provisional duty imposed on imports of recordable compact disks originating in Taiwan*; Council Regulation (EC) No 2604/2000 of 27 November 2000 *imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain polyethylene terephthalate originating in India, Indonesia, Malaysia, the Republic of Korea, Taiwan and Thailand*; Council Regulation (EC) No 2605/2000 of 27 November 2000 *imposing definitive anti-dumping duties on imports of certain electronic weighing scales (REWS) originating in the People's Republic of China, the Republic of Korea and Taiwan*; Council Implementing Regulation (EU) No 78/2013 of 17 January 2013 *imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain tube and pipe fittings of iron and steel originating in Russia and Turkey*.

⁷³ *Id.*, paras 28 to 31.

⁷⁴ Written submissions of the applicant, para 34.

⁷⁵ Panel Report, *United States – Anti-Dumping Measures Applying Differential Pricing Methodology to Softwood Lumber from Canada*, [WT/DS534/R](#) and Add.1, circulated to WTO Members 9 April 2019, appealed 4 June 2019.

⁷⁶ *Id.*, para 35.

H.2 Submissions of the other interested party

45. The other interested party has made the following submissions regarding the computation of the dumping margin:
- a. The applicant had initially proposed a 6-month period of investigation; however, the Authority had adopted a POI of 12 months while initiating the investigation. However, the applicant is once again requesting for the consideration of a six-month investigating period while computing the normal value.⁷⁷
 - b. As per the Manual of Operating Practices of Trade Remedy Investigations, once the POI has been fixed, it cannot be changed later on.⁷⁸
 - c. The Authority, in its wisdom has fixed the POI as 12 months, and therefore, there is no reason for modifying the same.⁷⁹
 - d. It has been the consistent practice of the Authority to analyse the POI as a whole for the purpose of assessment of the dumping margin, injury margin and rate of duty.⁸⁰

H.3 Examination of the Authority

46. Paragraph 6(iv) of Annexure-I to the Anti-Dumping Rules reads as follows:

*“Subject to the provisions governing comparison in this paragraph, the existence of margin dumping during the investigation phase shall normally be established on the basis of comparison of a weighted average normal value and export prices on a transaction-to-transaction basis. **A normal value established on a weighted average basis may be compared to the prices of the individual export transactions if it is found that the pattern of export prices which differs significantly among different purchasers, regions or time periods and if an explanation is provided as to why such differences cannot be taken into account appropriately by the use of weighted average-to-weighted average or transaction-to-transaction comparison.**”⁸¹*

47. The above provision provides three methodologies for the determination of dumping and computation of the dumping margin:
- i By comparing individual normal values to individual export prices on a transaction-to-

⁷⁷ Rejoinder submissions of Hubei.

⁷⁸ *Id.*, page 2.

⁷⁹ *Id.*

⁸⁰ Written submissions of Hubei, page 7.

⁸¹ Annexure-I to the Anti-Dumping Rules is in *pari materia* with Article 2.4.2 of the WTO Anti-Dumping Agreement.

- transaction basis (hereinafter referred to as ‘T-T methodology’).
- ii By comparing the weighted average normal value to the weighted average export price (hereinafter referred to as ‘W-W methodology’); or
 - iii By comparing the weighted average normal value to prices of individual export transactions (hereinafter referred to as ‘W-T methodology’).
48. As per Paragraph 6(iv) of Annexure-I to the Rules, the W-T methodology can be used if it is found that there is a pattern of export transactions which differs significantly among different purchasers, regions or time periods, and such differences cannot be taken into account by the use of the W-W methodology or the T-T methodology.
49. The applicant has stated that the inclusion of April to September 2021 (hereinafter referred to as “H1” to indicate the first half of the POI) for dumping and injury analysis is inappropriate since there was low dumping margin in April to September 2021 as compared to October 2021 to March 2022 (hereinafter referred to as “H2” to indicate the second half of the POI).⁸² The applicant has therefore requested the Authority to calculate the dumping margin by comparing weighted average normal value to individual export transactions.⁸³
50. The applicant has stated that there is a pattern of significant export price difference in the first half of the POI as compared to the second half. The applicant has submitted that the net adjusted CIF price (i.e. CIF price of base year adjusted with the raw material price) was lower than the actual import price. According to the applicant, this implies that the Chinese producers had, in fact, increased their prices more than the change in raw material cost and were practically not dumping in the domestic market. It was argued that in H1, both the raw material cost and the import price increased, but the increase in import price was not in line with the increase in raw material cost.⁸⁴ The applicant has presented the following table to demonstrate its claims:

S.No.	Particulars	CIF price (Rs./MT)	Raw Material cost (Rs./MT)	Adjusted CIF price (Rs./MT)	Difference (Rs./MT)
1.	2018-19	***	***	***	***
2.	2019-20	***	***	***	***
3.	2020-21	***	***	***	***
4.	POI – H1	***	***	***	***
5.	POI – H2	***	***	***	***
6.	POI(2021-22)	***	***	***	***

⁸² Written submissions of the Applicant, para 17.

⁸³ Written submissions of the applicant, para 21.

⁸⁴ Written submissions of the applicant, para 23.

51. The applicant's argument on the basis of the above-mentioned table are not tenable because in calculation of the adjusted CIF price, while the applicant is adding the raw material cost of the current year, it is adding the other costs of the previous year to reach the adjusted CIF price. For example, the difference in CIF price and raw material for 2019-20 is *** (costs other than raw material). To calculate the adjusted CIF price for 2020-21, the applicant has added this "costs other than raw material" of 2019-20 to the raw material cost of 2020-21 (5,31,801) to reach the figure of ***. The assumption that "costs other than raw material" shall remain unchanged for the next year has been improperly drawn.
52. The applicant has further submitted that in the second half of 2021-22, the export price has declined when the raw material price had in fact increased; therefore, the dumping margin during this period had allegedly increased. The applicant claims that this shows that there is a pattern of export prices which differs among different time periods. The applicant has submitted that from almost no aggressive pricing in the first half of the POI, the exporters have resorted to aggressive dumping in the second half.⁸⁵ The applicant has presented the following table to demonstrate its claims:

S.No.	Particulars	Raw Material cost (Rs./MT)	Import price CIF (Rs./MT)
1.	POI – 1 st Half	***	***
2.	POI – 2 nd Half	***	***
3.	Change Rs. /MT	***	***
4.	Change %	***	***

53. The applicant has further submitted that the above difference of pattern of export price between different time periods cannot be remedied by adopting the W-W methodology since the export price has not moved in tandem with the raw material price.⁸⁶ The applicant claims that the dumping margin in the first half of the POI was only 5%, which has increased to 24% in the second half of the POI.⁸⁷ The applicant has presented the following table to demonstrate its claims:

S.No.	Particulars	UOM	POI-H1	POI-H2	2021-22
1.	Normal Value	\$/MT	***	***	***
2.	Net Export Price	\$/MT	***	***	***
3.	Dumping Margin	\$/MT	***	***	***
4.	Dumping Margin	%	5%	24%	20%

⁸⁵ Written submissions of the applicant, para 24.

⁸⁶ Written submissions of the applicant, para 25.

⁸⁷ *Id.*, para 27.

54. The applicant has relied on the decision of the Appellate Body in *US – Anti-Dumping Methodologies (China)* to argue that the investigating authority has a discretion in deciding which methodology to adopt, as long as the investigating authority identifies ‘a pattern of export prices which differs significantly among different purchasers, regions or time’:

“5.22. ... Accordingly, investigating authorities enjoy a margin of discretion regarding the methods or tools they wish to use in establishing the existence of a pattern. However, irrespective of the method used, investigating authorities are required to identify ‘a pattern of export prices which differ significantly among different purchasers, regions or time periods’ within the meaning of the second sentence of Article 2.4.2 and consistently with their obligations under the Anti-Dumping Agreement.”

55. The applicant has further argued that the Authority is not required to identify the reasons for such differences in the export prices and is merely required to examine whether a pattern of export price exists. The applicant has submitted that if it is found that there is a pattern of export price, the Authority has the discretion to adopt any appropriate methodology for the determination of the dumping margin.⁸⁸ The applicant has relied on the WTO Appellate Body decision in *US – Washing Machines* and the USDOC’s Issues and Decision Memorandum in the anti-dumping investigation concerning imports of large residential washers from the Republic of Korea⁸⁹ to support its contention. The observations of the Appellate Body are as under:

“5.65. ... The text of the second sentence of Article 2.4.2 also does not imply an examination of the motivation for, or intent behind, the differences in prices. We thus see merit in the United States’ argument that, under the second sentence of Article 2.4.2, the investigating authority is charged with finding whether a pattern of export prices exists, not whether an exporter or producer has intentionally patterned its export prices to ‘target’ and ‘mask’ dumping.”

56. The applicants have also relied on decisions of the European Commission,⁹⁰ wherein it has

⁸⁸ Written submissions of the applicant, para 29.

⁸⁹ The USDOC observed that:

Thus, while the Department may consider other factors in conducting a targeted dumping analysis, the statute does not require the Department to consider why such differences exist. The only obligations imposed on the Department in its analysis appear in section 777A(d)(1)(B) of the Act. Section 777A(d)(1)(B) of the Act requires the Department (1) to examine whether there is a pattern of export prices for comparable merchandise that differ significantly among purchasers, regions, or time periods and, if such a pattern exists, (2) to explain why such differences cannot be taken into account using the average-to-average or transaction-to-transaction comparison methods. The Act does not require the Department to discern why such patterns arise.

⁹⁰ Supra Note 72.

been observed as under:

“(31) For all three exporting producers a clear pattern of export prices which significantly differed between regions was established. It was indeed found that significant volumes at low prices were concentrated on the UK and French markets. These two markets were responsible for more than 50 % of the imports of the product concerned in the Community during the IP.

(32) The dumping found on these markets would have been inappropriately disguised by the use of a comparison of a weighted average normal value with a weighted average of export prices to all Member States of the European Union, as the prices at dumped levels found for all three exporting producers on the UK and French markets were wholly or partly offset by higher and largely non-dumped prices on other Community markets. Such methodology would not, therefore, reflect the full degree of dumping being practised. It was accordingly found appropriate to reflect in the calculation of the dumping the significant differences in the pattern of export prices among different regions.

(33) In this case, the transaction-to-transaction comparison was not found to be an appropriate alternative comparison method because the process of selecting individual transactions in order to make such a comparison was considered too impractical and arbitrary, with tens of thousands of exports and domestic transactions.”⁹¹

57. Lastly, the applicant has relied on the WTO Panel decision in *US – Differential Pricing Methodology* to contend that the zeroing methodology may be adopted in the present investigation.⁹² In the above case, the WTO Panel had observed as under:

“We recall that an interpreter is not free to adopt a reading that would result in reducing whole clauses or paragraphs of a treaty to redundancy or inutility. Therefore, contextual considerations also support our view that the second sentence of Article 2.4.2 does not prohibit zeroing under the W-T methodology. Based on the above, we find that an investigating authority is permitted to use zeroing while applying the W-T methodology to the pattern transactions.”

58. The other interested party has submitted that the applicant had initially proposed a 6-month

⁹¹ Commission Regulation (EC) No. 355/2006 of 28 February 2006 *imposing a provisional anti-dumping duty on imports of side-by-side refrigerators originating in the Republic of Korea*; Council Regulation (EC) No 1050/2002 of 14 June 2002 *imposing a definitive anti-dumping duty and collectively definitively the provisional duty imposed on imports of recordable compact disks originating in Taiwan*

⁹² Written submissions of the applicant, para 35.

period of investigation; the Authority had adopted a POI of 12 months while initiating the investigation. However, the applicant is once again requesting for the consideration of a six month investigating period while computing the normal value.⁹³ It was contended that as per the Manual of Operating Practices of Trade Remedy Investigations, once the POI has been fixed, it cannot be changed later on.⁹⁴ The other interested party has submitted that the Authority, in its wisdom has fixed the POI as 12 months, and therefore, there is no reason for modifying the same.⁹⁵ It was further submitted that the consistent practice of the Authority has been to analyse the POI as a whole for the purpose of assessment of the dumping margin, injury margin and rate of duty.⁹⁶

59. The Authority notes that in order to apply the W-T methodology, it must first be established that the export prices differ significantly among different purchasers, regions or time periods, and such differences cannot be taken into account appropriately by adopting the W-W methodology or the T-T methodology. The applicant in the instant investigation has claimed that there is a pattern of export prices which differ across different time periods since the export price in the 1st half of the POI (i.e., from April to September 2021) is much higher than the export price in the 2nd half of the POI (i.e., from October 2021 to March 2022). In order to examine this claim, the Authority has compared the export price in the first half of the POI with the export price in the second half of the POI based on the import data maintained by DGCI&S and the exporter's questionnaire response. The difference in export prices has been set out in the table below:

Sl. No.	Particular	UOM	1st Half of POI	2nd Half of POI
Exports from China PR[#]				
1.	Export price	Rs./Kg	729	716
2.	Volume of imports	MT	147	338

As per the data reported by DGCI&S

60. The applicant has claimed that in the second half of 2021-22, the export price has declined when the raw material price had in fact increased and the dumping margin has intensified in this period. The applicant claims that this shows a pattern of export price which differs sharply among different time periods. The applicant has argued that from almost no aggressive pricing in the first half of the POI, the exporters have resorted to aggressive dumping in the second half of the POI.⁹⁷ The applicant has claimed that the CIF import

⁹³ Rejoinder submissions of Hubei.

⁹⁴ Rejoinder submissions of Hubei, page 2.

⁹⁵ Rejoinder submissions of Hubei.

⁹⁶ Written submissions of Hubei, page 7.

⁹⁷ Written submission of the applicant, para 24.

price of Chinese exporters has not moved in tandem with the change in the cost of the raw materials. The applicant has requested the Authority to take note of the disparity between the increase in the raw material costs in the 2nd half of the POI and the changes in the CIF import price in the 2nd half of the POI.

61. With respect to the differences in cost of raw materials relative to the differences in export price, Hubei has claimed that the cost of raw materials has not increased in relation to what is claimed by the applicant. The applicant has submitted that the Chinese producer does not operate in market economy conditions, therefore, its costs and prices must not be accepted.⁹⁸ The applicant states that it has procured its raw materials from various unaffiliated sources, which reflect international prices. It has been claimed that in case the cost of raw materials of the Chinese producers/exporters are below the international raw material prices, it must be concluded that the prices of inputs of the responding exporters are distorted.⁹⁹
62. The applicant has claimed that the Chinese exporter does not operate on market economy conditions, and therefore its costs must not be accepted. It is noted that any distortions to the costs of inputs of the Chinese exporters would be factored into the assessment of dumping since the Authority has computed the normal value of the Chinese exporters based on Paragraph 7 of Annexure-I to the AD Rules. The Authority has already made necessary adjustments to take into account the distortions to the input prices of the Chinese exporters while computing the normal value. The acceptance of the applicant's argument would effectively mean adoption of a constructed export price, which is permitted only under limited circumstances i.e., when an association or compensatory arrangement between the importer and the exporter or a third party has been established.¹⁰⁰
63. As seen from the table above, the Authority notes that there is no pattern of significant differences in export prices among different time periods. The difference between the export price of the second half of the POI and the first half of the POI is only miniscule. Therefore, the Authority does not find a valid and justifiable reason for computing the dumping margin based on the W-T methodology. The Authority has therefore assessed the dumping margin based on the W-W methodology. With respect to the applicant's argument regarding 'zeroing', the Authority notes that it has been consistently held by the WTO Panel and Appellate Body that 'zeroing' is not permitted under the Anti-Dumping Agreement.¹⁰¹

⁹⁸ Rejoinder of the applicant, para 24.

⁹⁹ *Id.*, para 25.

¹⁰⁰ See Section 9A(b) of the Customs Tariff Act, 1975; *see also* Article 2.3 of the Anti-Dumping Agreement.

¹⁰¹ Appellate Body Report, *European Communities – Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India*, [WT/DS141/AB/R](#), adopted 12 March 2001; Appellate Body Report, *United States – Continued Existence and Application of Zeroing Methodology*, [WT/DS350/AB/R](#), adopted 19 February 2009; Appellate Body Report, *United States – Laws, Regulations and Methodology for Calculating Dumping Margins ("Zeroing")*,

64. Considering the normal value and export price for subject goods, the proposed dumping margins are as follows:

SN	Producer	Normal Value (₹/MT)	Net Export Price (₹/MT)	Dumping Margin (₹/MT)	Dumping Margin (%)	Dumping Margin Range
1.	Hubei Hongyuan Pharmaceutical Technology Co., Ltd	***	***	***	***	10-15%
2.	Any other producer	***	***	***	***	10-15%

METHODOLOGY OF INJURY ASSESSMENT AND EXAMINATION OF CAUSAL LINK

65. Rule 11 of the AD Rules, 1995 read with Annexure II to the AD Rules, 1995 provides that an injury determination shall involve examination of factors that may indicate injury to the domestic industry, “... *taking into account all relevant facts, including the volume of dumped imports, their effect on prices in the domestic market for like articles and the consequent effect of such imports on domestic producers of such articles...*”. Further, in considering the effect of the dumped imports on prices, it is considered necessary to examine whether there has been a significant price undercutting by the dumped imports as compared with the price of the like article 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.

