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**File No. 14/31/2016 -DGAD
GOVERNMENT OF INDIA
MINISTRY OF COMMERCE & INDUSTRY
DEPARTMENT OF COMMERCE
(DIRECTORATE GENERAL OF ANTI-DUMPING & ALLIED DUTIES)
4th Floor, Jeevan Tara Building, 5 Parliament Street, New Delhi-110001**

NOTIFICATION

Date: 23rd May, 2017

(Preliminary Findings)

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

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

A. Background of the Case

1. M/s. Aarti Drugs Ltd. (hereinafter referred to as the “applicant” or “domestic industry”) has filed an application before the Designated Authority (hereinafter also referred to as the Authority) in accordance with the Customs Tariff Act, 1975 as amended from time to time (hereinafter also referred to as the Act) and Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped articles and for Determination of injury) Rules, 1995 as amended from time to time (hereinafter also referred to as the Rules) for initiation of anti-dumping investigation and imposition of anti dumping duty concerning imports of O-Acid (hereinafter also referred to as the subject goods), originating in or exported from China PR (hereinafter also referred to as the subject country).
2. Whereas, the Authority, on the basis of sufficient evidence submitted by the applicant, issued a Notification No. 14/31/2016-DGAD dated 21st September, 2016, published in the Gazette of India, initiating the subject investigations in accordance with the Rule 5 of the above Rule to determine existence, degree and effect of the alleged dumping of the subject goods, originating in or exported from China PR, and to recommend the amount of anti-dumping duty, which, if levied, would be adequate to remove the alleged injury to the domestic industry

B. PROCEDURE

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

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

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

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

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

- vi. Market Economy Treatment (MET) questionnaire was also forwarded to the known producers/exporters in China PR and the Embassy of China PR in India with the request to provide relevant information to the Authority within the prescribed time limit. None of the responding exporters have claimed MET.
- vii. The Authority sent Importer's Questionnaires to the following known importers/ users of subject goods in India calling for necessary information in accordance with Rule 6(4) of the Rules. However, no questionnaire response has been received from any importer of the subject goods:

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

- viii. The China Chamber of Commerce for Import & Export of Medicines & Health Products association have filed submissions but without a detailed Questionnaire response. Submissions made by these parties have also been taken into account in the present determination.
- ix. Authority made available non-confidential version of the evidence presented by various interested parties in the form of a public file kept open for inspection by the interested parties.
- x. Further information was sought from the applicant and other interested parties to the extent deemed necessary. Verification of the data provided by the domestic industry was conducted to the extent considered necessary for the purpose of the investigation.
- xi. Information provided by the interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claims. On being satisfied, the Authority has accepted the confidentiality claims, wherever warranted and such information has been considered confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non-confidential version of the information filed on confidential basis and the same were kept in the public file maintained by the Authority as per the Rules.
- xii. The Non-injurious Price based on the cost of production and cost to make and sell the subject goods in India based on the information furnished by the domestic industry on the basis of Generally Accepted Accounting Principles (GAAP) has been worked out so as to

ascertain whether Anti-Dumping duty lower than the dumping margin would be sufficient to remove injury to the Domestic Industry;

- xiii. Applicant started their trial production in June 2015 and full scale production from October 2015. Investigation was carried out for the period starting from July 2015 - June 2016 (POI). Injury analysis has been carried out on month to month basis.
- xiv. Request was made to the Directorate General of Commercial Intelligence and Statistics (DGCI&S) to arrange details of imports of subject goods for the past three years, including the POI. The authority has relied upon import data procured from DGCI&S in the present investigation.
- xv. The submissions made by the interested parties considered relevant by the Authority have been addressed in this preliminary finding.
- xvi. *** in this finding represents information furnished by an interested party on confidential basis, and so considered by the Authority under the Rules.
- xvii. The exchange rate adopted by the Authority for the subject investigation is 1 US \$ = Rs. 66.84

C. PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE

C.1 Views of the Domestic industry

- 4. Following submissions have been made by the domestic industry with regard to product under consideration:
 - i. The product under consideration is O-acid or Ofloxacin Acid. It is an intermediate chemical for manufacture of Ofloxacin, which is a synthetic chemotherapeutic antibiotic of the fluoroquinolone drug class considered to be a second-generation fluoroquinolone. Ofloxacin is a racemic mixture, which consists of 50% levofloxacin (the biologically active component) and 50% of its “mirror image” or enantiomer dextrofloxacine.
 - ii. Import data for the product under consideration shows that the product under consideration is commercially transacted by a number of different names, such as O Acid, Ofloxacin Acid (Ofloxacin Acid 98% Min), 9,10-Difluoro-2,3-Dihydro-3-Methyl-7-Oxo-7h-Pyrido[1,2,3-De]-1,4-Benzoxazine-6-Carboxylic Acid (Ofloxacin Q Acid), 9,10-Difluoro-2,3-Dihydro-3-Methyl-7-Oxo-7h-Pyrido(1,2,3-De)-1,4-Benzoxazine-6-Carboxylic Acid(Ofloxacin Acid), Ofloxacin Q Acid, 9,10-Difluoro-2,3-Dihydro-3-Methyl-7-Oxo-7h-Pyrido(1,2,3-De)-1,4-Benzoxazine-6-Carboxylic Acid(Ofloxacin Q Acid), Ofloxacin Acid, Ofloxacinacid, Q-Acid Of Ofloxacin, etc. Since these are various possible commercial names of the product under consideration, the scope of the product under consideration includes all these names.
 - iii. Ofloxacin Acid is used in production of Ofloxacin. This is the sole use of Ofloxacin Acid. Ofloxacin is sold under a wide variety of brand names as well as generic drug equivalents, for oral and intravenous administration. Ofloxacin is also available for topical use, as eye drops and ear drops. It is on the WHO Model List of Essential Medicines, the most important medications needed in a basic health system

C.2. Views of the other interested parties

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

C.3. Examination by the Authority

6. The product under consideration in the present petition is O-acid or Ofloxacin acid . It is an off-white to white crystalline powder and is used as an intermediate for the manufacture of Ofloxacin, which is a synthetic chemotherapeutic antibiotic of the fluoroquinolone drug class considered to be a second-generation fluoroquinolone. Ofloxacin is a racemic mixture, which consists of 50% levofloxacin (the biologically active component) and 50% of its “mirror image” or enantiomer dextrofloxacin.
7. O- Acid is used in production of Ofloxacin, which is used to treat certain infections including bronchitis, pneumonia, and infections of the skin, bladder, urinary tract, reproductive organs, and prostate.
8. Product under consideration is classified under Chapter 29 of the Customs Tariff Act. The PUC is imported under various other HS codes namely 29419030, 29152990, 29163990, 29183090, 29189900, 29349900, 29411090, 29419090, 29420090. Customs classification in any case is indicative and not binding on the scope of the product under consideration in the present investigation.
9. The Authority notes from the information available on record that the product under consideration produced by the domestic industry is like article to the goods imported from the subject country. Product under consideration produced by the domestic industry and imported from the subject country are comparable in terms of physical & chemical characteristics, manufacturing process & technology, functions & uses, product specifications, pricing, distribution & marketing and tariff classification of the goods. The goods produced by the domestic industry and imported from the subject country are like articles in terms of the Rules. The two are technically and commercially substitutable. Thus, the Authority holds that goods produced by the applicant domestic industry are like article to the subject product under consideration imported from subject country in accordance with the AD Rules.

D. SCOPE OF DOMESTIC INDUSTRY & STANDING

D.1. Views of the Domestic industry

10. Following submissions have been made by the domestic industry with regard to scope and standing of the domestic industry:
 - i. The applicant is the sole producer of the product under consideration and has set up new production facility hitherto not produced in India.
 - ii. Applicant has been producing Ofloxacin for quite some time for which the applicant was importing Ofloxacin Acid from China.

- iii. Petitioner was importing the product under consideration in the past for the reason that there was no production of the product under consideration in India. Petitioner made significant investment for production of the product under consideration and commenced commercial production. However, the Chinese producers intensified dumping as soon the petitioner commenced commercial production.
- iv. The raw materials costs (at optimum consumption factors) involved in production of the product under consideration were higher than the price offered by the Chinese producer. It is thus a clear case where the Chinese producers have offered highly aggressive prices and even below a level that is supported by the costs involved on account of raw materials. The petitioner was therefore forced to import some volumes of the product under consideration after commencement of commercial production
- v. The applicant has not exported the product under consideration. The applicant is not related to any importer or exporter of the product under consideration from the subject country. In any case, there is no such relationship that would attract possibilities of exclusion under Rule 2(b).
- vi. Considering the circumstances in which the applicant has imported the product under consideration, the Authority should consider the applicant as eligible domestic industry within the meaning of the Rules.
- vii. There is no other known producer of product under consideration in India. Applicant is the new producer of the product under consideration in India with no past history of production in India. The petition satisfies the requirement of standing under the Rules. Further, the applicant constitutes domestic industry within the meaning of the Anti Dumping Rules.