66. The applicant has requested the Authority to conduct the injury analysis on a half yearly basis, by separately examining the trends of injury during the first half of the POI and the second half of the POI. The applicant submitted that in several investigations, the Authority has conducted a quarterly/half yearly analysis of the performance of the domestic industry.¹⁰²

[WT/DS294/AB/R](#), adopted 9 May 2006; Appellate Body Report, *United States – Measures Relating to Zeroing and Sunset Reviews*, [WT/DS322/AB/R](#), adopted 23 January 2007; Panel Report, *United States – Use of Zeroing in Anti-Dumping Measures Involving Products from Korea*, [WT/DS402/R](#), adopted 24 February 2011.

¹⁰² Anti-Dumping Investigations concerning imports of Carbon Black used in rubber applications originating in or exported from Australia, China PR, Iran, Malaysia, Russia and Thailand; Anti-Dumping investigation concerning imports of “Glazed/Unglazed Porcelain/ Vitrified tiles in polished or unpolished finish with less than 3% water absorption”, originating in or exported from China PR; Anti-dumping investigation concerning imports of Flat base

67. The Authority has examined the effect of dumped imports on the state of the domestic industry in the paragraphs below. Wherever required, the Authority has separately examined the trends in the 1st half of the POI and the 2nd half of the POI.

I VOLUME EFFECT OF DUMPED IMPORTS

I.1 Assessment of Demand

I.1.1 Submissions of the domestic industry

68. The domestic industry has made the following submission regarding the volume effects of the dumped imports:

- a. The applicant has requested the Authority to conduct the injury analysis on a half yearly basis. The applicant has submitted that the Authority had conducted a half yearly analysis of the injury examination in several previous investigations.
- b. The volume of imports from the subject country declined during the first half of the POI and has increased significantly in the second half of the POI.¹⁰³
- c. Imports in relation to the production and consumption has also shown the same pattern.¹⁰⁴
- d. The increase in imports was both in terms of absolute and relative production and consumption in India.¹⁰⁵
- e. The imports have increased 3.5 times during the second half of the POI as compared to the first half of the POI.¹⁰⁶

I.1.2 Submissions of the other interested party

69. The other interested party has made the following submissions regarding the volume effects of the imports:

- a. The reason for the increase of imports from the subject country from 2018 to 2022 is not dumping, but rather the growth of the Indian market demands following the

Steel Wheels originating in/exported from China PR (some parameters); Anti-dumping investigation concerning imports of D (-) Para Hydroxy Phenyl Glycine Base (PHPG Base) originating in or exported from the European Union; Anti-dumping investigation concerning imports of Styrene Butadiene Rubber SBR of 1500 series and 1700 series originating in or exported from European Union, Korea RP & Thailand; Anti-dumping investigation involving imports of PVC Flex Films originating in or exported from China PR.

¹⁰³ Application, para 60.

¹⁰⁴ Written submissions of the applicant, para 40

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

development of the downstream industry.¹⁰⁷

- b. The imports from China PR, have at no point during the injury period, put any sort of volume pressure on the sales of the petitioner.¹⁰⁸
- c. With a decline in demand, the imports from the subject country have also declined, whereas, the sales of the petitioner have slightly increased.¹⁰⁹
- d. The share of imports from China PR in relation to the production and demand in India has continuously declined during the period examined.¹¹⁰

1.1.3 Examination of the Authority

70. With regard to the volume of the dumped imports, the Authority is required to consider whether there has been a significant increase in the volume of dumped imports, either in absolute terms or relative to production or consumption in India. The transaction – wise import data of DGCI&S has been considered for the purpose of injury assessment. The Authority has also examined the trends of imports in 6 months of the post-POI period, (i.e., from April 2022 to September 2022) wherever necessary to assess whether the trends during the POI are sustained. It is noted that the examination of post-POI is not usually warranted in an original investigation. However, the factual circumstances of the present investigation demand the same. The applicant had in its original application requested the Authority to determine the dumping and injury for the POI October 2021 – March 2022. However, the reasons provided by the applicant were not sufficient enough to accept the said period as the POI. The Authority had therefore revised the POI as April 2021 – March 2022 through the initiation notification. Upon further analysis, it was found that injury was non-existent for the period April 2021 – September 2021 (H1) which warranted the investigation team to further consider whether the period October 2021 – March 2022 (H2) was a period of aberration or a state of continued injury. The investigation team has therefore analysed the 6 month post-POI data for the period April 2022 to September 2022 to determine the same.

71. The import volumes of the subject goods from the subject countries are as follows:

SN	Particulars	UOM	2018-19	2019-20	2020-21	POI (H1)	POI (H2)	POI (2021-22)
1.	Domestic Sales of Applicant	MT	***	***	***	***	***	***
	Trend	Indexed	100	111	103	-	-	101
2.	Sales of other producers	MT	0	0	0	0	0	0

¹⁰⁷ Written submissions of Hubei, page 8

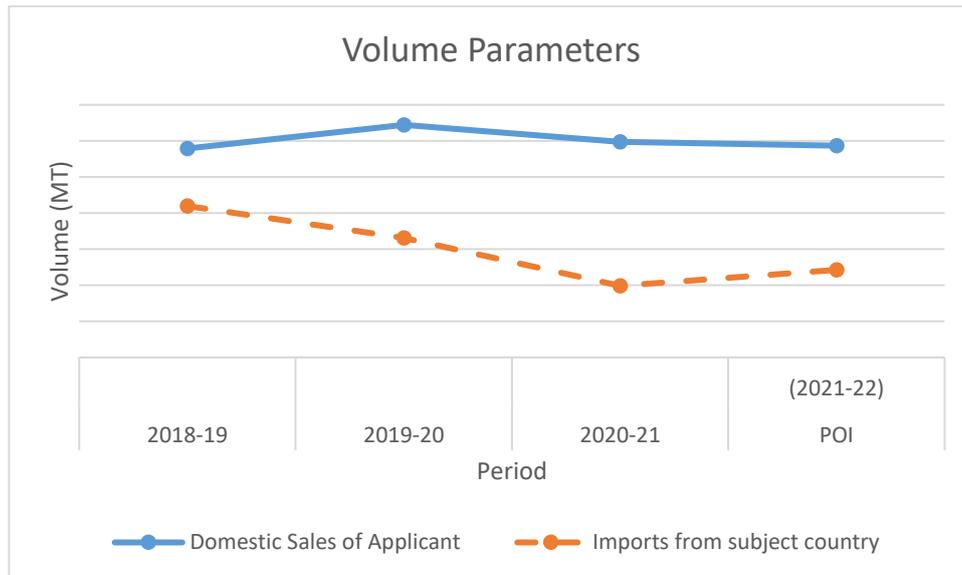
¹⁰⁸ *Id.*, page 9.

¹⁰⁹ *Id.*

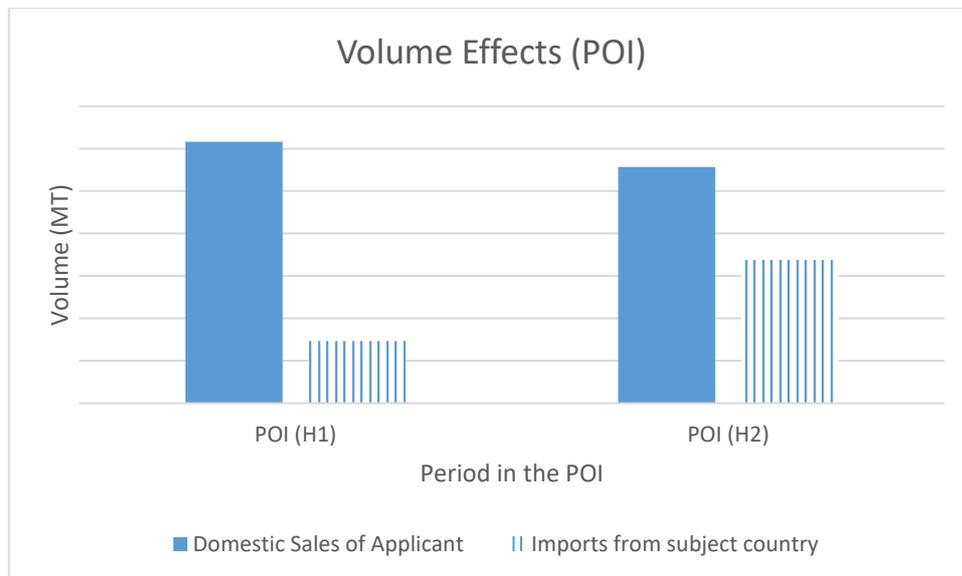
¹¹⁰ *Id.*, page 10.

SN	Particulars	UOM	2018-19	2019-20	2020-21	POI (H1)	POI (H2)	POI (2021-22)
	Trend	Indexed	0	0	0	-	-	0
3.	Imports from subject country	MT	839	662	397	147	338	485
	Trend	Indexed	100	79	47	-	-	58
4.	Imports from other countries	MT	26	0	0	0	0	0
	Trend	Indexed	100	0	0	-	-	0
5.	Total imports	MT	865	662	397	147	338	485
	Trend	Indexed	100	77	46	-	-	56
6.	Total demand/consumption (excluding captive consumption of DI)	MT	***	***	***	***	***	***
	Trend	Indexed	100	96	79	-	-	82
7.	Total demand/consumption (including captive consumption of DI)	MT	***	***	***	***	***	***
	Trend	Indexed	100	96	86	-	-	91

72. The total demand/consumption of the product under consideration in India has declined from the base year to the POI. However, the domestic sales of the applicant have increased marginally from the base year to the POI. There are no other producers in India that are selling the product under consideration in the domestic market. The imports from the subject country have declined from the base year to the POI, while imports from other countries are nil from the year 2019-20 to the POI. It is the applicant's contention that there has been an increase in imports in the second half of the POI, as compared to the first half of the POI. It is seen that the domestic sales of the applicant have marginally reduced in the second half of the POI as compared to the first half, however, the overall sales of the applicant during the POI have slightly increased as compared to the base year, and has marginally reduced as compared to the previous year.



Volume effects through the injury period



Volume effects (POI)

I.2 Import Volumes and Market Share

I.2.1 Submission of the domestic industry

73. The domestic industry has made the following submissions with respect to import volumes and market share:

- a. The market share of the applicant increased till April 2020 to September 2021, however declined thereafter with an increase in imports.¹¹¹

¹¹¹ Application, para 62.

- b. Market share of imports in the proposed period is the highest over the injury period.¹¹²
- c. The volume of imports from China PR declined till September 2021 had has increased significantly thereafter.¹¹³
- d. The increase in imports was in both absolute terms and in relation to production and consumption in India. The imports have increased 3.5 times in the period October 2021 to March 2022 as compared to April 2021 to September 2021.¹¹⁴

1.2.2 Submissions of the other interested party

74. The Hubei has made the following submissions with respect to import volumes and market share:

- a. Imports from China PR have, at no point in time during the period considered, put any sort of volume pressure on the sales of the petitioner.¹¹⁵
- b. The sales of the petitioner have slightly increased.¹¹⁶
- c. Imports from China PR in relation to Indian production and total demand have also declined during the period observed.¹¹⁷

1.2.3 Examination of the Authority

75. 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 import volumes of the subject goods from the subject countries and share of the dumped imports during the injury investigation period are as follows:

SN	Particulars	UOM	2018-19	2019-20	2020-21	POI (H1)	POI (H2)	POI (2021-22)
<i>Imports in Absolute Terms</i>								
1.	Imports from subject country	MT	839	662	397	147	338	485
	Trend	Indexed	100	79	47	n/a	n/a	58
2.	Imports from other countries	MT	26	0	0	0	0	0
	Trend	Indexed	100	0	0	0	0	0
3.	Total imports	MT	865	662	397	147	338	485
	Trend	Indexed	100	77	46	n/a	n/a	56

¹¹² *Id.*

¹¹³ Written submissions of the applicant, para 40.

¹¹⁴ *Id.*

¹¹⁵ Written submissions of Hubei, page 9.

¹¹⁶ *Id.*

¹¹⁷ *Id.*, page 10.

SN	Particulars	UOM	2018-19	2019-20	2020-21	POI (H1)	POI (H2)	POI (2021-22)
4.	Total demand/consumption (excluding captive consumption of DI)	MT	***	***	***	***	***	***
	Trend	Indexed	100	96	79	n/a	n/a	82
5.	Total demand/consumption (including captive consumption of DI)	MT	***	***	***	***	***	***
	Trend	Indexed	100	96	86	-	-	91
Subject imports in relation to								
5.	Indian Production	%	***	***	***	***	***	***
	Trend	Indexed	100	61	39	25	59	42
6.	Total Demand (excluding captive consumption of DI)	%	***	***	***	***	***	***
	Trend	Indexed	100	82	60	46	91	70
7.	Total Demand (including captive consumption of DI)	%	***	***	***	***	***	***
	Trend	Indexed	100	82	55	40	86	64
8.	Total Imports	%	97%	100%	100%	100%	100%	100%
	Trend	Indexed	100	103	103	103	103	103

76. Imports from the subject country have declined during the period examined. Imports from China PR during the POI have almost halved as compared to the base year. There was a miniscule volume of imports from other countries during the base year; however, there have been no imports from other countries thereafter. There is a decline in volume of imports during the POI in absolute terms. As far as imports in relative terms are concerned, it is seen from the table above that imports in relation to Indian production have declined during the POI as compared to the base year. There is a marginal increase in imports from the subject country in relation to Indian production and Indian demand in the POI as compared to 2020-21; however, imports in relation to Indian production and Indian demand during the POI is below the base year levels.

77. The applicant has stated that during the second half of the POI, there was a significant increase in imports from the subject country in absolute terms. While it is true that imports in absolute terms have increased during the second half of the POI as compared to the first half of the POI, the share of imports in relation to the Indian production and Indian demand during the second half of the POI is still lower than the base year. This is because the sales of the domestic industry during the second half of the POI is significantly higher than the import volumes. It is further seen that subject import volumes have increased by ***% during the second half of the POI as compared to the first half of the POI (i.e. from *** MT to

***MT), whereas, the domestic sales of the applicant have only declined by ***% (i.e. from ***MT to ***MT). This indicates that the decline in volume of sales of the domestic industry has not been proportionate to the increase in volume of imports during the second half of the POI. Despite the increase in volume of imports during the second half of the POI, the domestic industry has managed to maintain substantial sales volume. Further, it may be noted that there was a decline in total demand during the POI as compared to the base year, which could have also contributed to the decline in sales volumes of the domestic industry.

78. The Authority has also examined the post-POI trends of imports in the table below. It is observed that there has been a substantial increase in imports in the 6-month period immediately following the POI (i.e. April to September 2022). The import volumes during the 6-month post-POI period are almost equal to the import volume during the base year (12 months). However, the landed price of imports in the 6-month post-POI period is substantially higher than previous periods. In fact, the landed price of imports during the April to September 2022 period is at the highest level and is ***% higher than the landed price in the second half of the POI, and ***% higher than the landed price during the base year. The landed price during this 6-month post-POI period is also higher than the NIP calculated for the POI.

SN	Particulars	UOM	Base year (2018-19)	POI (H1)	POI (H2)	POI (2021-22)	Post-POI (April – September 2022)
1.	Imports from subject country	MT	839	147	338	485	799
2.	Imports from other countries	MT	26	0	0	0	-
3.	Total imports	MT	865	147	338	485	799
4.	Landed Price	Rs./Kg	787	841	837	838	978
5.	Selling Price of DI	Rs./Kg.	***	***	***	***	***

79. The Authority has assessed the market shares of imports as well as the domestic industry (excluding captive sales) in the table below:

SN	Particulars	UOM	2018-19	2019-20	2020-21	POI (H1)	POI (H2)	POI (2021-22)
1.	Domestic Sales of Applicant	%	***	***	***	***	***	***
	Trend	Indexed	100	115	131	141	109	124
2.	Sales of other producers	%	***	***	***	***	***	***
	Trend	Indexed	0	0	0	0	0	0
3.	Imports from subject country	%	***	***	***	***	***	***
	Trend	Indexed	100	83	61	46	93	85
4.	Imports from other countries	%	***	***	***	***	***	***

SN	Particulars	UOM	2018-19	2019-20	2020-21	POI (H1)	POI (H2)	POI (2021-22)
	Trend	Indexed	100	0	0	0	0	0
5.	Total imports	%	***	***	***	***	***	***
	Trend	Indexed	100	79	58	45	88	85

80. The market share of domestic industry has improved during the POI as compared to the base year, while the market share of the imports from the subject country has declined during this period. During the 2nd half of the POI, the market share of the domestic industry is **%, while the market share of the imports from the subject country is **%. It is seen that during the second half of the POI, the market share of the domestic industry has declined in comparison to the first half of the POI as well as the previous year. On the other hand, the market share of the imports from the subject country has increased during the second half of the POI.

81. The Authority has also compared the volume trends observed during the present investigation with the historic trends of imports of Metronidazole from China PR in the table given under:

SN	Particulars	UOM	Jan-Dec 2010*	Jan-June 2011*	2018-19	2019-20	2020-21	POI (2021-22)
1.	Sales of the domestic industry	MT	268	175	***	***	***	***
2.	Sales of other producers	MT	466	466	0	0	0	0
	Trend	Indexed	100	100	0	0	0	0
3.	Total sales of domestic producers	MT	734	641	***	***	***	***
4.	Imports from subject country	MT	1,133	1,049	839	662	397	485
	Trend	Indexed	100	93	74	58	35	58
5.	Imports from other countries	MT	0	92	26	0	0	0
	Trend	Indexed	-	100	28	0	0	0
6.	Total imports	MT	1,133	1,141	865	662	397	485
	Trend	Indexed	100	101	76	58	35	58
7.	Demand/Consumption (excluding captive consumption of DI)	MT	1,867	1,782	***	***	***	***
Market share in Demand (excluding captive sales of the DI)								
8.	Domestic Industry	%	14.38%	9.82%	***	***	***	***
9.	Other producers	%	24.94%	26.14%	0%	0%	0%	0%
10.	Imports from subject country	%	60.68%	58.88%	***	***	***	***
11.	Imports from other countries	%	0%	5.16%	***	***	***	***

* As per the final findings of the 2nd SSR of the previous investigation on Metronidazole¹¹⁸

82. The period of investigation of the 2nd SSR of the previous investigation on Metronidazole was January to December 2010. The Authority had also analyzed the post-POI data of January to July 2011 therein. As can be observed from the table above, the demand for Metronidazole in the year 2010 and 2011 is similar to the demand for Metronidazole during the POI. Whereas in the year 2010 and 2011, the exports from China PR occupied a substantial portion of the market share, during the injury period and the POI for the present investigation, the domestic industry has captured a significant portion of the domestic demand.

J PRICE EFFECT

J.1 Submission of the Parties

J.1.1 Submissions of the domestic industry

83. The domestic industry has made the following submissions with respect to price effects:

- a. The landed price of the subject imports during the POI is below the selling price of the domestic industry.¹¹⁹
- b. The price undercutting was negative during the entire period examined except during the POI.¹²⁰
- c. Price undercutting was negative even during April to September 2021.¹²¹
- d. Price underselling during the POI is positive.¹²²
- e. Prior to the POI, the landed price of imports was above the cost of sales and the selling price of the applicant, and therefore, the applicant was able to fetch reasonable prices.¹²³
- f. During the POI, the cost of sales increased globally, but the landed price of imports declined even below costs. The domestic industry has not been able to increase its selling

¹¹⁸ Final Findings No. 15/9/2003-DGAD dated 29th June 2012, “Sunset Review of anti-dumping duty imposed concerning imports of ‘Metronidazole’ originating in or exported from China PR”, para 20, https://dgtr.gov.in/sites/default/files/adfin_SSR2_metronidazole_chinaPR.pdf

¹¹⁹ Application, para 75.

¹²⁰ *Id.*, para 75.

¹²¹ Written submissions of the applicant, para 42.

¹²² Application, para 76.

¹²³ *Id.*, para 79.

price in the same proportion as increase in cost.¹²⁴

- g. Prior to the October 2021 – March 2022 period, the landed price of imports was above the cost of sales and the selling price of the domestic industry. However, in October 2021 – March 2022, the cost of sales increased sharply, but the landed price of imports has declined below the cost.¹²⁵
- h. Even compared to the April 2021 to September 2021 period, the landed price has declined, whereas the cost of sales has increased.¹²⁶

J.1.2 Submissions of the other interested party

84. The other interested party has made the following submissions with respect to the price effects:
- a. The cost of sales of the domestic industry has increased substantially, by 23% during the POI as compared to the base year.¹²⁷
 - b. The landed price of imports from China has remained almost the same during the POI as compared to the base year as there is not much fluctuations in the price of raw materials used by the producer/exporter.¹²⁸
 - c. Price undercutting is negative throughout the injury period and is slightly positive during the POI.¹²⁹
 - d. The domestic industry is in a position to increase the price to sell at a higher price in the Indian market.¹³⁰

J.1.3 Examination of the Authority

85. The impact on the prices of the domestic industry on account of the dumped imports from the subject country has been examined with reference to the price undercutting, price suppression and price depression, if any. For the purpose of this analysis, the cost of production and net sales realization (NSR) of the domestic industry have been compared with the landed price of imports of the subject goods from the subject country.

¹²⁴ *Id.*, para 79.

¹²⁵ Written submissions of the applicant, para 44.

¹²⁶ *Id.*, para 45.

¹²⁷ Written submissions of Hubei, page 10.

¹²⁸ *Id.*, page 10.

¹²⁹ *Id.*, page 10-11.

¹³⁰ *Id.*, page 11.

J.2 Price undercutting effect

86. With regard to the effect of the dumped imports on prices, it is required to be analysed whether there has been a significant price undercutting by the dumped imports as compared to the price of the like products in India, or whether the effect of such imports is otherwise to depress the prices or prevent price increases, which otherwise would have occurred in the normal course.

SN	Particulars	UOM	2018-19	2019-20	2020-21	POI (H1)	POI (H2)	POI (2021-22)
1.	Import volume	MT	839	662	397	147	338	485
2.	Landed price	₹/MT	7,87,082	7,46,700	8,30,524	8,40,696	8,36,797	8,37,977
3.	Net Sales Realisation (NSR)	₹/MT	***	***	***	***	***	***
	Trend	Indexed	100	98	108	109	115	112
4.	Price undercutting	₹/MT	***	***	***	***	***	***
	Trend	Indexed	-100	-22	-34	-57	97	19
5.	Price undercutting	%	***	***	***	***	***	***
	Range	Indexed	(0-5)	(0-5)	(0-5)	(0-5)	0-5	0-5
6.	Raw material cost of domestic industry	₹/MT	***	***	***	***	***	***
	Trend	Indexed	100	96	99	115	138	126

87. The price undercutting throughout the examined period, except the POI is negative. In the POI, the price undercutting is ***%. During the second half of the POI, the price undercutting was ***%. The landed price of imports has been below the net sales realization of the domestic industry only during the second half of the POI. Even in the first half of the POI, the landed price of imports was above the net sales realization. It is noticed that from the base year to 2020-21, even though the net sales realization of the domestic industry was lower than the landed price, the profitability parameters (as mentioned in table to paragraph 110) of the domestic industry was positive and significant. The domestic industry had been profitable during this period even though it was selling the PUC at a lower price than the subject imports.

88. The applicant has contended that during the POI, particularly, in the second half of the POI, there has been an increase in price of raw materials, whereas the import price of the subject goods has not moved in tandem.¹³¹ The applicant submitted that with the increase in prices of the raw materials, the export price and landed value should have increased, however, this

¹³¹ Written submissions of the applicant, paras 22-24.

has not been the case.¹³² Hubei, on the other hand submitted that there has been no significant fluctuation in its price of raw materials.¹³³ However, Hubei has not provided any evidence to substantiate its claims. The applicant submitted that since Chinese producers operate in non-market economy conditions, the prices of raw materials in China is not are not set by market forces.¹³⁴ The applicant submitted that the Chinese raw material prices are substantially lower than both Indian as well as international raw material prices.¹³⁵ The applicant has submitted that it has procured raw materials from several sources, which reflect international prices.¹³⁶ The applicant has submitted the following information regarding the fluctuation of its raw material prices:¹³⁷

Source	Domestic			Imported		
Period	2020-21	2021-22	Increase	2020-21	2021-22	Increase
2 Methyl 5-Nitro Imidazole	***	***	***	***	***	***
Formic Acid 85%	***	***	***	***	***	***
Ethylene Oxide	***	***	***	***	***	***
Anhydrous Ammonia Gas	***	***	***	***	***	***

Unit: ₹/MT

89. The applicant's claim that the prices of raw materials in India have moved in tandem with international raw material prices cannot be accepted. The fluctuation in prices of raw materials from India are not similar to the international prices of raw materials. Further, the prices of raw materials in India have grown at a substantially higher rate than the international prices in raw materials. The Indian raw material prices have increased by about 27% during the POI as compared to the previous year, whereas the international prices of raw materials have increased only by about ***% during the POI as compared to the previous year. The increase in international raw materials prices is seen only with respect to 2 Methyl 5-Nitro Imidazole and not with other raw materials.

90. The Authority notes that the increase in cost of domestic raw materials during the POI has contributed to the applicant's increase in net sales realization. This has led to a situation wherein the price undercutting during the POI is positive. It is further noticed that during the first half of the POI, the price undercutting is negative, whereas only in the second half

¹³² *Id.*

¹³³ Written submissions of Hubei, page 10.

¹³⁴ Rejoinder of the applicant, para 25.

¹³⁵ *Id.*

¹³⁶ Rejoinder of the applicant, para 25.

¹³⁷ *Id.*

of the POI, the price undercutting is positive.

J.3 Price Suppression and Depression

91. In order to assess as to whether imports from the subject countries were suppressing/depressing the prices of the domestic industry and whether the effect of such imports is to suppress prices to a significant degree or prevent price increases which otherwise would have occurred to a significant degree, the Authority has compared the cost of production and the net selling price of the domestic industry over the injury period along with the landed price of imports over the injury period, and shown in the table below:

SN	Particulars	UOM	2018-19	2019-20	2020-21	POI (H1)	POI (H2)	POI (2021-22)
1.	Cost of sales per unit	₹/MT	***	***	***	***	***	***
	Trend	Indexed	100	106	101	115	139	126
2.	Selling price per unit	₹/MT	***	***	***	***	***	***
	Trend	Indexed	100	98	108	109	115	112
3.	Landed Price	₹/MT	***	***	***	***	***	***
4.	Raw material cost of domestic industry	₹/MT	***	***	***	***	***	***
	Trend	Indexed	100	96	99	115	138	126

92. It is seen that the cost of sales has increased from the base year to the POI. During the second half of the POI, the cost of sales has increased significantly. The selling price of the product under consideration has also increased. While the cost of sales has increased by ***% from the base year to the POI, the selling price has increased by ***%. It is further noted that the cost of raw materials of the domestic industry has also increased by ***% from the base year to the POI. From the first half of the POI to the second half, the price of raw materials increased by **%, and the applicant's cost of sales increased by ***%. The increase in cost of sales during this period appears to be directly attributable to the increase in raw material costs.

93. The landed price has also increased from the base year to the POI. The Authority notes that during the 2nd half of the POI, the landed price of the imports has been lower than the selling price of the applicants. During the second half of the POI, the applicant's selling price was also lower than its cost of sales, thereby indicating that it has incurred losses during the second half of the POI. As discussed above, the increase in cost of sales, could be attributable to the increase in raw material prices. In fact, from 2018-19 till the first half of the POI, the selling price of the domestic industry was below the landed price, and yet the profitability and

market share of the applicant were substantial. The Authority notes that the apparent price suppressive/depressive effects of the imports observed during the second half of the POI are a result of an increase in raw material prices, which occurred during this period.

K ECONOMIC PARAMETERS PERTAINING TO THE DOMESTIC INDUSTRY

K.1 Production, Capacity, Capacity Utilisation and Sales

K.1.1 Submission of the domestic industry

94. The domestic industry made the following submissions with respect to the production, capacity, capacity utilization and sales:

- a. The domestic sales of the applicant have declined during the POI.¹³⁸
- b. The production and capacity utilization of the applicant has increased during the POI due to an increase in export sales of the applicant.¹³⁹
- c. The primary market for the applicant is the domestic market; however, due to the increase in imports from the subject country, the applicant is forced to export.¹⁴⁰
- d. The export sales volumes of the applicant have increased, whereas domestic sales have increased till the year 2019-20 and have declined thereafter.¹⁴¹

K.1.2 Submissions of the other interested party

95. The other interested party made the following submissions with respect to production, capacity, capacity utilization and sales of the domestic industry:

- a. The capacity of the petitioner has remained stable. The production and sales of the petitioner have increased sharply.¹⁴²

K.1.3 Examination of the Authority

96. The following table shows the capacity, production and sales parameters of the applicant:

SN	Particulars	UOM	2018-19	2019-20	2020-21	2021-22 H1	2021-22 H2	POI (2021-22)
1.	Installed capacity	MT	***	***	***	***	***	***
	Trend	Indexed	100	100	100	100	100	100

¹³⁸ Application, para 64.

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ Written submissions of the applicant, para 65.

¹⁴² Written submissions of Hubei, page 12.

SN	Particulars	UOM	2018-19	2019-20	2020-21	2021-22 H1	2021-22 H2	POI (2021-22)
2.	Production- PUC	MT	***	***	***	***	***	***
	Trend	Indexed	100	119	109	126	122	124
3.	Capacity Utilisation	%	***	***	***	***	***	***
	Trend	Indexed	100	119	109	126	122	124
Sales Volume								
4.	Domestic	MT	***	***	***	***	***	***
	Trend	Indexed	100	111	103	53	48	101
5.	Exports	MT	***	***	***	***	***	***
	Trend	Indexed	100	99	133	78	93	171
6.	Captive	MT	***	***	***	***	***	***
	Trend	Indexed	100	96	125	79	59	137
7.	Total sales of the domestic industry	MT	***	***	***	***	***	***
	Trend	Indexed	100	106	114	64	61	124
8.	Subject Imports	MT	865	662	397	147	338	485

97. It is seen that:

- i The installed capacity of the applicant has remained stable throughout the injury period and the POI.
- ii The production and capacity utilization has increased from the base year to the POI. The production and capacity utilization has increased from the base year to 2019-20, and has declined slightly in the year 2020-21, and has once again picked up during the POI. The capacity utilization during the second half of the POI (when the raw material prices of the domestic industry had increased substantially) stands at **%, which is significant.
- iii The domestic sales has slightly increased during the POI as compared to the base year despite the alleged price undercutting. The domestic sales of the applicant was at the highest level during the year 2019-20 and has declined thereafter. The export sales and captive consumption of raw materials has continuously increased from the base year to the POI. The applicant has contended that due to the increase in volume of imports from the subject country, they have begun shifting their focus away from the domestic markets to the export markets.
- iv The overall sales of the applicant (i.e. domestic sales + export sales + captive sales) have steadily increased throughout the examined period, yet the domestic sales of the applicant has not shown a substantial increase during the examined period.

98. The contention of the applicant that due to an increase in volume of imports from the subject country, they have been forced to shift their focus to the export markets is not tenable. If this had been the case, the applicant's export sales would have increased with an increase in

volume of subject import and vice-versa. However, this has not been the case. The Authority notes that during the years 2018-19 and 2019-20, the import volumes from the subject country was far higher than the import volumes during the POI; yet, the export sales of the applicant during the years 2018-19 to 2019-20 was lower than its export sales during the POI. The Authority further notes that during the year 2020-21, although there was extremely low volume of imports from the subject country (lowest among all years examined), the applicant has exported significant quantities of the PUC. It is to be further noted that the increase in export sales cannot be considered a counter reaction to the alleged dumping given the fact that the export market has always been more price attractive for the applicant. The same can be concluded from the following table:

Particulars	UOM	2018-19	2019-20	2020-21	2021-22 H1	2021-22 H2	2021-22
Sales Volume							
Domestic	MT	***	***	***	***	***	***
Exports	MT	***	***	***	***	***	***
Captive	MT	***	***	***	***	***	***
Sales Value							
Domestic	₹ Lacs	***	***	***	***	***	***
Exports	₹ Lacs	***	***	***	***	***	***

99. Further, from the year 2019-20 to the year 2020-21, the import volumes from the subject countries declined by **%, whereas the export sales of the applicant increased by **% during the same period. It is true that during the POI, the import volumes from the subject country has increased as compared to the previous year; however, the Authority notes that this appears to not have a direct correlation to the applicant's tendency to export the PUC as has been examined above.

100. It is further noted that from 2018-19 to 2020-21, when the applicant was not suffering injury either in terms of its profitability or in terms of its market share, the applicant's domestic sales has remained more or less constant and has merely fluctuated between ** MT to **MT. The applicant has not been able to improve its domestic sales volumes during this period when there was apparently no injury from the subject imports. Yet, the applicant has increased its export sales volumes. This period (2018-19 to 2020-21) was a period which saw a gradual decline in imports of the subject goods. This shows that the applicant's tendency to sell in the export market is not influenced by the increase in imports from the subject countries. The applicant has been continuously increasing its export sales irrespective of the volume of imports from the subject country. The applicant, for certain reasons which are unrelated to imports from the subject country, has not been able to increase its domestic sales beyond a certain level despite a relatively high capacity utilization. In fact, during the POI,

the overall sales of the applicant (domestic, export and captive) were even higher than its production capacity.

K.2 Market Share

K.2.1 Submission of the domestic industry

101. The domestic industry has made the following submissions with respect to the market shares:

- a. The market share of the applicant increased till April 2020 to September 2021 as imports from the subject country declined. With an increase in imports, the market share of the applicant declined.¹⁴³

K.2.2 Submissions of the other interested party

102. The other interested party made the following submissions with respect to market share:

- a. Sales of the petitioner have increased during the POI as compared to the base year. The export sales and captive consumption sales have also increased sharply.¹⁴⁴

K.2.3 Examination of the Authority

103. The Authority has assessed the market shares of imports as well as the domestic industry in the table below:

SN	Particulars	UOM	2018-19	2019-20	2020-21	POI (H1)	POI (H2)	POI (2021-22)
1.	Domestic Sales of Applicant	%	***	***	***	***	***	***
	Trend	Indexed	100	115	131	141	109	124
2.	Sales of other producers	%	***	***	***	***	***	***
	Trend	Indexed	0	0	0	0	0	0
3.	Imports from subject country	%	***	***	***	***	***	***
	Trend	Indexed	100	82	60	46	91	70
4.	Imports from other countries	%	***	***	***	***	***	***
	Trend	Indexed	100	0	0	0	0	0
5.	Total imports	%	***	***	***	***	***	***
	Trend	Indexed	100	79	58	45	88	68

104. The market share of domestic industry has improved during the POI as compared to the

¹⁴³ Application, para 62.

¹⁴⁴ Written Submissions of Hubei, page 12.

base year, while the market share of the imports from the subject country has declined during this period. During the 2nd half of the POI, the market share of the domestic industry is **%, while the market share of the imports from the subject country is **%. It is seen that during the second half of the POI, the market share of the domestic industry has declined in comparison to the first half of the POI as well as the previous year. On the other hand, the market share of the imports from the subject country has increased during the second half of the POI.