D.2. Views of the other interested parties

11. Following submissions have been made by the other interested parties with regard to standing and scope of domestic industry:

- i. Investigation has been initiated based on application by applicant which started manufacturing O-Acid in October 2015 and it is not clear whether the production is trial run or commercial production.
- ii. Applicant has admitted that its investment is for captive consumption and not domestic sales, and is hence not competing with imports of O-Acid.
- iii. Captive producers have been excluded from the scope of DI under Final Findings No. 14/09/2015-DGAD dated 20th Oct, 2016, Anti-dumping investigation concerning imports of “Low Ash Metallurgical Coke” originating in or exported from Australia and China PR.
- iv. The present investigation is bad in law since the petitioner freely admits that it is an importer of the subject goods from China PR. As per Rule 2(b) the producers that are also importers may be excluded from the purview of Domestic Industry. The petitioner has been importing goods the subject goods before and also after the commercial production of the subject goods by them. Since the petitioner has claimed confidentiality with respect to production figures during the POI as well as petitioner’s import from China PR it is not possible for the respondents to comment on the same. The petitioner appears to have shielded itself from any ill-effects of the alleged dumping, by benefiting from the purchase and sale of the alleged dumped goods. Thus there are sufficient grounds to dismiss the present petition.

D.3. Examination of the Authority

12. Rule 2 (b) of the AD rules defines domestic industry as under:

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

13. The application has been filed by M/s. Aarti Drugs Ltd., Mumbai as a domestic producer of the product under consideration. It is undisputed that there is no other known producer of product under consideration in India and the applicant is a new producer of the product under consideration in India. Applicant has made fresh investment for production of the product under consideration. The capacity created by the domestic industry for production of product under consideration has been compared with the captive requirement of the applicant for production of Ofloxacin. It is noted that the applicant has installed capacity of *** MT and its own requirement of the product is about *** MT. Further, the requirement for the product in the Country has been estimated as *** MT considering production of Ofloxacin as about *** MT. It is thus evident that the applicant has set up production capacities for Ofloxacin Acid far beyond its own requirement.
14. The applicant has submitted that they were importing O-Acid before they commenced production of O-Acid for consumption in production of ofloxacin. After commencement of their own production of O-Acid, applicant had stopped importing O-Acid. However, the exporters from China reduced the prices so significantly that the applicant was forced to again import O-Acid from China to continue the production of downstream product (Ofloxacin) so as to remain competitive in that product, particularly when Ofloxacin also is being exported at dumped prices from China for which a separate investigation is going on.
15. The Authority notes that the intent of the provisions laid down under Rule 2(b) of the Anti-dumping Rules is not to debar any domestic producer from the ambit of domestic industry merely because they have imported the subject goods from the subject country. The Authority finds it appropriate to consider the rationale and circumstances of such imports and accordingly examine whether or not the domestic producer should be treated as domestic industry” in terms of AD Rules. It is important to assess the intent of such domestic producer and the situation under which such imports have been effected. From the information provided by the applicant, it is noted that (a) the landed price of imports of subject goods from China declined significantly, (b) while the actual cost of production is admittedly high due to low production from the new plant, even when the overhead expenses are optimized considering optimum production, it is seen that the landed price of goods offered by the Chinese producers were materially below such optimized cost of

production of subject goods by the applicant, (c) the applicant is competing with other domestic producers of the downstream goods in the same market namely Ofloxacin, where its competitors are getting access to low & dumped prices of Ofloxacin Acid. The applicant's operations for Ofloxacin are quite unviable in case it produces Ofloxacin from its own captive Ofloxacin Acid. The applicant has made a fresh investment for production of Ofloxacin Acid, which shows that the applicant in fact intends to focus on production and not import. Applicant has been forced to import the product as a matter of self defence at the time of dumping of both Ofloxacin Acid and Ofloxacin. The focus of the applicant domestic industry is in production rather than imports and the dumped imports are not allowing the domestic industry to get fully established in the market. Further, the imports made by the domestic industry have not been sold in the merchant market.

16. The interested parties have contended that the applicant has set up facilities only for captive consumption and the Authority has held in the past that captive consumption is not required to be considered for determination of standing of a domestic producer under Rule 5. The Authority notes that (a) the capacities created by the company for Ofloxacin Acid are much higher than its own requirement, (b) such capacities are quite comparable to the demand for the product in the Indian market, (c) after commencing production, the applicant has repeatedly offered the product for sale through email communications and public advertisements in Chemical Weekly, (d) the present case is a case where the Authority is investigating whether dumping of the product is materially retarding establishment of domestic industry in the Country, (e) it would not be appropriate to consider the present situation and compare with a situation where there are a number of domestic producers who are in existence for a long period and who have been either producing for captive consumption or exclusively selling in the market or undertaking both the operations. In the facts and circumstances of the present case, therefore, the Authority holds that the fact of absence of actual merchant sales upto POI should not deprive the company from being treated as domestic industry under Rule 2(b).

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

E. MISCELLANEOUS ISSUES

Views of the opposing interested parties

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

- i. The provisional duties cannot be imposed in cases of "Material Retardation" as per Section 9B (1)(b)(iii). It can be imposed only when dumping causes injury during POI and there is a further determination that duty is necessary to prevent injury

- during the investigation i.e. the requirement of preventing injury is in addition to and not in lieu of existing duty.
- ii. The application filed by the Applicant hides more than it reveals. The Applicant has claimed confidentiality or failed to share data in respect of most of the information which is crucial to the investigation.
 - iii. The Authority cannot continue with the investigation without first evolving and disclosing the methodology to examine material retardation to domestic industry. Incorporation of the US standard would enable the Authority to conduct a complete and efficient investigation. *Based on established standards in previous cases before DGAD and other jurisdictions, the DI's petition does not establish any case for consideration of the material retardation standard.*
 - iv. Data in petition merely indicates normal start-up conditions. The injury alleged is caused due to operational inefficiencies and start up pangs, rather than any alleged dumping from China PR.
 - v. The Petitioner is a young establishment and its production and supply lines are not clearly established. Disrupting established lines, in the instance of such an essential commodity, would lead to adverse impacts on the user industry, i.e., health care industry. Even increasing the price of the product from the sole supplying country may hinder supply entirely and cause undue burden on the user industry and ultimately, on patients who are consumers of the product.
 - vi. The Petitioner itself is unable to supply the subject goods in the market is an undue burden which must not be placed upon the importers of the subject goods. In fact, even the Petitioner is an importer of the subject goods. Moreover, price factors and volume factors do not singularly dictate the levy of any anti-dumping measure.

Examination by the Authority

19. The miscellaneous submissions have been analysed as under:

- i. As regards the contention that provisional duties cannot be levied in material retardation case, it is noted that there is no bar under Custom tariff Act for imposition of provisional anti dumping duty. "Injury" in terms of Section 9B (1)(b)(iii) includes all three forms of injury, i.e., material injury, threat of material injury and material retardation to the establishment of the domestic industry. It is noted that imposition of provisional duty is necessary to prevent the injury being caused to the domestic industry.
- ii. As regards the contention on excessive confidentiality, the Authority notes that the information provided by the domestic industry on confidential basis was examined with regard to sufficiency of the confidentiality claims. On being satisfied, the Authority has accepted the confidentiality claims wherever warranted and such information has been considered as confidential and not disclosed to other interested parties. Wherever possible, the domestic industry was directed to provide sufficient non-confidential version of the information filed on confidential basis.
- iii. As regards the contention that investigation cannot be continued without first evolving and disclosing the methodology to examine material retardation, the

Authority notes that there have been several cases on material retardation in past. Further, the initiation notification clearly laid down that the investigation concerns examination of material injury and material retardation to the establishment of the domestic industry and thus monthly performance of the domestic industry will be taken into consideration.

- iv. As regards the contention that domestic industry's production and supply line has not been established, the Authority notes that monthly analysis shows that the domestic industry could increase its production and capacity utilization in its plant, however, it is the dumped imports which has prevented the domestic industry from producing and selling the subject goods in the domestic market. The decline in production and captive sales has consequently resulted into financial losses.

F. Market Economy Treatment, Normal Value, Export Price and Determination of Dumping Margin

20. Under Section 9A(1)(c), normal value in relation to an article means:

- (i) *the comparable price, in the ordinary course of trade, for the like article when meant for consumption in the exporting country or territory as determined in accordance with the rules made under sub-section (6); or*
- (ii) *when there are no sales of the like article in the ordinary course of trade in the domestic market of the exporting country or territory, or when because of the particular market situation or low volume of the sales in the domestic market of the exporting country or territory, such sales do not permit a proper comparison, the normal value shall be either-*
 - (a) *comparable representative price of the like article when exported from the exporting country or territory or an appropriate third country as determined in accordance with the rules made under sub-section (6); or*
 - (b) *the cost of production of the said article in the country of origin along with reasonable addition for administrative, selling and general costs, and for profits, as determined in accordance with the rules made under sub-section (6):*

Provided that in the case of import of the article from a country other than the country of origin and where the article has been merely transshipped through the country of export or such article is not produced in the country of export or there is no comparable price in the country of export, the normal value shall be determined with reference to its price in the country of origin.