105. The Authority has also compared the volume trends observed during the present investigation with the trends which were noticed during the 2nd Sunset Review of the previous investigation on Metronidazole from China PR in the table given under:

SN	Particulars	UOM	Jan-Dec 2010*	Jan-June 2011*	2018-19	2019-20	2020-21	POI (2021-22)
1.	Sales of the domestic industry	MT	268	175	***	***	***	***
2.	Sales of other producers	MT	466	466	0	0	0	
	Trend	Indexed	100	100	0	0	0	0
3.	Total sales of domestic producers	MT	734	641	***	***	***	***
4.	Imports from subject country	MT	1,133	1,049	839	662	397	485
	Trend	Indexed	100	93	74	58	35	
5.	Imports from other countries	MT	0	92	26	0	0	0
	Trend	Indexed	-	100	28	0	0	0
6.	Total imports	MT	1,133	1,141	***	***	***	***
	Trend	Indexed	100	101	76	58	35	
7.	Demand/Consumption (excluding captive sales of the DI)	MT	1,867	1,782	***	***	***	***
Market share in Demand (excluding captive sales of the DI)								
8.	Domestic Industry	%	14.38%	9.82%	***	***	***	***
9.	Other producers	%	24.94%	26.14%	***	***	***	***
10.	Imports from subject country	%	60.68%	58.88%	***	***	***	***
11.	Imports from other countries	%	0%	5.16%	***	***	***	***

* As per the final findings of the 2nd SSR of the previous investigation on Metronidazole¹⁴⁵

106. The period of investigation of the 2nd SSR of the previous investigation on Metronidazole was January to December 2010. The Authority had also analyzed the post-POI data of January to July 2011 therein. As can be observed from the table above, the demand for

¹⁴⁵ Final Findings No. 15/9/2003-DGAD dated 29th June 2012, "Sunset Review of anti-dumping duty imposed concerning imports of 'Metronidazole' originating in or exported from China PR", para 20, https://dgtr.gov.in/sites/default/files/adfin_SSR2_metronidazole_chinaPR.pdf

Metronidazole in the year 2010 and 2011 is similar to the demand for Metronidazole during the POI. Whereas in the year 2010 and 2011, the exports from China PR occupied a substantial portion of the market share, during the injury period and the POI for the present investigation, the domestic industry has captured a significant portion of the domestic demand.

K.3 Profitability, Return on Capital Employed and Cash Profits.

K.3.1 Submission of the domestic industry

107. The domestic industry made the following submissions with respect to profitability, return on capital employed and cash profits

- a. Profitability of the applicant has declined significantly in the POI. The applicant is earning the lowest profits during the POI.¹⁴⁶
- b. Cash profits and ROCE have shown the same trends as profitability.¹⁴⁷
- c. Cash profits and profit before tax are historically the lowest levels during the POI.¹⁴⁸
- d. The applicant placed reliance on the decision of the Ld. CESTAT in the case of *Forum of Acrylic Fibre Manufacturers v. Designated Authority*, to argue that price determination in a market economy is an outcome of market forces of supply and demand. Therefore, the decline in profitability of the domestic industry should not be seen as insignificant.¹⁴⁹

K.3.2 Submissions of the other interested party

108. The other interested party has made the following submissions with respect to profitability, cash profits and return on capital employed:

- a. The profitability of the domestic industry has declined due to a sharp and sudden increase in cost of sales of the applicant, whereas the selling price of the applicant has not increased in tandem.¹⁵⁰
- b. The increase in cost of sales is due to an increase in raw material cost of the applicant. The cost of raw materials may not be as substantial as claimed by the applicant.¹⁵¹

¹⁴⁶ Application, para 68.

¹⁴⁷ Application, para 68.

¹⁴⁸ Written submissions of the applicant, para 71.

¹⁴⁹ Rejoinder of the applicant, paras 30& 31.

¹⁵⁰ Written submissions of Hubei, page 13.

¹⁵¹ *Id.*

K.3.3 *Examination of the Authority*

109. The following table lays down the figures pertaining to the financial parameters of the domestic industry:

SN	Particulars	UOM	2018-19	2019-20	2020-21	POI (H1)	POI (H2)	POI (2021-22)
1.	Cost of sales per unit	₹/MT	***	***	***	***	***	***
	Trend	Indexed	100	106	101	115	139	126
2.	Selling price per unit	₹/MT	***	***	***	***	***	***
	Trend	Indexed	100	98	108	109	115	112
3.	Profit/Loss	₹/MT	***	***	***	***	***	***
	Trend	Indexed	100	47	147	77	(12)	35
4.	Profit/Loss (PBT)	₹ Lakhs	***	***	***	***	***	***
	Trend	Indexed	100	63	152	-	-	35
5.	PBIT	₹/MT	***	***	***	***	***	***
	Trend	Indexed	100	59	140	74	(8)	35
6.	PBIT	₹ Lakhs	***	***	***	***	***	***
	Trend	Indexed	100	66	145	79	(8)	36
7.	Cash profits	₹/MT	***	***	***	***	***	***
	Trend	Indexed	100	61	144	79	(5)	39
8.	Cash profits	₹ Lakhs	***	***	***	***	***	***
	Trend	Indexed	100	68	149	84	(5)	39
9.	ROCE	%	***	***	***	***	***	***
	Trend	Indexed	100	64	144	75	(8)	35

110. The applicant has relied on the decision of the Ld. CESTAT in the case of *Forum of Acrylic Fibre Manufacturers v. Designated Authority*, to argue that profits are relevant and important to business enterprises and the decline in profits of the domestic industry should not be regarded as insignificant or inconsequential.¹⁵²

111. It is seen that:

- i The cost of sales and selling price have increased from the base year to the POI. The cost of sales has increased substantially during the POI as compared to the previous year. The increase in cost of sales is most significant during the second half of the POI.
- ii The profits of the applicant have declined in the year 2019-20, and have increased in the year 2020-21, and declined during the POI to the lowest levels. The same trend is observed for PBIT, cash profits and ROCE. During the second half of the POI, the applicant has incurred losses. However, during the first half of the POI, the applicant is sufficiently profitable. Although the applicant's profitability has declined in the POI in relation to

¹⁵² Rejoinder of the applicant, paras 30 & 31.

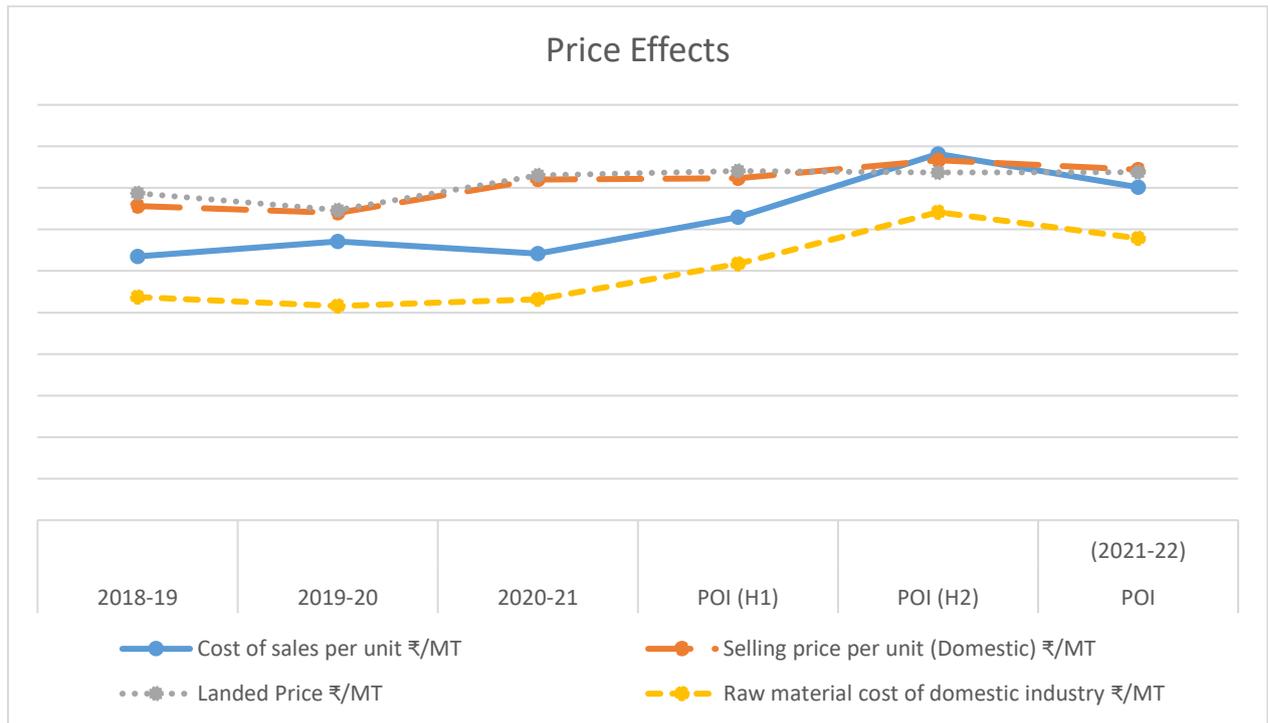
previous years, it has been overall profitable.

- iii It is seen that during the year 2020-21, while the volume of imports has been at the lowest levels of the examined period, the applicant had made substantial profits. This is also reflected in the PBIT, cash profits and ROCE.

112. The performance of the applicant must also be examined in the light of the substantial increase in raw material cost during the POI (particularly the second half of the POI). It is seen that while in the first half of the POI, the applicant is making sufficient profits, with a stable and satisfactory ROCE, during the second half of the POI, when the raw material costs increased, the profitability of the applicant has also declined.

113. During the second half of the POI, the applicant's selling price was also lower than its cost of sales, thereby indicating that it has incurred losses during the second half of the POI. The increase in cost of sales, could be attributable to the increase in raw material prices. While the cost of sales has moved in tandem with the price of raw materials, the selling price of the domestic industry has moved in tandem with the landed value.

SN	Particulars	UOM	2018-19	2019-20	2020-21	POI (H1)	POI (H2)	POI (2021-22)
1.	Cost of sales per unit	₹/MT	***	***	***	***	***	***
	Trend	Indexed	100	106	101	115	139	126
2.	Selling price per unit (Domestic)	₹/MT	***	***	***	***	***	***
	Trend	Indexed	100	98	108	109	115	112
3.	Landed Price	₹/MT	7,87,082	7,46,700	8,30,524	8,40,696	8,36,797	8,37,977
4.	Raw material cost of domestic industry	₹/MT	***	***	***	***	***	***
	Trend	Indexed	100	96	99	115	138	126



114. Due to the significant increase in raw material costs during the second half of the POI, the cost of sales of the domestic industry also increased. However, during the second half of the POI, the landed price has remained stable and therefore the domestic industry was unable to increase its selling price. It is the increase in raw material price and not the decline in landed price which has affected the profitability of the domestic industry. The domestic industry has contended that the landed price of the import from the subject country has not moved in tandem with the increase in raw material prices, and therefore, the domestic industry has not been able to adjust its selling price to the increase in raw material prices. The domestic industry has submitted that the pricing behaviour of exporters – whereby import prices have been unaffected by increase in raw material prices – is causing injury to the domestic industry.

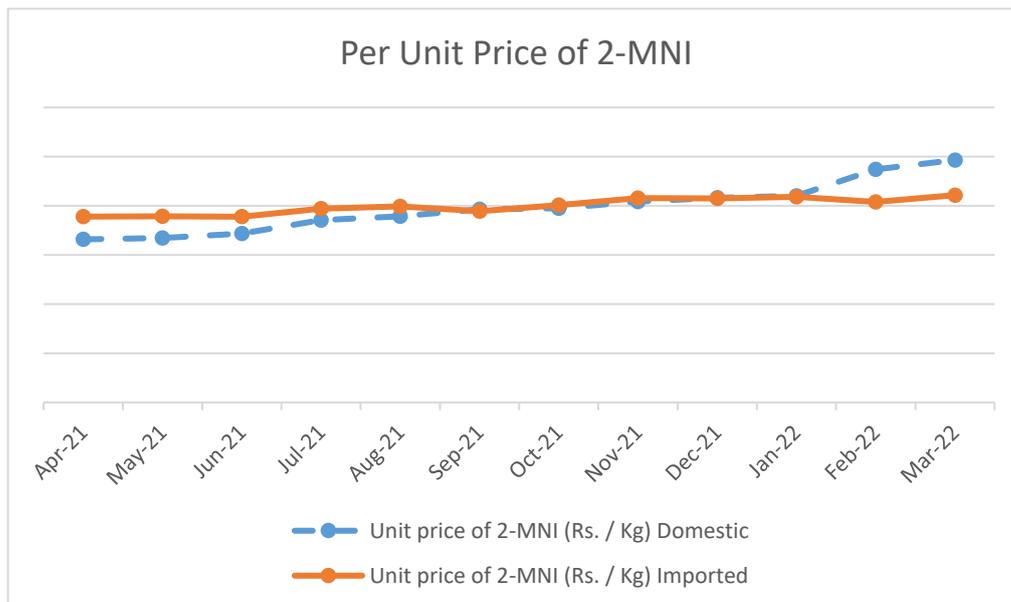
115. The applicant has claimed that the CIF import price of Chinese exporters has not moved in tandem with the change in the cost of the raw materials. The applicant has requested the Authority to take note of the disparity between the changes in the raw material costs and the changes in the CIF import price. With respect to the differences cost of raw materials relative to the differences in export price, Hubei has claimed that the cost of raw materials has not increased in relation to what is claimed by the applicant. The applicant has submitted that the Chinese producer does not operate in market economy conditions, therefore, its costs and prices must not be accepted.¹⁵³ The applicant states that it has procured its raw materials from various unaffiliated sources, which reflect international prices. It has been claimed that

¹⁵³ Rejoinder of the applicant, para 24.

in case the cost of raw materials of the Chinese producers/exporters are below the international raw material prices, it must be concluded that the prices of inputs of the responding exporters are distorted.¹⁵⁴

116. The Authority notes that the domestic industry has sourced its raw materials from both domestic and international suppliers. The applicant has provided data of the month-wise prices of the major raw material of metronidazole 2 Methyl 5-Nitro Imidazole (“2-MNI”), which it has procured from both domestic as well as international sources. The month-wise price of 2-MNI procured by the applicant during the POI is as under:

Month	Unit price of 2-MNI (Rs. / Kg)	
	Domestic	Imported
Apr-21	***	***
May-21	***	***
Jun-21	***	***
Jul-21	***	***
Aug-21	***	***
Sep-21	***	***
Oct-21	***	***
Nov-21	***	***
Dec-21	***	***
Jan-22	***	***
Feb-22	***	***
Mar-22	***	***



¹⁵⁴ *Id.*, para 25.

117. As seen from the table and graph above, the prices of domestically sourced 2-MNI has consistently increased. During the second half of the POI, the price of domestically sourced 2-MNI is higher than the international price of 2-MNI. Pertinently, vide email dated 29th July 2023, the domestic industry has itself conceded that the raw material price (particularly the price of 2-MNI) has increased more sharply in the Indian market as compared to the international market.¹⁵⁵ The Authority further notes that the increase in raw material cost without the corresponding increase in landed price of the subject goods is merely restricted to H2 of the POI. As noted in paragraph 143 below, during the 6 month post-POI period, the raw material price has increased by Rs. *** per MT (***)% increase) as compared to the preceding 6 months, whereas the landed value has increased by Rs. *** per MT (***)% increase), and the selling price has increased by Rs. *** per MT (***)% increase). The abnormal increase in raw material cost relative to the landed value was noticed only during H2 of the POI, which is an aberration. The Authority notes that any determination of injury cannot solely be based on the H2 of the POI – which appears to be period of aberration, more so in view of the H1 of the POI and the post-POI period.

K.4 Inventories

K.4.1 Submissions of the domestic industry

118. The applicant has made the following submissions with respect to its inventories:

- a. The inventories of the applicant have declined over the injury period and during the POI.¹⁵⁶
- b. Closing inventories increased in 2019-20 when COVID lockdown was imposed, resultantly, the average inventories increased during this period.¹⁵⁷
- c. The closing inventories declined in the year 2020-21 since the production of the applicant declined.¹⁵⁸
- d. The inventories of the applicant have declined as it has undertaken export sales.¹⁵⁹

K.4.2 Submissions of the other interested party

119. The other interested party has made no specific submissions with respect to inventories

¹⁵⁵ Email of the applicant dated 29th July 2023.

¹⁵⁶ Application, para 70.

¹⁵⁷ Written submissions of applicant, para 69.

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

K.4.3 Examination of the Authority

120. The following table shows the inventory figures of the domestic industry:

Particulars	UOM	2018-19	2019-20	2020-21	POI (H1)	POI (H2)	POI (2021-22)
Opening Inventory	MT	***	***	***	***	***	***
Trend	Indexed	100	35	387	168	112	168
Closing Inventory	MT	***	***	***	***	***	***
Trend	Indexed	100	1,101	479	319	201	201
Average Inventory	MT	***	***	***	***	***	***
Trend	Indexed	100	312	411	208	135	177

121. It is seen that there has been an increase in inventories from 2018-19 to 2020-21. Thereafter, the level of inventories has declined. During the POI, the average inventories have reduced, however, the level of inventories during the POI is still higher than the base year. There was an accumulation of stock in the year 2020-21. However, it is seen that a substantial amount of stock was cleared during the POI. This is despite the high production and capacity utilization of the applicant. Further, as noted above, the total sales of the domestic industry during the POI (domestic sales + export sales + captive sales) is ***MT. The domestic industry appears to not be facing much difficulty in making sales and clearing its existing stock through different sales channels (domestic, export or captive).