Provisions relating to Non- Market Economy country

21. Annexure-I to AD rules states as under:

7. In case of imports from non-market economy country, 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 country, 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.

8. (1) The term “non-market economy country” means any country which the designated Authority determines as not operating on market principles of cost or pricing structures, so that sales of merchandise in such country do not reflect the fair value of the merchandise, in accordance with the criteria specified in subparagraph (3)

(2) There shall be a presumption that any country that has been determined to be, or has been treated as, a non-market economy country for purposes of an antidumping investigation by the designated Authority or by the competent Authority of any WTO member country during the three year period preceding the investigation is a nonmarket economy country Provided, however, that the non-market economy country or the concerned firms from such country may rebut such a presumption by providing information and evidence to the designated Authority that establishes that such country is not a non-market economy country on the basis of the criteria specified in subparagraph (3)

(3) The designated Authority shall consider in each case the following criteria as to whether:

(a) the decisions of the concerned firms in such country regarding prices, costs and inputs, including raw materials, cost of technology and labour, output, sales and investment, are made in response to market signals reflecting supply and demand and without significant State interference in this regard, and whether costs of major inputs substantially reflect market values;

(b) the production costs and financial situation of such firms are subject to significant distortions carried over from the former non-market economy system, in particular in relation to depreciation of assets, other write-offs, barter trade and payment via compensation of debts;

(c) such firms are subject to bankruptcy and property laws which guarantee legal certainty and stability for the operation of the firms, and

(d) the exchange rate conversions are carried out at the market rate. Provided, however, that where it is shown by sufficient evidence in writing on the basis of the criteria specified in this paragraph that market conditions prevail for one or more such firms subject to anti-dumping investigations, the designated Authority may apply the principles set out in paragraphs 1 to 6 instead of the principles set out in paragraph 7 and in this paragraph”.

G.1 Views of the Domestic industry

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

- i. China is a non-market economy country. None of the exporters satisfy each and every condition to qualify for grant of market economy status. The Chinese producers' cost and price cannot be relied upon for determination of normal value.
- ii. Normal Value cannot be determined on the basis of price or constructed value in a market economy third country for the reason that the relevant information is not publicly available. The applicant has not been able to procure such information from a producer in a market economy third country as the product is produced in China and India only. In fact, imports have also not been reported in the country from any other country
- iii. The normal value has been determined on the basis of cost of production in India; duly adjusted.
- iv. The applicant has relied upon transaction wise import data provided by IBIS for calculation of export price.
- v. The export prices being CIF value while the normal values being at ex-factory level, the export prices have been adjusted for, ocean freight, marine insurance, commission, inland freight expenses, port expenses, bank charges and VAT adjustment.
- vi. The dumping margin from subject country is not only above *de minimis* levels, but also substantial.

G.2. Views of the interested parties

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

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

G.3. EXAMINATION BY THE AUTHORITY

24. At the stage of initiation, the Authority proceeded with the presumption that China PR is a non-market economy country. Upon initiation, the Authority advised the producers/exporters in China to respond to the notice of initiation and provide information relevant to determination of their market economy status. The Authority sent copies of the MET questionnaire to all the known producers/ exporters for rebutting presumption of non-market economy in accordance with criteria laid down in Para 8(3) of Annexure-I to the Rules. The Authority also requested Government of China to advise the producers/exporters in China to provide the relevant information.
25. The Authority notes that the known Chinese producers/exporters and the Government of China have been adequately notified about the requirement of submission of information in the form and manner prescribed and adequate opportunity was also granted to them to make their submissions in this regard. A number of producers/exporters have responded to the present investigation. However, none of them claimed MET. Further, none of the interested parties have provided any other alternative basis, as defined in the Rules, on which normal value can be determined.
26. In view of the above position and in the absence of rebuttal of non-market economy claim by any Chinese exporting company, the Authority considers it appropriate to proceed with para-7 of Annexure-I to the Rules for determination of normal value.
27. The normal value in China is required to be determined based on domestic selling prices in a market economy third country, or the constructed value in a market economy third country, or the export prices from such a third country to any other country, including India. However, if the normal value cannot be determined on the basis of these alternatives, the Designated Authority may determine the normal value on any other reasonable basis, including the price actually paid or payable in India for the like product, duly adjusted to include reasonable profit margin.
28. Applicant contended that the product under consideration is not produced in many countries. In fact, there is very limited production of the product under consideration globally. Entirety of imports of the product under consideration in India over the injury period was from China. There is no publicly available information with regard to cost or price of the product in market economy third countries. Thus, in the absence of any reliable price and cost details for the subject goods in any market economy third country, the Authority has constructed normal value in China on the basis of cost of production in India; duly adjusted. It is noted that the applicant is a new producer of the product in the Country and therefore its actual cost of production may be high due to low production. However, the Authority has not considered its actual cost of production. The Authority has determined cost of production of the applicant, had it been operating at a reasonable level of capacity utilization. Accordingly, the Authority has determined the Normal Value for the subject goods exported by all exporters in China by considering the optimum cost of production and after making additions for selling, general & administrative costs and providing profit at ***%.

Export price for all exporters in China

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

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

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

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

31. From the response filed by M/s Jiangxi Chibang Pharmaceutical Co., Ltd. (Chibang), authority notes that Chibang is a producer as well as exporter of the subject goods. During the POI, Chibang exported the subject goods directly and also through two unrelated trading companies i.e. M/s Zhejiang Chemicals Import & Export Co., Ltd. and M/s Zhejiang Hengdian Apelo Imp. & Exp. Co., Ltd. Both trading companies have filed responses separately. Adjustment towards inland freight, ocean freight, handling and customs charges, insurance, credit cost, VAT adjustment and bank charges have been claimed by the producer and exporters and the same have been allowed provisionally by the authority. Accordingly, the provisional export price has been determined for Chibang direct exports and through exporters at ex-factory level is shown in the Dumping Margin Table below.

Yancheng XinAnzhou Pharmaceutical Co., Ltd., (Producer) along with traders Zhejiang Chemical Import & Export Co., Ltd. , Zhejiang Ueasy Business Service Co., Ltd., Zhejiang Xingyang Import & Export Co., Ltd., Zhejiang Hengdian Apelo Imp. & Exp. Co., Ltd.

32. From the response filed by Yancheng XinAnzhou Pharmaceutical Co., Ltd.(“Yancheng XinAnzhou”), Authority notes that Yancheng XinAnzhou is the producer of subject goods in China PR. During the POI, XinAnzhou sold *** kgs of the subject goods to four

unrelated trading companies for exports to India i.e. M/s Zhejiang Chemicals Import & Export Co., Ltd., M/s Zhejiang Ueasy Business Service Co., Ltd., M/s Zhejiang Xingyang Import & Export Co., Ltd. and M/s Zhejiang Hengdian Apelo Imp. & Exp. Co., Ltd. All the trading companies have filed responses separately. Adjustment towards inland freight, ocean freight, handling and customs charges, insurance, credit cost, VAT adjustment and bank charges have been claimed by the producer and exporters and the same have been allowed provisionally by the authority. Accordingly, the provisional export price has been determined for Yancheng XinAnzhou at ex-factory level is shown in the Dumping Margin Table below.

Inner Mongolia Yuanhong Fine Chemical Co., Ltd. (Producer) along with traders Dreamland Creation Inc., Zhejiang Yuanhong Medical & Chemical Technology Co., Ltd., Zhejiang Ueasy Business Service Co., Ltd., China Sinopharm International Corporation

33. From the response filed by Inner Mongolia Yuanhong Fine Chemical Co., Ltd. (“Inner Mongolia Yuanhong”) Authority notes that Inner Mongolia Yuanhong is the producer of subject goods in China PR. During the POI, Inner Mongolia Yuanhong exported *** kgs of the subject goods through four traders namely, Dreamland Creation Inc., Zhejiang Yuanhong Medical & Chemical Technology Co., Ltd. M/s. Zhejiang Ueasy Business Service Co., Ltd. and China Sinopharm International Corporation. All trading companies have filed responses separately. Adjustment towards inland freight, ocean freight, handling and customs charges, insurance, credit cost, VAT adjustment and bank charges have been claimed by the producer and exporters and the same have been allowed provisionally by the authority. Accordingly, the provisional export price has been determined for Inner Mongolia Yuanhong at ex-factory level is shown in the Dumping Margin Table below.

Jiangxi Dadi Pharmaceutical Limited Liability Company (Producer) along with trader M/s. Zhejiang Hengdian Apelo Imp. & Exp. Co., Ltd.