K.5 Employment, wages and productivity*K.5.1 Submission of the domestic industry*

122. The domestic industry has made the following submissions with respect to employment, wages and productivity:

- a. Productivity and salary & wages has increased over the injury period. Number of employees have declined.¹⁶⁰
- b. Employment and wages are not dependent on the performance of the product under consideration and the applicant is not claiming injury in these parameters.¹⁶¹

K.5.2 Submissions of the other interested party

123. The other interested party has made the following submissions with respect to employment, wages and productivity:

¹⁶⁰ Application, para 66.

¹⁶¹ *Id.*

- a. The number of employees increased during the POI as compared to the base year.¹⁶²
- b. Wages slightly declined during the POI.¹⁶³
- c. Employment and wages are not dependent on the performance of the product under consideration and the applicant is not claiming injury in these parameters. Thus, there is no injury to the domestic industry from the imports from China PR.¹⁶⁴
- d. Productivity per day and productivity per employee has increased sharply from the base year to the POI.¹⁶⁵

K.5.3 Examination of the Authority

124. The following table shows the figures with respect to employment, wages and productivity:

Particulars	UOM	2018-19	2019-20	2020-21	POI (H1)	POI (H2)	POI (2021-22)
Salary & Wages	₹ Lacs	***	***	***	***	***	***
Trend	Indexed	100	109	127	142	140	141
No. of Employees	Nos	***	***	***	***	***	***
Trend	Indexed	100	101	95	95	95	95
Productivity per day	MT/days	***	***	***	***	***	***
Trend	Indexed	100	119	109	126	122	124
Productivity per employee	MT/Nos	***	***	***	***	***	***
Trend	Indexed	100	118	115	133	128	131

125. The salary and wages have increased significantly from the base year to the POI, although the number of employees has declined. The productivity per day and productivity per employee has also improved. The applicant is not claiming injury with respect to the abovementioned parameters.¹⁶⁶

K.6 Growth

K.6.1 Submission of the domestic industry

126. The domestic industry has made the following submissions with respect to its growth:

- a. The applicant recorded positive growth in the period April 2020 to September 2021, but

¹⁶² Written submissions of Hubei, page 13

¹⁶³ Written submissions of Hubei, page 13.

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*, page 14.

¹⁶⁶ Application, para 66.

recorded a negative growth in majority of the parameters in the POI.¹⁶⁷

K.6.2 Submissions of the other interested party

127. The other interested party has made no submissions with respect to growth.

K.6.3 Examination of the Authority

128. The growth in terms of production, capacity utilization, domestic sales volume, inventories, profits, cash profits and return on investment is as per below table:

SN	Particulars	UOM	2019-20	2020-21	POI
1	Production	Y/Y	***	***	***
2	Sales	Y/Y	***	***	***
3	Profit/(Loss) per unit	Y/Y	***	***	***
4	Inventory	Y/Y	***	***	***
5	Market Share	Y/Y	***	***	***
7	Cash Profit	Y/Y	***	***	***
8	PBIT	Y/Y	***	***	***
9	ROI	Y/Y	***	***	***

129. It is noted that during the POI, the growth of the domestic industry has declined as compared to 2020-21. However, it may be noted that during the year 2020-21, the volume of imports from the subject goods was very low. A plausible reason for the low volume of imports during 2020-21 is the COVID-19 pandemic and the consequent decline in demand. Further, in 2020-21, the profitability of the domestic industry was substantial. Consequently, the growth of the domestic industry during the POI has declined as compared to 2020-21. The impact of decline in demand is also visible on the production and sales figures of the domestic industry, which have registered a negative growth in 2020-21.

K.7 Ability to raise capital investment

130. Applicant submitted that it is faced with low return on capital employed and that its ability to raise capital investments have significantly weakened due to the presence of dumped imports.¹⁶⁸ However, the applicant has not provided any evidence to substantiate its claim. Therefore, the Authority is unable to conclude that the domestic industry is suffering injury

¹⁶⁷ Application, para 72.

¹⁶⁸ Application, para 73.

on this parameter.

K.8 Conclusion on injury

131. Having examined all parameters above, the Authority has observed that:

- i The volume of imports has declined from the base year as compared to the POI. There is an increase in imports during the POI as compared to the previous year, however, imports in relation to the Indian production and the total demand has declined as compared to the base year.
- ii Although there is an increase in imports during the post-POI period, the landed price of the imports during this post-POI period is substantially higher than the landed price during any other examined period. In fact, the landed price during this period is higher than the NIP calculated for the POI.
- iii The market share of the domestic industry during the POI has significantly improved. Further the applicant is the sole domestic producer that is selling the PUC in the Indian market. Apart from the applicant, there is one other domestic producer in India; however, the other domestic producer is not selling the PUC in the Indian market. The market share of imports from the subject country have declined.
- iv Imports from the subject country and market share of imports is significantly lower during the POI as compared to the period January 2020 to June 2011. There has been a positive growth of Indian producers in the market. The domestic producers have become stable and are able to compete with the imports even without the protection of the duty.
- v The price undercutting and price suppression/depression throughout the entire examined period, except the second half of the POI is negative. However, during the second half of the POI, the price of raw materials has substantially increased, which has contributed to the significant increase in cost of production of the applicant, and consequently, the positive price undercutting and price suppression/depression during this period.
- vi The performance of the domestic industry in terms of production, installed capacity, sales volumes has improved during the POI as compared to the base year. This is despite the increase in raw material price during the POI.
- vii The domestic industry has been profitable throughout the entire examined period

except the second half of the POI. Only during the second half of the POI, the profitability (profits, cash profits, ROCE and PBIT) are negative. The Authority notes that the negative profitability during the second half of the POI is attributable to the increase in cost of raw materials during this period.

- viii The average inventories of the applicant have increased during the POI as compared to the base year. However, the inventories during the POI have declined when compared to the previous year.
- ix The salary and wages, productivity per day, and productivity per employee has improved during the POI as compared to the base year. The applicant has not claimed injury in this respect.
- x The applicant has shown positive growth in terms of its production and sales figures, but has shown negative growth in terms of profitability. As examined above, the negative growth in terms of the profitability of the applicant is as a result of the increase in raw material cost.

L POST-POI ANALYSIS

L.1 Submission of the domestic industry

132. The domestic industry has contended that the decline in performance during the 2nd half of the POI was not a temporary phenomenon, but rather the import trend and the injury to the domestic industry has persisted even after the POI. Vide email dated 29th July 2023, the domestic industry has furnished information for the April 2022 to September 2022 period to argue that the domestic industry has continued to suffer injury even after the POI. The domestic industry has submitted that October 2021 to March 2022 was not a temporary phenomenon, but the alleged dumping of the Chinese exporters has continued thereafter.¹⁶⁹ The applicant has submitted that imports of the applicant have increased in absolute terms in the period April 2022 to September 2022.¹⁷⁰ The domestic industry has submitted that their market share has declined, whereas the market share of the Chinese Exporters has increased to more than ***%. The applicant submitted that it had the capacity to cater to ***% of the total domestic demand, however, it is unable to capture sufficient market share.¹⁷¹

¹⁶⁹ Email received from the applicant dated 29th July 2023, paragraph 1.

¹⁷⁰ *Id.*, para 2.

¹⁷¹ *Id.*, para 3.

133. The applicant has further submitted that even though the import price during the April 2022 to September 2022 period have increased, the imports are still being made at dumped prices.¹⁷² The domestic industry further submitted that the difference between the selling price and the raw material cost continues to remain low even in the April 2022 to September 2022 period:¹⁷³

SN	Period	UOM	Selling price	Raw material cost	Difference	Difference (%)
1	2018-19	Rs/KG	***	***	***	***
2	2019-20	Rs/KG	***	***	***	***
3	2020-21	Rs/KG	***	***	***	***
4	2021-22 (H1)	Rs/KG	***	***	***	***
5	2021-22 (H2)	Rs/KG	***	***	***	***
6	2022-23 (H1)	Rs/KG	***	***	***	***

134. The applicant further submitted that while it is true that the raw material price has increased more sharply in the domestic market as compared to the international market, however, despite the increase, the raw material price in the domestic market continued to remain low.¹⁷⁴ The applicant contended that the decline in profitability is due to the sourcing of raw material from the domestic market and if the applicant had sourced raw material from the international market, its losses would have been higher:¹⁷⁵

SN	Particulars	Actual (Rs./MT)		Considering entire raw material imported (Rs./MT)	
		Apr-Sep'20	Oct'-Mar'21	Apr-Sep'20	Oct'-Mar'21
1	Raw material cost	***	***	***	***
2	Other cost	***	***	***	***
3	Total cost	***	***	***	***
4	Selling price	***	***	***	***
5	Profit/unit	***	***	***	***

L.2 Examination of the Authority

135. The Authority notes that the volume of imports during the April 2022 to September 2022 period has increased. However, it is to be noted that the landed price of imports during this period has also substantially increased. Furthermore, it is seen that there is also a substantial increase in demand for the PUC during the April 2022 to September 2022 period, while the

¹⁷² Email from the applicant dated 29th July 2023, paragraph 5.

¹⁷³ *Id.*, para 6.

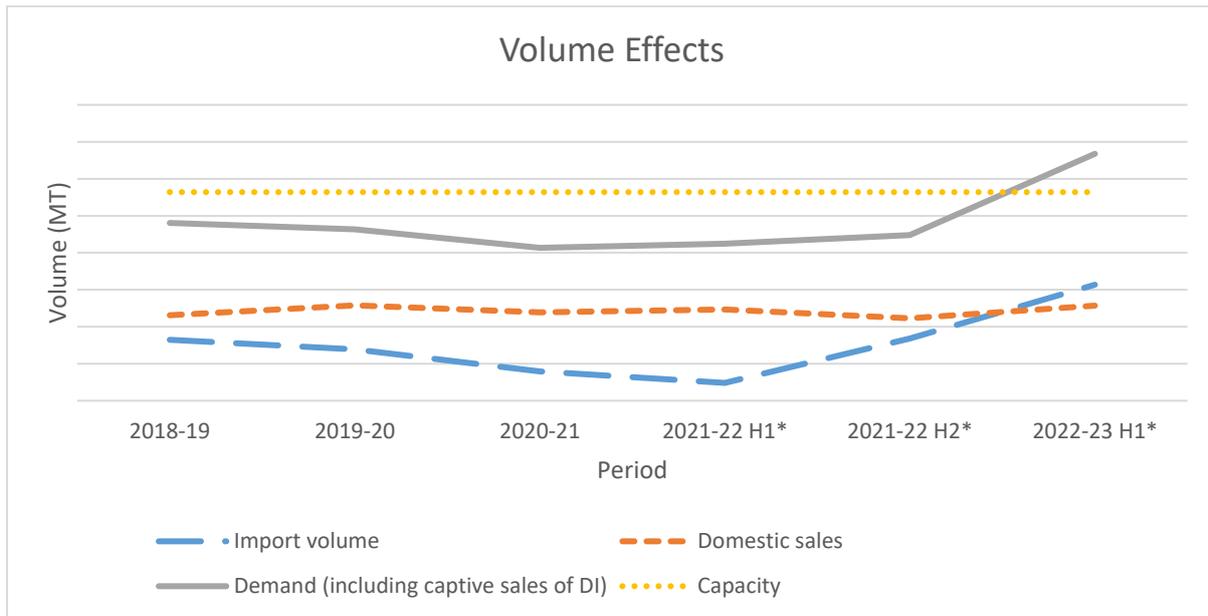
¹⁷⁴ Email from the applicant dated 29th July 2023, para 9.

¹⁷⁵ *Id.*, para 9.

domestic sales of the domestic industry has increased as compared to the previous years:

Particulars	UOM	2018-19	2019-20	2020-21	2021-22 H1*	2021-22 H2*	2021- 22	2022-23 H1*
Import volume	MT	***	***	***	***	***	***	***
Domestic sales	MT	***	***	***	***	***	***	***
Trend	Indexed	100	111	103	106	96	101	111
Domestic sales including captive consumption	MT	***	***	***	***	***	***	***
Trend	Indexed	100	108	109	119	102	110	113
Demand (including captive sales of DI)	MT	***	***	***	***	***	***	***
Trend	Indexed	100	96	86	88	93	91	139
Demand (excluding captive sales of DI)	MT	***	***	***	***	***	***	***
Trend	Indexed	100	96	79	75	88	82	143
Market share of imports (excluding captive sales of DI)	%	***	***	***	***	***	***	***
Trend	Indexed	100	83	61	46	93	71	134
Market share of applicant (excluding captive sales of the DI)	%	***	***	***	***	***	***	***
Trend	Indexed	100	116	132	142	109	125	79
Market share of applicant (including captive sales of the DI)	%	***	***	***	***	***	***	***
Trend	Indexed	100	111	127	134	109	122	81

* means the figures have been annualised



136. It is noticed that the installed capacity of the applicant has remained the same throughout the examined period. Throughout the examined period (including the post-POI period), the domestic sales of the applicant have remained at almost same levels with minor variations year-on-year (fluctuating between ***MT to ***MT). It is further noticed that the post-POI period is the only period wherein the volumes of imports from the subject country is higher than the domestic sales of the applicant. From the graph and the table above, it appears as if the sales of the domestic industry have not been impacted by the imports from the subject country. Throughout the examined period, the domestic sales of the applicant have been at a constant and stable level with minor variations year-on-year. Even from the period 2018-19 to the first half of the POI, when the volume of imports from the subject country were very low and declining, the domestic sales of the applicant still remain at the stable levels, with minor variations. The increase in volume of imports during the post-POI period has not had an impact on the stable domestic sales of the domestic industry.

137. In the post-POI period, the imports from the subject country do not appear to have disturbed the sales of the applicant, but rather the total demand for the subject goods in India has increased, and the imports from the subject country have catered to this increase in demand, without substantially affecting the sales of the domestic industry. It must further be noted that during the post-POI period, the total domestic demand is much higher than the installed capacity of the domestic industry and the demand appears to be growing. The applicant has argued that it has the capacity to cater to more ***% of the total domestic demand in India. However, based on the trends of the domestic sales, it appears that the domestic industry is unable to increase its domestic sales above a certain level, even when the import volumes were very low.

138. Upon analysis of the market share, a preliminary inference can be drawn that the market share of the domestic industry appears to be declining. However, when these figures are juxtaposed with the price behaviour of imports and domestic sales, a completely different picture is seen. As mentioned in the table below, it is noted that the selling price of the domestic industry is significantly below the landed value of imports. The principles of economics dictate that all other things being equal (e.g., quality of a product), consumers would prefer to buy goods offered at lower prices as compared to higher priced goods. Despite selling their goods at prices lower than the imports, the domestic industry has not been able to capture a larger share of the growth in demand. The domestic industry has not been able to afford any plausible explanation for the same. The capture of the growth in demand by imports therefore does not appear to adversely impact the competitiveness of the domestic industry in the post-POI period:

Particulars	UOM	2018-19	2019-20	2020-21	2021-22 (H1)	2021-22 (H2)	2022-23 (H1)
Landed price	Rs./Kg	787	747	831	841	837	978
Trend	Indexed	100	95	106	107	106	124
Selling price	Rs./Kg	***	***	***	***	***	***
Trend	Indexed	100	98	108	109	115	125
Raw material cost	Rs./Kg	***	***	***	***	***	***
Trend	Indexed	100	96	99	115	138	144

139. As seen from the table above, the domestic industry also had the opportunity to increase its selling prices, given the significant difference in landed value of imports and the selling price of the domestically produced goods, and therefore, increase its profits. However, that has not been the case. Furthermore, the inability of the domestic industry to capture the growth in demand despite selling at low prices shows that other unknown factors are at play which are inhibiting the domestic industry from capturing the demand.

140. Moreover, the capacity utilisation of the domestic industry ranged from around ***-***% during the examined period. Yet, the domestic sales volumes of the domestic industry have not increased beyond a certain level throughout the examined period. The argument that the domestic has the capacity to cater to more than ***% of the total domestic demand is not reasonable since throughout the examined period, the applicant has dedicated a significant portion of the PUC that it produces to export markets and captive consumption. Therefore, even with the full capacity utilisation, it is unlikely that the domestic industry would cater to ***% of the total domestic demand. This is seen from the table below:

Particulars	UOM	2018-19	2019-20	2020-21	2021-22 H1	2021-22 H2	POI (2021-22)
Domestic sales	MT	***	***	***	***	***	***
Trend	Indexed	100	111	103	106	96	101
Export sales	MT	***	***	***	***	***	***
Trend	Indexed	100	99	133	157	186	171
Captive sales	MT	***	***	***	***	***	***
Trend	Indexed	100	96	125	157	118	137
Total sales of the domestic industry	MT	***	***	***	***	***	***
Trend	Indexed	100	106	114	64	61	124
Total demand (including captive consumption of DI)	MT	***	***	***	***	***	***
Trend	Indexed	100	99	88	88	102	140
Total demand (excluding captive consumption of DI)	MT	***	***	***	***	***	***
Trend	Indexed	100	96	79	-	-	82
Import volume	MT	839	662	397	147	338	485

141. Further, the argument that the domestic industry was not able to capitalise on the increase in demand due to imports from the subject country cannot be accepted since the domestic industry has not been able to increase its domestic sales volume above a certain level throughout the examined period – including when the volume of imports from the subject country was low (i.e., during 2018-19 to the first half of the POI). Moreover, it must also be noted that from 2018-19 to the first half of the POI, the profitability of the domestic industry was positive and significant while the volume of imports from the subject country were low. The applicant's argument that its market share has declined also cannot be accepted. As explained above, the trends in market share cannot not be characterised as a decline in the market share of the domestic industry, but rather an increase in domestic demand, which the domestic industry has not been able to cater to. The increased volume of imports has been able to cater to this increase in domestic demand despite the imports being priced higher than the selling price of the domestic industry.