34. From the response filed by Jiangxi Dadi Pharmaceutical Limited Liability Company (“Jiangxi Dadi”), Authority notes that Jiangxi Dadi is the producer of subject goods. During the POI, Jiangxi Dadi has exported *** kgs of the subject goods through unrelated trader M/s Zhejiang Hengdian Apelo Imp. & Exp. Co., Ltd who has filed response separately. Adjustment towards inland freight, ocean freight, handling and customs charges, insurance, credit cost, VAT adjustment and bank charges have been claimed by the producer and exporters and the same have been allowed provisionally by the authority. Accordingly, the provisional export price has been determined for Jiangxi Dadi at ex-factory level is shown in the Dumping Margin Table below.

Zhejiang Yuanhong Medical and Chemical Technology Co., Ltd. (Producer) along with traders M/s. Dreamland Creation Inc., Shanghai Changyu Chemical Technology Co., Ltd., Zhejiang Medicines & Health Products Import & Export Co., Ltd., Zhejiang Chemical Import & Export Co., Ltd., Zhejiang Xingyang Import & Export Co., Ltd., China Sinopharm International Corporation

35. From the response filed by M/s. Zhejiang Yuanhong Medical and Chemical Technology Co., Ltd (“Zhejiang Yuanhong”) Authority notes that Zhejiang Yuanhong is the producer of subject goods in China PR. During the POI, Zhejiang Yuanhong exported *** kgs of the

subject goods produced by it and also exported *** kgs manufactured by Inner Mongolia Yuanhong Fine Chemical Co., Ltd to India through trading companies namely, M/s. Dreamland Creation Inc., Shanghai Changyu Chemical Technology Co., Ltd., Zhejiang Medicines & Health Products Import & Export Co., Ltd., Zhejiang Chemical Import & Export Co., Ltd., Zhejiang Xingyang Import & Export Co., Ltd., China Sinopharm International Corporation. All trading companies have filed responses separately. Adjustment towards inland freight, ocean freight, handling and customs charges, insurance, credit cost, VAT adjustment and bank charges have been claimed by the producer and exporters and the same have been allowed provisionally by the authority. Accordingly, the provisional export price has been determined for Zhejiang Yuanhong at ex-factory level is shown in the Dumping Margin Table below.

Dumping Margin

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

DUMPING MARGIN TABLE

S.No	Producer	Exporter	Construct ed Normal Value USD/Kg	Ex-Factory Export Price USD/Kg	Dumping Margin USD/Kg	Dumping Margin (%)	Dumping Margin % Range
1.	Jiangxi Chibang Pharmaceutical Co., Ltd	Jiangxi Chibang Pharmaceutical Co., Ltd	***	***	***	***	15-25
2.	Jiangxi Chibang Pharmaceutical Co., Ltd	i. Zhejiang Chemicals Import & Export Co., Ltd. ii. Zhejiang Hengdian Apelo Imp.& Exp. Co., Ltd.	***	***	***	***	30-40
3.	M/s. Yancheng XinAnzhou Pharmaceutical Co., Ltd.	i. Zhejiang Chemicals Import & Export Co., Ltd. ii. Zhejiang Hengdian Apelo Imp.& Exp. Co., Ltd. iii. Zhejiang Ueasy Business Service Co., Ltd. iv. Zhejiang Xingyang Import & Export Co., Ltd.	***	***	***	***	25-35
4.	M/s. Inner Mongolia Yuanhong Fine Chemical Co., Ltd	i. Dreamland Creation Inc. ii. Zhejiang Ueasy	***	***	***	***	45-55

		Business Service Co., Ltd iii. Zhejiang Yuanhong Medical & Chemical Technology Co., Ltd iv. China Sinopharm International Corporation					
5.	M/s. Jiangxi Dadi Pharmaceutical Limited Liability Company	Zhejiang Hengdian Apelo Imp. & Exp. Co., Ltd	***	***	***	***	10-20
6.	M/s. Zhejiang Yuanhong Medical and Chemical Technology Co., Ltd	i. Zhejiang Medicines & Health Products Co., Ltd ii. China Sinopharm International Corporation iii. Zhejiang Chemicals Import & Export Co., Ltd. iv. Zhejiang Xingyang Import & Export Co., Ltd. v. Dreamland Creation Inc. vi. Shanghai Changyu Chemical Technology Co., Ltd	***	***	***	***	20-30
7.	Any other	Any other	***	***	***	***	45-55

G. Examination of Injury and Causal Link

H.1. Views of other interested parties

37. Following submissions have been made by the other interested parties with regard to injury and causal link:

- i. It is clear from the petition that applicant has not sold any goods in the domestic market; they are themselves importing huge volumes. Since applicant has not sold product domestically, there is no question of selling it at low prices. No domestic sales means no domestic price thus conclusions with regard to consequent impact of the imports on domestic industry in terms of price undercutting, price suppression and

depression, deterioration in respect of parameters such as profits, return on capital employed is baseless.