142. It is further noted that the increase in volume of imports must be analysed in the context of the price of imports, price of raw materials and selling price of the domestic industry:

Particulars	UOM	2018-19	2019-20	2020-21	2021-22 (H1)	2021-22 (H2)	2022-23 (H1)
Landed price	Rs./Kg	787	747	831	841	837	978
Trend	Indexed	100	95	106	107	106	124
Selling price	Rs./Kg	***	***	***	***	***	***
Trend	Indexed	100	98	108	109	115	125
Raw material cost	Rs./Kg	***	***	***	***	***	***
Trend	Indexed	100	96	99	115	138	144

143. It is seen that although the volume of imports during the 6-month post-POI period is higher than the domestic sales volume of the applicant, the landed price of the imports is higher as well. Despite the higher landed price, the sales volumes of the subject imports are higher than the domestic sales of the applicant. Further, during the 6-month post-POI period, the raw material price has increased by Rs. ***per MT (***)% increase) as compared to the preceding 6 months, whereas the landed value has increased by Rs. ***per MT (***)% increase), and the selling price has increased by Rs. *** per MT (***)% increase):

Particulars	Oct' 21 to March' 22 (Rs./Kg)	Apr' 22 to Sept' 22 (Rs./Kg)	Increase (Rs./Kg)	Increase (%)
Selling price	***	***	***	***
Raw material cost	***	***	***	***
Landed price	***	***	***	***

144. The above table indicates that increase in landed price of the subject imports is higher than the increase in raw material price. Further, the applicant has also been able to increase its selling price at a higher rate than the increase in cost of raw materials. It is also noticed that the domestic industry does not appear to be facing price pressure from the subject imports since the landed price of the subject imports is higher than the selling price of the domestic industry.

M INJURY MARGIN

M.1 Submission of the domestic industry

145. The domestic industry has made the following submissions with respect to the injury margin:

- a. Since there was negative injury margin during April 2021 to September 2021, the inclusion of 2021-22 as a whole for the injury analysis would not be appropriate.¹⁷⁶

¹⁷⁶ Written submissions of the applicant, para 17(a).

- b. Performance of the domestic industry in the period April 2021 to September 2021 was reasonably good, whereas it has deteriorated sharply in the period October 2021 to March 2022. Inclusion of April 2021 to September 2021 would imply inclusion of a period when the domestic industry did not suffer material deterioration in performance.¹⁷⁷
- c. The Authority must apply the W-T Methodology to assess the injury margin instead of the W-W Methodology.¹⁷⁸
- d. The injury margin was negative in the period April 2021 to September 2021, but increased to ***% in October 2021 to March 2022. Therefore, a calculation done on average basis will imply merging of two periods when the domestic industry was not suffering from the Chinese dumping.¹⁷⁹
- e. While the WTO has held that ‘zeroing’ of dumping is against the mandate of the anti-dumping agreement, the agreement does not impose restrictions on the Authority to note undertake ‘zeroing’ for injury margin.¹⁸⁰
- f. The Authority may only consider those transactions which are below the non-injurious price for determination of the injury margin and quantum of duty since the domestic industry’s concerns are only against the low-priced imports. Hence there is no reason to consider high priced imports under the determination as well.¹⁸¹

M.2 Submission of the other interested party

146. The other interested party has made the following submissions with respect to the injury margin:

- a. The consolidated data for the POI should be considered by the Authority for computation of the injury margin.¹⁸²
- b. The petitioner had requested the Authority to consider a 6-month POI for the assessment of injury, however, the Authority has decided to consider a 12-month POI.¹⁸³
- c. As per paragraph 5.10 of the Manual of Operating Practices for Trade Remedy Investigations, the POI, once fixed by the Authority, cannot be modified.¹⁸⁴

¹⁷⁷ *Id.*, para 17(c).

¹⁷⁸ *Id.*, page 6.

¹⁷⁹ Written Submissions of the Applicant, para 26.

¹⁸⁰ *Id.*, para 36.

¹⁸¹ *Id.*, para 35.

¹⁸² Written submissions of Hubei, page 7.

¹⁸³ *Id.*

¹⁸⁴ *Id.*

M.3 Examination of the Authority

147. The determination of injury margin neither reflects the injury in quantitative terms nor does it confirm the existence of injury. However, since the domestic industry is not suffering injury due to the dumped imports, the Authority does not find it necessary to determine the injury margin.

N CAUSAL LINK AND NON-ATtribution ANALYSIS

N.1 Submissions of the domestic industry

148. The domestic industry has made the following submissions with respect to the causal link and non-attribution analysis:

- a. There are negligible imports from countries other than the subject country and are high priced.¹⁸⁵
- b. The demand for the PUC in India has increased during the POI, while the domestic sales of the applicant have declined.¹⁸⁶
- c. There are no trade restrictive practices in India, there has been no significant development in technology, the applicant has segregated its export performance, the productivity of the applicant has moved in tandem with changes in production, the data provided by the applicant relates only to its performance of the PUC.¹⁸⁷
- d. The applicant has not faced constraints of raw materials shortage, power shortage, impact of any tax differential, lack of adequate capacity or investment constraints.¹⁸⁸
- e. The import price of the subject imports has declined during the POI as compared to the previous years, allowing it to increase its import volumes.¹⁸⁹
- f. The import price of the subject imports is significantly below the cost of sales.¹⁹⁰
- g. The price pressure has significantly reduced the applicant's profits, cash profits and return on capital employed earned by the domestic industry.¹⁹¹

¹⁸⁵ Application, para 96.

¹⁸⁶ *Id.*, para 98.

¹⁸⁷ *Id.*, para 99.

¹⁸⁸ Application, para 102.

¹⁸⁹ *Id.*, para 104 (i).

¹⁹⁰ *Id.*, para 104 (ii).

¹⁹¹ *Id.*, para 104 (iii).

h. Increase in volume of imports has taken away the market share of the domestic industry.¹⁹²

N.2 Submission of the other interested party

149. The other interested party has made the following submissions with respect to the causal link and non-attribution analysis:

- a. The WTO Appellate Body, in *US – Hot Rolled Steel* has held that in a non-attribution analysis, the investigating authorities are not required to separate and distinguish the injurious effects of other known causal factors from the injurious effects of the dumped imports.¹⁹³
- b. The Authority is required to separate the injury caused to the domestic industry from the injurious effects of other factors.¹⁹⁴
- c. Internal problems, depressed market conditions globally, impact of COVID-19, the influence of the currency devaluation, inflation, price increase of bulk drug commodities are factors which have contributed to the injury of the domestic industry.¹⁹⁵
- d. The Indian rupee has weakened post the Russia-Ukraine war, which has led to inflation. This is the cause for injury to the domestic industry.¹⁹⁶

N.3 Examination of the Authority

150. Para (v) of Annexure – II to the AD Rules, 1995 requires the Authority to establish that the domestic industry is suffering injury due to the dumped imports. At the same, the Authority is required to examine other known factors other than the dumped imports that could have impacted the performance of the domestic industry so that the injury caused by other known factors is not attributable to the dumped imports of the subject goods. The relevant factors in this respect include the volume of subject goods not sold at dumped prices, contraction in demand or changes in the pattern of consumption, trade restrictive practices, changes in technology, the export performance of the domestic industry and the productivity of the domestic industry. The Authority has noted above that the domestic industry has shown a decline in performance in the second half of the POI. The Authority has analysed the other factors which may have contributed to the domestic industry's decline in performance. The aforementioned factors have been examined below:

¹⁹² *Id.*, para 104 (iv).

¹⁹³ Written Submissions of Hubei, page 15.

¹⁹⁴ *Id.*, page 16.

¹⁹⁵ *Id.*, page 17.

¹⁹⁶ *Id.*, page 17.

N.3.1 Contraction in demand

151. It is noted that the demand for the subject goods has declined during the POI as compared to the base year. However, the sales of the domestic industry have not changed substantially, whereas the volume of imports has declined from the base year as compared to the POI. There has been an increase in volume of imports during the POI as compared to the preceding year.

N.3.2 Change in pattern of consumption

152. None of the interested parties have argued or brought forth any evidence which establishes a change in pattern of consumption.

N.3.3 Trade restrictive practices

153. None of the interested parties have argued or brought for any evidence regarding the existence of trade restrictive practices.

N.3.4 Development in technology

154. None of the interested parties have argued or brought forth any evidence to demonstrate any advancement in technology in the manufacturing of the PUC.

N.3.5 Export performance of the domestic industry

155. The applicant's export performance has improved during the POI as compared to the base year.

N.3.6 The performance of other products of the domestic industry

156. The injury analysis has been conducted based on the domestic industry's performance with respect to the PUC only. Therefore, the performance of other products of the domestic industry is not relevant for the purpose of the present investigation.

N.3.7 Depressed global market conditions

157. Hubei has argued that the applicant's performance has declined due to the depressed global market conditions as well as the impact of COVID-19. Hubei has further argued that the Russia-Ukraine war has led to a devaluation of the Indian rupee, which is the cause for the injury of the domestic industry. However, the Authority notes that apart from merely making such assertions, Hubei has not provided any evidence to establish its claims.

N.3.8 Increase in the price of raw materials

158. The Authority notes that the profitability parameters of the domestic industry has been positive throughout the entire examined period except the second half of the POI. The applicant has also stated that the price of raw materials during the second half of the POI has increased substantially, whereas the CIF import price has not moved in tandem. The applicant has stated that the increase in price of raw materials, along with the imports from the subject countries are causing injury.

159. The Authority notes the WTO Panel Report in *EC – Salmon (Norway)*¹⁹⁷ that any increases in production costs of the applicant is a relevant factor in assessing the causality of injury to the domestic industry. In this case, it was argued that the EC industry had experienced significant increase in in per unit costs of production, which explains why, despite an increase in sales volumes, and constant prices (measured in pounds sterling) the domestic industry incurred losses. It was argued that if the domestic industry's cost of production had not increased, it would have been profitable. The Panel observed that the EC was required to examine the impact of the increase in product cost in its causal link analysis. The Panel observed as under:

7.660 The EC asserts that Norway has failed to make a prima facie case with respect to its argument that increased costs were a cause of injury to the EC industry, and that in order to do so, Norway would have to explain to the Panel why it believes costs should not have increased as they did. We do not agree. Norway has demonstrated that the facts before the investigating authority showed that EC industry production costs increased, and that it was argued to the investigating authority that that increase in costs caused injury. The Provisional and Definitive Regulations do not address this contention. The EC has not brought forward any information that was before the investigating authority or analysis on this issue. In the absence of consideration of this argument, the EC has not demonstrated that an objective and unbiased investigating authority could have concluded that increased production costs were not causing injury to the domestic industry, and therefore that injury caused by this factor was not attributed to dumped imports. In these circumstances, our view is that Norway has demonstrated that the EC failed to comply with Article 3.5 of the AD Agreement.

160. The Authority notes that there has been an increase in the prices of raw materials for the PUC in the Indian market. This has contributed to the injury being caused to the domestic industry. As noted above, the raw material prices of the domestic industry has increased

¹⁹⁷ Panel Report, *European Communities – Anti-Dumping Measure on Farmed Salmon from Norway*, [WT/DS337/R](#), adopted 15 January 2008.

during the second half of the POI. This has coincided with the decline in performance and profitability parameters of the applicant during the very same period. Therefore, the Authority concludes that the injury to the domestic industry, if any, during the second half of the POI is as a result of the increase in raw material prices during this period. The Authority therefore concludes that the injury to the domestic industry, if any, is not caused by the imports from the subject country.

O INDIAN INDUSTRY ISSUES

O.1 Submission of the domestic industry

161. The domestic industry has made the following submissions with respect to the Indian industry issues:

- a. The applicant is the only existing producer that is selling the PUC in the Indian market. Continued dumping could lead to shortage of production and sales completely.¹⁹⁸
- b. Cost of API is not significant in the cost of formulations. The duty on the PUC would have an insignificant impact on the cost of the final product.¹⁹⁹
- c. The cost of metronidazole API does not play a major role in the final price of the product for the end consumers. The price for the formulation does not increase in the same proportion as the Metronidazole.²⁰⁰
- d. The impact of the anti-dumping duty on the final formulation is very negligible.²⁰¹
- e. There is significant variation in the prices of the medicines which use Metronidazole as an API. This shows the ability of the users to bear the cost of the duty.²⁰²
- f. Chinese producers have offered very low prices to Indian users in an attempt to eliminate competition with Indian producers. Once the Indian industry is wiped out, there would be an overdependency on Chinese producers.²⁰³
- g. The domestic industry has been competitive and capable of supplying the product to the consumers in the competition to fair priced imports.²⁰⁴

¹⁹⁸ Application, para 82.

¹⁹⁹ *Id.*, para 83.

²⁰⁰ *Id.*, para 84.

²⁰¹ *Id.*, para 85.

²⁰² *Id.*, para 86.

²⁰³ Application, para 87.

²⁰⁴ *Id.*, para 88.

- h. Sourcing the PUC from the domestic industry is in the interest of the user industry in India since producers from the subject country operate with the objective of maximizing their profits. The Indian industry, being located within the same territory as consumers, will keep the consumer's interest in mind. The consumers will have to maintain a higher degree of inventory if they have to depend on imported material. On the contrary, they would not be required to hold a high level of inventory in case they are purchasing from the domestic producers.²⁰⁵
- i. It cannot be presumed that the operations of the consumers would become unviable, merely because dumping is prevented by imposition of duty.²⁰⁶

O.2 Submissions of the other interested party

162. The other interested party has made no submissions with respect to the Indian industry's interest.

O.3 Examination of the Authority

163. The Authority notes that imposition of trade remedial measures is intended to ensure a level playing field. However, the imposition of such measures may impact different stakeholders variedly. The Authority had publicized the initiation notification as required under AD Rules, 1995 and also sent a copy of the application to industry associations as well as to the known importers according to the list provided by the applicant in order to elicit the views of other stakeholders regarding the impact of the anti-dumping duties, if imposed.

164. No user industry or importer has participated in the investigation. At a very late stage in the investigation, a few days prior to the issuance of disclosure statement, a company named [***] which claimed to be an importer and user of the subject goods sought opportunity to present its views before the Authority. It also explained in its letter that it has been consistently procuring the subject goods from the applicant²⁰⁷. However, as has been explained above in

²⁰⁵ *Id.*, para 89.

²⁰⁶ *Id.*, para 92.

²⁰⁷ Letter from [***] dated 25th September 2023:

*“As was communicated in our previous letter dated 18 September 2023, it is clarified that [***] is both, procuring the Product Under Consideration (‘PUC’) from the Domestic Industry (‘DI’) as well as from the exporters in China PR. Hence, [***] is an importer as well as a user of the PUC and an interested party in terms of the Rule 2(c) (i) of the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 (‘Indian AD Rules’).*

*Given that [***], [***], and the DI share a long-standing business relationship, the DI was already aware of the functional email addresses of these entities. Even then, the DI chose to use these incorrect email addresses, [***] and [***], which have no relation with [***] or its unit/ subsidiary. This is a deliberate attempt by the DI to get an anti-dumping protection while keeping a major user/ importer of the PUC in the dark, and by*

detail in procedure, the time for registration as an interested party had long been over. Granting opportunity at this stage would prejudice the rights of other interested parties.

165. The Authority notes the submissions of the applicant that the imposition of the duty would not have an impact on the end users since Metronidazole does not have a substantial cost on the end product, and therefore, the duties on metronidazole would not adversely impact the consumers of the final product. The Authority notes that the PUC is used as an API in several drugs. The Authority also notes that in the post-POI period the landed price of the imports has increased by ***%. Therefore, the imposition of duty would further increase the cost of the subject goods. The Authority would consider other comments on economic interest as given in the post-disclosure comments and would consider the same in the final findings.

166. The Authority notes that the subject good is an active pharmaceutical ingredient, which is used to manufacture a drug that has been listed in the ‘National List of Essential Medicines’ by the Department of Pharmaceuticals, Ministry of Health and Family Welfare.²⁰⁸ Further, Metronidazole medicine has been subject to several price control orders by the National Pharmaceutical Pricing Authority of India, Ministry of Chemicals and Fertilizers.²⁰⁹

P POST-DISCLOSURE ANALYSIS

167. The Authority circulated the disclosure statement containing all essential facts under consideration for making final recommendations to the Central Government to all interested parties on 19th September 2023. The interested parties were directed to file their comments on the disclosure statement by 25th September 2023. The Authority has examined all post – disclosure comments made by the interested parties in these final findings to the extent deemed relevant. Any submission which was merely a reproduction of the previous submission and which had been adequately examined by the Authority have not been repeated for the sake of brevity.

not allowing it to participate in the investigation before the Hon'ble Authority.”

²⁰⁸ See “National List of Essential Medicines 2022”, Notification No X.11035/346/2021-DRS, Ministry of Health and Family Welfare, available at: <https://main.mohfw.gov.in/sites/default/files/Notification%20and%20Report%20on%20National%20List%20of%20Essential%20Medicines%2C%202022.pdf>, accessed on 21st September 2023, at 10:59 a.m.

²⁰⁹ See Notification No. CG-DL-E-01042023-244884, published in Gazette of India, Extraordinary, Part II – Section 3 – Sub-section(ii), available at: <https://egazette.gov.in/WriteReadData/2023/244884.pdf>, accessed on 21st September 2023, at 11:04 a.m.

P.1 RE: Domestic industry and standing

168. Hubei has commented that Aarti Drugs Limited cannot be considered as an eligible domestic industry as it has imported the subject goods during the period of investigation not under advance authorization as claimed in the petition, but in ordinary course of trade.²¹⁰ Hubei has stated that the applicant has made the payment at the Indian Custom Ports for the imports made by them. The details of which are as under:

Row Labels	Sum of Quantity	Sum of CIF Value (USD)
2021-22	***	***
Injury Period	***	***
Post POI	***	***
Pre-injury Period	***	***
Grand Total	***	***

169. Hubei has submitted that the same situation was noticed in the 2nd sunset review investigation concerning imports of ‘Metronidazole’ originating in or exported from China PR, wherein Aarti Drugs Limited was excluded from the scope of the domestic industry.²¹¹ Hubei has further submitted that in the 3rd sunset review investigation, the Authority had rejected the application of Aarti on the same grounds.²¹² According to Hubei, the High Court of Delhi, in W.P. No. 7464/2017 has noted that the Aarti Drugs Limited cannot be considered as an eligible domestic industry.²¹³ Hubei has further submitted that the applicant is a habitual user of anti-dumping measures.²¹⁴

170. The Authority re-iterates its observations in paragraphs 20 to 24 of the disclosure statement as well as paragraphs 20 to 24 of these findings that the volume of imports made by the applicant during the current POI is lower than the imports by the applicant during previous investigations. Further, the Authority re-iterates that the applicant has imported the subject goods under advance authorization licenses in order to meet its export obligations. Hubei has not provided any evidence to demonstrate that imports were not made by the applicant under advance authorization licenses. The Authority confirms its observations in the disclosure statement regarding the standing of the domestic industry and holds that the applicant constitutes a ‘domestic industry’ in terms of Rule 2(b) of the AD Rules.

²¹⁰ Post disclosure comments of Hubei, page 3.

²¹¹ Final findings No. 15/18/2010-DGAD dated 29th June 2012, paragraphs 4 and 5

²¹² Post disclosure comments of Hubei, page 4.

²¹³ *Id.*, page 4.

²¹⁴ *Id.*, page 5.

P.2 RE: Assessment of Dumping and Injury Margins

171. The applicant has submitted that in its email dated 29th July 2023, it has requested the Authority to determine half yearly dumping margins, injury margins and price undercutting.²¹⁵ The applicant has stated that the Authority has conducted half yearly examination of the volume and price effect of imports on the performance of the domestic industry, however, the Authority has not determined the injury margin and dumping margin on half yearly basis.²¹⁶ According to the applicant, a half yearly analysis implies that the Authority has found that there is significant differences in the parameters over the period of investigation which warrant that an analysis considered for the period of investigation as a whole will not be appropriate.²¹⁷ The applicant has therefore submitted that the dumping and injury margins must be calculated on a half yearly basis.

172. The applicant has submitted that in several investigations,²¹⁸ the Authority has conducted a half yearly analysis where it has found that there is significant difference in cost of production and selling price with time.²¹⁹ The applicant has also referred to the Manual of Operating Practice for trade remedy investigations to argue that a half yearly computation of dumping and injury margin is permitted.²²⁰

173. At the outset, it is clarified that the applicant's assumption that the Authority has carried out half-yearly analysis as it had found significant differences in price over the period is misplaced. The Authority has analysed the injury information based on the complete POI. Given the fact that the applicant had made several submissions regarding injury in H2 of the POI, the Authority has merely bifurcated the POI to examine the applicant's submissions. The Authority further examined six months of post-POI data to verify whether the alleged injury and conditions in H2 of the POI have continued beyond the POI. However, as has been mentioned in the "injury" section above, even after considering the submissions of the applicant, the Authority has reached the conclusion that H2 period of the POI was an

²¹⁵ Post disclosure comments of applicant, paragraph 6.

²¹⁶ *Id.*, paragraph 9.

²¹⁷ *Id.*

²¹⁸ Anti-Dumping Investigations concerning imports of Phenol originating in or exported from Japan and Thailand; Antidumping investigations involving imports of Acetone originating in or exported from Japan and Thailand; Anti-Dumping Investigations concerning imports of 'Carbon Black used in rubber applications' originating in or exported from Australia, China PR, Iran, Malaysia, Russia and Thailand; Anti-Dumping investigation concerning imports of 'Chlorinated Polyvinyl Chloride (CPVC)- Whether or not further processed into compound' from Korea RP and China PR; Anti-dumping investigation concerning imports of Melamine originating in or exported from the European Union, Japan, Qatar and the United Arab Emirates; Sunset Review of anti-dumping duty on Viscose Staple Fibre from China PR

²¹⁹ Post disclosure comments of applicant, paragraph 11.

²²⁰ *Id.*, paragraph 10.

aberration.

174. The Authority notes that in the facts and circumstances of the present case, while there has been an alleged variation in the dumping and injury margins in the first and second half of the POI, the Authority notes that this is not a result of the change in pattern of export prices/landed values. The Authority has already determined that there is no pattern of difference in export price between the first half and the second half of the POI. Further, the Authority notes that the applicant has procured its raw materials from both domestic and international sources. The Authority has also noted above that the domestic raw material prices of the applicant have increased at a higher rate than the international raw material prices during the second half of the POI.²²¹ Further, in the first half of the POI, the price of domestically sourced 2MNI was lower than the prices of the internationally sourced 2MNI; however, during the second half of the POI, the price of domestically sourced 2MNI has increased, and is higher than the prices of the internationally sourced 2MNI.

175. It is evident that any alleged variation in the dumping or injury margins in the second half of the POI is as a result of volatility which is specific to the domestic industry alone (i.e., increase in domestic raw material prices). Since the main cause of the difference in dumping and injury margins during the two halves of the POI is the variation in domestic raw material prices, the Authority does not deem it fit to compute the dumping and injury margins on a half yearly basis.

176. Hubei has submitted that the dumping and injury margins which has been computed for it must not be the same. Hubei has submitted that the Authority must grant a lower rate of duty to it as compared to the residual category since it has cooperated with the Authority in the investigation. The Authority notes that since it has concluded that no injury has been caused to the domestic industry due to the alleged dumping of goods from the subject countries, the Authority sees no need to examine this contention of Hubei.

P.3 RE: Determination of dumping & injury margin by comparison of weighted average normal value/NIP to transaction-wise export price/landed value.

177. According to the applicant, the Authority has inappropriately interpreted and partially considered the request of the applicant for adopting the W-T Methodology for computation of the dumping margin and injury margin. The applicant claims that the Authority rejected the applicant's proposal for computation of the dumping and injury margins on the grounds that the WTO Panel and Appellate Body has held that zeroing is not permitted under the

²²¹ See paragraphs 88, 116 & 117, *supra*.

Anti-Dumping Agreement.²²²

178. At the outset, the Authority wishes to indicate that the applicant has not understood the basis on which the Authority has rejected the applicant's proposal for adopting the W-T methodology. In paragraphs 58 to 61 of the disclosure statement (paragraphs 58 to 61 of these findings), it is clear that the Authority has declined to adopt the W-T methodology since there is no pattern of export prices which differs across different time periods. The observations of the Authority with respect to zeroing was in response to the applicant's separate request for adopting of the zeroing methodology as proposed in its written submissions.²²³ The applicant has not appreciated the reasoning adopted by the Authority in paragraphs 58 to 61 of the disclosure statement (paragraphs 58 to 61 of these findings).

179. According to the applicant, the Authority has accepted that there has been an increase in cost of raw materials during the second half of the POI.²²⁴ The applicant submits that the very fact that the raw material prices have increased implies that the normal value has increased.²²⁵ The applicant has further submitted that the fact that the export price has declined when the normal value has increased itself shows that there is a significant difference in the pattern of prices between the two periods.²²⁶ The applicant has submitted that between the first half of the POI and the second half, the dumping and injury margins differ, which establishes that a comparison on the basis of weighted average is not appropriate.²²⁷ The applicant has provided the following information to substantiate its claims:

Particulars	UOM	Separate Comparison			POI
		1 st Half	2 nd Half	Wt. Average	
Export Price	Rs./Kg	***	***	***	***
Normal Value	Rs./Kg	***	***	***	***
Dumping Margin	Rs./Kg	***	***	***	***
Non-injurious price	Rs./Kg	***	***	***	***
Landed price	Rs./Kg	***	***	***	***
Injury margin	Rs./Kg	***	***	***	***
Import volumes	MT	***	***	***	***

180. The applicant has also referred to the WTO decision of *US – AD/CVD measures on Large Residential Washers from Korea*, the US Court of Appeals' decision in *Apex Frozen Foods*

²²² Post disclosure comments of applicant, paragraph 12.

²²³ Written Submission of the applicant, paragraph 37.

²²⁴ Post disclosure comments of the applicant, paragraph 16.

²²⁵ *Id.*, paragraph 17.

²²⁶ *Id.*, paragraph 17.

²²⁷ *Id.*, paragraph 20.

Pvt. Ltd. v. United States, the European Commission’s decision in the case of *Certain Tube and Pipe Fittings of Iron or Steel Originating in Russia and Turkey* and the Ld. CESTAT’s order in the case of *Kothari Sugars & Chemicals Ltd. v. Designated Authority* to argue that the W-T methodology must be adopted.²²⁸

181. With respect to the applicant’s submission that the dumping margin and the injury margin has increased in the second half of the POI, the Authority notes that the cause for such an increase in dumping and injury margins during the second half of the POI is clearly the increase in normal value/non-injurious price, which is constructed on the basis of the applicant’s data. The increase was primarily due to an increase in domestic raw material prices during the second half of the POI. As examined by the Authority in paragraph 58 of the disclosure statement (paragraph 58 of these findings), there is no significant increase in export price. The increase in raw material cost during the second half of the POI – which has translated to a higher normal value and non-injurious price – is the reason for the higher dumping and injury margins during the second half of the POI. This is not sufficient grounds for applying the W-T methodology.

182. As explained in paragraph 58 to 62 of the disclosure statement (paragraph 58 to 62 of these final findings), in order to adopt the W-T Methodology, the Authority must first determine that there is a pattern of difference in **export price** across different time periods. The submission of the applicant that the export price has declined when the normal value has increased is not relevant in determining whether or not to apply the W-T methodology under Paragraph 6(iv) of Annexure-I to the Anti-Dumping Rules:

“Subject to the provisions governing comparison in this paragraph, the existence of margin dumping during the investigation phase shall normally be established on the basis of comparison of a weighted average normal value and export prices on a transaction-to-transaction basis. A normal value established on a weighted average basis may be compared to the prices of the individual export transactions if it is found that the pattern of export prices which differs significantly among different purchasers, regions or time periods and if an explanation is provided as to why such differences cannot be taken into account appropriately by the use of weighted average-to-weighted average or transaction-to-transaction comparison” (emphasis supplied)

183. As seen above, the Authority is required to first find if there is a pattern of difference between the **export prices**. The argument of the applicant that the Authority should consider the relative increase in normal value is not a relevant factor in determining whether

²²⁸ Post disclosure comments of applicant, paragraphs 20-24.

it is appropriate to apply the W-T methodology under Paragraph 6(iv) of Annexure-I to the AD Rules. Contrary to the submissions of the applicant, the Authority is required to establish that there exists a difference in export price between different time periods. In the absence of a substantial difference between the export prices of two different time periods, the Authority cannot resort to the W-T methodology. In paragraphs 58 to 61 of the disclosure statement (paragraphs 58 to 61 of these findings), the Authority has already found that there is an insignificant difference in export prices between the first half of the POI as compared to the second half. The Authority has also undertaken a detailed analysis as to why the export price must not be adjusted to account for any changes in the raw material prices of the domestic industry.²²⁹ Further, as already explained above, a pattern of difference between *export prices* is prerequisite for the adoption of the W-T methodology under Paragraph 6(iv) of Annexure-I to the AD Rules; and since the Authority has found no such differences in export price between the first half of the POI and the second half, the Authority has not deemed it appropriate to adopt the W-T methodology.

184. The applicant has further submitted that the Authority may adopt the zeroing methodology for computation of the injury margin.²³⁰ Given the fact that the Authority has decided not to apply the W-T methodology, the Authority does not deem it fit to apply the zeroing methodology for the determination of the injury margin.

P.4 RE: The sufficiency of the disclosure of essential facts

185. The applicant has claimed that the disclosure statement circulated on 19th September 2023 does not fully disclose the essential facts. According to the applicant, the disclosure statement is incomplete and does not disclose facts related to various injury parameters and post-POI analysis.²³¹ The applicant has claimed that the following are some examples of essential facts which may form the basis of the Authority's decision:²³²

Facts	Claim of the applicant
Scope of the product under consideration	This fact has been clearly stated in the disclosure statement.
Scope of the like article offered by the domestic industry	This fact has been clearly stated in the disclosure statement.
Scope of the domestic industry	This fact has been clearly stated in the disclosure statement.
Dumping and dumping margin in subject	This fact has been clearly stated in the

²²⁹ Paragraph 61 of the disclosure statement; *see also* paragraph 61 *supra*.

²³⁰ Post disclosure comments of the applicant, paragraph 25.

²³¹ *Id.*, paragraph 30.

²³² *Id.*, paragraph 37.

imports	disclosure statement.
Whether the domestic industry has suffered from injury	This fact has not been completely established or disclosed to the domestic industry. The Authority has not concluded their analysis after examining the various injury parameters which resulted in unclear disclosures of facts.
Post period of investigation analysis	The Authority has not preliminarily concluded their analysis of the post POI.

186. The applicant's claim as to the lack of adequate disclosure is only on the grounds that the conclusion of the Authority with respect to the existence of injury and the post-POI conclusion of the Authority has not been disclosed. The applicant has also claimed that the post-POI analysis was incompletely done.²³³

187. The applicant has argued that Article 6.9 of the Anti-Dumping Agreement and Rules 16 of the AD Rules provides that the Designated Authority shall, before giving its final findings, inform all interested parties of the essential facts under consideration which form the basis for its decision. The applicant has relied on the WTO Appellate Body Report in the case of *China – GOES*²³⁴ to argue that in order to apply definitive measures at the conclusion of anti-dumping investigations, an investigating authority must find dumping, injury and a causal link, and 'essential facts' with respect to these three factors must be disclosed.²³⁵

188. The applicant has also relied on *EC – Salmon*²³⁶ to argue that the 'essential facts' are the body of facts essential to the determinations that must be made by the investigating authority before it can decide whether to apply the measures, i.e., the facts that are necessary to the process of analysis and decision making by the investigating authority, and not only those that support the decision ultimately reached.

189. The applicant has also relied on the following observations of the Hon'ble High Court of Gujarat:²³⁷

“31.5 Thus, while Article 6.9 does not prescribe a particular form for the disclosure of the essential facts, it does require in all cases that the investigating authority disclose those facts in such a manner that an interested party can understand clearly

²³³ Post disclosure comments, paragraph 48.

²³⁴ Appellate Body Report, *China – Countervailing and Anti-Dumping Duties on Grain Oriented Flat-Rolled Electrical Steel from the United States*, [WT/DS414/AB/R](#), adopted 16 November 2012

²³⁵ Post disclosure comments of the applicant, paragraph 31.

²³⁶ Panel Report, *European Communities – Anti-Dumping Measure on Farmed Salmon from Norway*, [WT/DS337/R](#), adopted 15 January 2008

²³⁷ *Nirma Limited v. Union of India*, 2017 (358) E.L.T. 146 (Guj.).

what data the investigating authority has used, and how those data were used to determine the margin of dumping. The disclosure statement, therefore, contains the intermediate findings and conclusions of the designated authority on the essential facts which would form the basis for the decision whether or not to apply definitive measures and not final conclusions on whether or not definitive measures are required to be applied. In the opinion of this Court, as rightly submitted by the learned counsel for the petitioners, the disclosure statement should contain the conclusions of the designated authority on those essential facts which would form the basis for its decision as to whether or not to apply definitive measures and not its conclusions on the basis of those essential facts. The conclusions on the basis of the essential facts are to be recorded in the final findings, viz., whether or not on the basis of such facts definitive measures are required to be applied. The contention that the disclosure statement is in the nature of a draft order, therefore, does not merit acceptance, inasmuch as, a draft order would also contain conclusions on whether or not definitive measures are required to be applied.”

190. The applicant’s claim is that the Authority has not disclosed its conclusion with respect to injury and the analysis of the injury during the post-POI period. However, it must be noted that the applicant has not identified which specific parts of the disclosure statement have been inadequately disclosed. The Authority notes that as per Article 6.9 of the Anti-Dumping Agreement read with Rule 16 of the AD Rules, the Authority is merely required to disclose the ‘essential facts under consideration’ which form the basis for its decision.

191. It is noted that the Hon’ble Court in the abovementioned case has also stated that the Authority has to only provide intermediate findings and conclusions of essential facts. Further, the WTO Compliance Panel’s Report in the decision of *US – Oil Country Tubular Goods Sunset Review*,²³⁸ states as under:

“7.148 We note that Article 6.9 imposes a one-time disclosure obligation on the investigating authorities regarding the essential facts under consideration which would then form the basis of the authorities’ final determination whether to apply definitive measures. The text of Article 6.9 clarifies that this obligation applies with respect to facts, as opposed to the reasoning of the investigating authorities. Furthermore, Article 6.9 applies to essential facts and not to all facts...” (emphasis supplied)

²³⁸ Panel Report, *United States – Sunset Reviews of Anti-Dumping Measures on Oil Country Tubular Goods from Argentina – Recourse to Article 21.5 of the DSU by Argentina*, [WT/DS268/RW](#), adopted 11 May 2007, as modified by Appellate Body Report [WT/DS268/AB/RW](#)

192. Further, in *Korea – Certain Paper*,²³⁹ the Panel observed that:

“6.92 Turning to Indonesia's arguments in support of its claim, we note that Indonesia argues that the KTC should have disclosed under Article 6.9 the fact that it intended to base its injury redetermination solely on the information from the original investigation. Here too we disagree with the view that the KTC's intention to base its injury re-determination solely on the data collected in the original investigation constituted an "essential fact" within the meaning of Article 6.9. The scope of the obligation under Article 6.9, in our view, excludes the reasoning of the authorities or their intention as to how certain determinations will be made. We therefore find that Indonesia has failed to make a prima facie case with regard to its claim under Article 6.9 of the Agreement.” (footnotes supplied) (emphasis supplied)

193. In *Guatemala – Cement II*,²⁴⁰ the WTO Panel held that the Authority is not required to disclose the legal basis for its final determinations on injury during the course of an investigation:

“8.238 Mexico's claim is based on Articles 6.1, 6.2 and 6.9 of the AD Agreement. We note that Articles 6.1 and 6.9 impose certain obligations on investigating authorities in respect of "information", "evidence" and "essential facts". However, Mexico's claim does not concern interested parties' right to have access to certain factual information during the course of an investigation. Mexico's claim concerns interested parties' alleged right to be informed of an investigating authority's legal determinations during the course of an investigation. As for Article 6.2, we note that the first sentence of that provision is very general in nature. We are unable to interpret such a general sentence in a way that would impose a specific obligation on investigating authorities to inform interested parties of the legal basis for its final determination on injury during the course of an investigation, when the express wording of Article 12.2 only imposes such a specific obligation on investigating authorities at the end of the investigation.” (emphasis supplied)

194. The Authority notes that all essential facts under consideration which were the basis of these findings were disclosed by the Authority in its disclosure statement dated 19th September 2023. The applicant has merely claimed that the Authority has not disclosed its

²³⁹ Panel Report, *Korea – Anti-Dumping Duties on Imports of Certain Paper from Indonesia – Recourse to Article 21.5 of the DSU by Indonesia*, [WT/DS312/RW](#), adopted 22 October 2007.

²⁴⁰ Panel Report, *Guatemala – Definitive Anti-Dumping Measures on Grey Portland Cement from Mexico*, [WT/DS156/R](#), adopted 17 November 2000.

conclusions with respect to the injury and the ‘preliminary conclusions’ on the post-POI injury analysis. As noted by the WTO Panel Reports cited above, the Authority is required to disclose only the essential facts and not its conclusions, reasoning and the legal basis for its injury determination.

195. The Authority notes that the Hon’ble Gujarat High Court²⁴¹ has observed that “*the disclosure statement should contain the conclusions of the designated authority on those essential facts which would form the basis for its decision as to whether or not to apply definitive measures and not its conclusions on the basis of those essential facts.*” As summarized in Section K.8 of these findings above, the Authority has concluded that the domestic industry is not suffering from injury on account of the allegedly dumped imports. Therefore, disclosure of the final determinations regarding the existence of injury in the disclosure statement would have amounted to the disclosure of the conclusion of the final findings as a whole, which, as per the decision of the Hon’ble High Court of Gujarat, is not required to be done in the disclosure statement.

P.5 RE: Injury Analysis

196. The applicant has claimed that its arguments mentioned in paragraphs 22 to 24 of its written submission have not been taken on record.²⁴² The Authority notes that this claim of the applicant is erroneous. At paragraphs 49 to 51 of the disclosure statement, the Authority has clearly taken on record the submissions of the applicant. Further, the Authority notes that the arguments of the applicant in paragraphs 22 to 24 of its written submission is with respect to the determination of the pattern of export prices in relation to the dumping margin calculation and has no relevance to the injury determination.

197. The applicant has contended that even when the imports in the base year were higher, they were significantly above the cost of the domestic industry and were therefore not impacting the domestic industry.²⁴³ The applicant has submitted that when the import prices are seen in relation to the raw material prices, there would be injury:

Particulars	Landed price Rs/MT	Raw material cost Rs/MT	Adjusted price Rs/MT	Difference Rs/MT
2018-19	***	***	***	***
2019-20	***	***	***	***
2020-21	***	***	***	***
H1 21-22	***	***	***	***

²⁴¹ *Nirma Limited v. Union of India*, 2017 (358) E.L.T. 146 (Guj.).

²⁴² Post disclosure comments of applicant, paragraph 41.

²⁴³ *Id.*, paragraph 42.

Particulars	Landed price Rs/MT	Raw material cost Rs/MT	Adjusted price Rs/MT	Difference Rs/MT
H2 21-22	***	***	***	***
2021-22	***	***	***	***

198. The applicant has submitted that the landed prices during the POI are below the levels which they should have been after due adjustments for raw materials.²⁴⁴ It is noted that injury must be analysed in the context of increase in price of imports, price of raw materials and selling price of the domestic industry (as the Authority had observed in paragraph 126 of its disclosure statement).

199. Hubei has re-iterated that it has provided evidence regarding the raw material costs associated with its production of the subject goods.²⁴⁵ Hubei has further submitted that the applicant has purchased metronidazole from Hubei prior to the POI and after the POI. Hubei has also stated that the applicant has sourced 2MNI from Hubei during pre-POI, POI and post-POI periods.²⁴⁶ Hubei has stated that two main raw materials for the production of the PUC are oxirane, which constitutes about ***% of the total raw material cost and 2-MNI, which constitutes ***% of the total raw material cost.²⁴⁷ Hubei has provided information from 'Oilchem' website (a leading provider of energy and chemical information and market price index) that the raw material costs for Hubei did not undergo any material change in the second half of the POI.²⁴⁸ Hubei further submits that there were no significant increase in cost of 2MNI for its production of the subject goods.²⁴⁹

200. The Authority re-iterates its observations that the increase in the cost of raw materials, which was not matched by a corresponding increase in the landed price of the subject goods, was mainly confined to the second half (H2) of the POI. As outlined in paragraph 143 above, in the six months following the POI, raw material prices rose by Rs. *** per metric ton (a ***% increase) compared to the preceding six months. In contrast, the landed value saw a more significant increase of Rs. *** per metric ton (a ***% increase), and the selling price went up by Rs. *** per metric ton (an ***% increase). This unusual surge in raw material costs relative to the landed value appears to be an anomaly specific to H2 of the POI. The Authority underscores that any determination regarding the existence of injury cannot be based solely on H2 of the POI, given its exceptional nature, more so in view of H1 of the POI and the

²⁴⁴ Post disclosure comments of applicant, paragraph 43.

²⁴⁵ Post disclosure comments of Hubei, page 6.

²⁴⁶ *Id.*

²⁴⁷ *Id.*

²⁴⁸ *Id.*, page 8.

²⁴⁹ *Id.*

period following the POI.

201. Hubei has re-iterated its submission that there is no causal link between the dumping and the alleged injury.²⁵⁰ The Authority has taken note of the absence of causal link between the dumping and the alleged injury.

P.6 RE: Post-POI Analysis

202. The applicant has claimed that the volume of imports has increased significantly during the post-POI period; the imports have tripled in the post-POI period; the increase in imports is over and above the increase in demand; despite an increase in demand in the post-POI period, the domestic sales did not increase with the increase in demand; the market share of imports of the subject country has significantly increased in the post-POI period; the market share of the applicant is the lowest in the post-POI period.

203. The Authority found the injury to be non-existent for the period April 2021 – September 2021 (H1). This fact has also not been disputed by the applicant, even in its post-disclosure comments. Therefore, the Authority has analysed 6 months of post-POI data to determine if the state of injury and the factors at play during the period October 2021 to March 2022 were merely an aberration.

204. The Authority re-iterates its conclusion in Section L.2 of these findings regarding the post-POI analysis. The Authority has found that the imports from the subject country do not appear to have disturbed the sales of the applicant, but rather the total demand for the subject goods in India has increased, and the imports from the subject country have catered to this increase in demand, without substantially affecting the sales of the domestic industry. Further, as mentioned in the table to paragraph 138, the selling price of the domestic industry is significantly below the landed value of imports during the post-POI period. Despite selling their goods at prices lower than the imports, the domestic industry has not been able to capture a larger share of the growth in demand. The domestic industry has not been able to afford any plausible explanation for the same. The capture of the growth in demand by imports therefore does not appear to adversely impact the competitiveness of the domestic industry in the post-POI period.

205. Further, the argument that the domestic industry was not able to capitalise on the increase in demand due to imports from the subject country cannot be accepted since in the six months following the POI, the domestic industry's selling prices were actually lower than the landed prices of the imported goods. According to economic principles, all else being equal

²⁵⁰ Post disclosure comments of Hubei, page 10.

(such as product quality), consumers generally prefer to purchase goods at lower prices rather than higher ones. Even though the domestic industry offered their products at lower prices than the imports, they failed to secure a larger share of the expanding market demand. The domestic industry has not been able to provide a reasonable explanation for this phenomenon. Therefore, it seems that the competitiveness of the domestic industry in the post-POI period has not been negatively affected by the import's ability to capture the growing demand.

206. As seen from paragraph 140 of these findings above, the argument that the applicant has not been able to increase its market share cannot be accepted since the applicant has consistently dedicated a significant portion of the PUC that it produces to export markets and captive consumption. Therefore, the domestic industry has not been able to increase its domestic sales volume above a certain level throughout the examined period – including when the volume of imports from the subject country was low (i.e., during 2018-19 to the first half of the POI). The applicant's argument that its market share has declined also cannot be accepted. As explained above, the trends in market share cannot not be characterised as a decline in the market share of the domestic industry, but rather an increase in domestic demand. In fact, in absolute numbers there has been an increase in the sales of the domestic industry.

P.7 Economic interest and miscellaneous issues

207. With respect to the economic interest, the applicant has re-iterated all its submission made earlier. The Authority has already addressed the public interest concerns in Section O of these findings.

208. The applicant has suggested that the Authority recommend a benchmark duty.²⁵¹ However, since the Authority has already observed that no injury is being caused to the domestic industry due to dumped imports, this issue is not being considered.

209. Hubei has claimed that the 22% ROCE adopted by the Authority grants undue protection to the domestic industry.²⁵² Since the Authority has concluded that the applicant is not suffering from injury caused due to dumping, this submission of Hubei is not required to be addressed.

²⁵¹ Post disclosure comments, paragraph 51.

²⁵² Post disclosure comments of Hubei, page 10-12.

Q CONCLUSION

210. Based on the submissions made, substantiated information provided by the interested parties and the facts available before the Authority as recorded and examined in the aforementioned paragraphs and on the basis of determination of dumping and consequent injury to the domestic industry, the Authority concludes the following:

- i The subject goods exported from the subject countries and the article manufactured by the domestic industry are 'like article' to each other in terms of Rule 2 (d) of the AD Rules, 1995.
- ii The applicant accounts for ***% of the eligible domestic production. The applicant satisfies the requirements stipulated under Rule 2 (b) of the AD Rules, 1995 and the application satisfies the standing requirements under Rule 5(3) of the AD Rules, 1995.
- iii The application contained all information relevant for the purpose of initiation of the anti – dumping investigation and necessary evidence in terms of Rule 5(2) of the AD Rules, 1995 to justify the initiation of the present investigation for determination of dumping and material injury to the domestic industry in terms of Rule 5 (3) of the AD Rules, 1995.
- iv The claims regarding confidentiality were accepted wherever warranted and in case, where such confidentiality claims were found to be excessive, the interested parties were directed to disclose the same or provide appropriate non – confidential summary of the same in terms of Rule 7 of the AD Rules, 1995.
- v **Dumping margin:** One producer from China PR namely Hubei Hongyuan Pharmaceutical Technology Co., Ltd. had participated in the investigation. Based on the information provided by such exporter and the constructed normal value, the dumping margin for exports of Hubei Hongyuan Pharmaceutical Technology Co., Ltd was determined to be positive.
- vi **Volume effect:** The volume of imports and the dumping margin of the subject goods from the subject countries were found to be above *de minimis* thresholds as stipulated under para (iii) of Annexure – II to the AD Rules, 1995.
- vii With respect to the volume effect of the imports on the state of the domestic industry as required to be assessed under para (ii) of the AD Rules, 1995, it was found that the volume of imports has declined significantly from the base year as compared to the POI. The volume of imports during April 2021 to September 2021 (H1) was at very low

- levels. There was an increase in imports during the POI as compared to the immediate previous year, however, imports in relation to the Indian production and the total demand has declined as compared to the base year.
- viii The market share of the domestic industry during the POI has significantly improved. The market share of imports from the subject country has declined.
- ix Imports from the subject country and market share of imports is significantly lower during the POI as compared to the period January 2020 to June 2011. There has been a positive growth of Indian producers in the market. The domestic producers have become stable and are able to compete with the imports even without the protection of the duty.
- x **Price effect:** As regards the price effect of such dumped imports, it was found that the price undercutting and price suppression/depression throughout the entire examined period, except the second half of the POI is negative. However, during the second half of the POI, the price of raw materials has substantially increased, which has contributed to the significant increase in cost of production of the applicant, and consequently, the positive price undercutting and price suppression/depression during this period.
- xi As regards the effect of such dumped on the economic parameters of the domestic industry, the following conclusions were reached:
- a) The performance of the domestic industry in terms of production, installed capacity, sales volumes has improved during the POI as compared to the base year. This is despite the increase in raw material price during the POI.
 - b) The domestic industry has been profitable throughout the entire examined period except the second half of the POI. Only during the second half of the POI, the profitability (profits, cash profits, ROCE and PBIT) are negative. However, if the POI is seen as a whole, the domestic industry is profitable.
 - c) The average inventories of the applicant have increased during the POI as compared to the base year. However, the inventories during the POI have declined when compared to the previous year.
 - d) The salary and wages, productivity per day, and productivity per employee has improved during the POI as compared to the base year. The

applicant has not claimed injury in this respect.

- e) The applicant has shown positive growth in terms of its production and sales figures, but has shown negative growth in terms of profitability. As examined above, the decline in growth in terms of the profitability of the applicant is as a result of the increase in raw material cost.
 - f) The total sales of the applicant (i.e., the domestic sales + captive sales + export sales) is at the highest period during the POI.
 - g) The injury to the domestic industry was non-existent for the period April 2021 – September 2021 (H1), and was limited to only the period October 2021 – March 2022 (H2). The Authority examined the 6 month post-POI period of April 2022 to September 2022 and has determined that the injury suffered by the domestic industry during H2 was merely an aberration.
 - h) The domestic sales volume of the domestic industry during the post-POI period has also increased.
 - i) In the post-POI period, the applicant's selling price is significantly below the landed value of the subject goods imported from China PR, yet the market share of imports from China PR are higher than the market share of the domestic industry. Despite selling their goods at prices lower than the imports, the domestic industry has not been able to capture a larger share of the growth in demand. The domestic industry has not been able to afford any plausible explanation for the same.
 - j) In the post-POI period, the demand for the subject goods has increased, however, the domestic industry has not been able to capture this increase in demand despite having a lower selling price than the landed value of the subject imports. During this period, the domestic sales volume of the domestic industry has also increased.
- xii **Injury Margin:** Since the domestic industry is not being injured as a result of imports of the subject goods from China PR, the Authority does not find it necessary to determine the injury margin.
- xiii **Causal link:** It was found that domestic industry has not suffered injury, and the decline in the performance of the domestic industry is only restricted to the second half of the

POI. This has coincided with the decline in performance and profitability parameters of the applicant during the very same period. Therefore, the injury to the domestic industry, if any, during the second half of the POI is as a result of the increase in raw material prices during this period and not the dumped imports.

- xiv **Indian industry issues:** The Authority notes that the subject good is an active pharmaceutical ingredient, which is used to manufacture a drug that has been listed in the 'National List of Essential Medicines' by the Department of Pharmaceuticals, Ministry of Chemicals and Fertilizers. Further, Metronidazole medicine has been subject to several price control orders by the National Pharmaceutical Pricing Authority of India.

R RECOMMENDATIONS

211. Having examined the contentions of various interested parties and on the basis of above facts, circumstances and analysis, the Authority concludes that the domestic industry is not suffering material injury due to imports from the subject country in terms of the provisions enshrined under the Anti-Dumping Rules. In view of the above, the Authority does not consider it appropriate to recommend levy of anti-dumping duty on the imports of subject goods from the subject country. Therefore, in terms of Section 9A and 9B of the Customs Tariff Act read with Rule 14(b), Rule 17(1)(a)(ii) and Rule 11(2) of the Anti-Dumping Rules, the Designated Authority decides to terminate the present investigation which was initiated vide Notification No.F.No.6/3/2022-DGTR, dated 30th September 2022.

S FURTHER PROCEDURE

212. An appeal against this notification shall lie before the Customs, Excise and Services Tax Appellate Tribunal in accordance with the Customs Tariff Act, 1975.


(Anant Swarup)
Designated Authority