- ii. There is no mention of either a non-injurious price or a calculation thereof to support the allegation of price underselling and injury. The elements to establish price injury have not been established or clearly alleged by the Petitioner.
- iii. No material retardation to the establishment of the domestic industry or causal link is established in the present case. There is no injury, as alleged, to the DI and their economic parameters appear to be improving, regardless of imports from the subject country.
- iv. Imports did not increase in relative terms. Clearly, since the Petitioner's sales increased from 0 MT to 126 MT in 2015-16 and therefrom to 220 MT in the POI, it is evident that the relative figures of growth of domestic production/sales clearly outshine the relative figures of growth of imports. Thus the imports are not impeding the growth of the domestic industry
- v. The Petitioner has claimed to be an embryonic industry with no history of production. Thus, the Authority has drawn conclusions of deterioration where no comparative figures exist.
- vi. While determining the cost of production of the Applicant, extra-ordinary costs must be excluded. In the present investigation, the domestic producer is a nascent industry. Therefore, considering their actual cost of production in the NIP calculation will provide skewed result.
- vii. The alleged injury is due to high costs for raw materials in India.

H.2. Views of Domestic Industry

38. Following submissions have been made by the domestic industry with regard to injury and causal link:

- i. Demand for the product under consideration has been positive so far, with increasing production of Ofloxacin.
- ii. The petitioner commenced full scale commercial production of the subject goods from Oct 2015 and the goods so produced were consumed captively. Till Oct 2015, entire demand was being met by the Chinese imports. With the production of the product under consideration by the petitioner, market share of the imports declined and that of the petitioner increased. However, with the price reduction by the Chinese producers, the market share of imports increased once again and that of the domestic industry declined.
- iii. In spite of having a capacity to fulfil the demand, the Applicant is not able to utilise its capacity fully because the price of imported goods is much lesser than the price of domestically produced subject goods. In fact, the price of imported goods was even lower than the price of raw materials cost of the domestic industry.
- iv. There was a steep decline in the import price, particularly after Oct., 2015. In fact, the decline is far more, if the import price is considered in US\$.

- v. If the import price is compared with the cost of production on account of raw materials and utilities alone, it would be seen that the import prices have been even below the costs on account of raw materials and utilities.
- vi. Applicant commenced commercial production in 2015-16. The applicant placed advertisements in leading trade journal (Chemical Weekly) informing that the applicant is offering the product under consideration in the market. The applicant however received no response from the consumers. When the material is available in the market at a price below the costs, it is quite natural that the consumers are not at all interested in buying the product from the Indian market.
- vii. The domestic industry, which commenced commercial production in Oct., 2015 had to thereafter suspended production in Jan 2016. Inventories in Dec., 2015 reached very high levels leading to suspension of production in Jan., 2016. Further, production even during Feb., 2016 remained low.
- viii. Chinese producers are also resorting to dumping of downstream product namely Ofloxacin in the Indian market. Therefore, dumping of both the products in the Country is preventing the domestic industry from using its own production to the extent of its own requirements.
- ix. Domestic industry achieved capacity utilisation of ***% in Dec., 2015 and thereafter ***% in March, 2016. The domestic industry is however unable to regularly keep this production level in view of dumping in the Country
- x. Given dumping of Ofloxacin in the market, evidently the applicant would not have got better prices for Ofloxacin from the market and would have been forced to absorb the entire loss. While the applicant is already suffering financial losses in Ofloxacin, the applicant would have suffered higher and significant financial losses, had the applicant based its entire operations on its own production of O-Acid..
- xi. Examination of projected profitability and actual profitability shows that the applicant suffered significant losses in the captive sales and would have suffered significant financial losses had the applicant sold the product at prices aligned to the current import prices.
- xii. The applicant has made fresh investment in the manufacturing of O-Acid. However, the performance of the product is very adverse. Despite commencement of commercial production, the domestic industry is not able to produce and sell the product to the extent of its abilities because of dumping of the product under consideration in the Country.
- xiii. The Petitioner was earlier importing entire volumes of O-Acid for consumption in the production of Ofloxacin. Petitioner has now started producing O-Acid. However, the Petitioner has to import O-Acid even after commencement of production of O-Acid due to dumping of O-Acid and Ofloxacin.
- xiv. If the Petitioner would have produced the entire volume O-Acid required for manufacturing Ofloxacin in house the profitability would have been far more severe had the petitioner not used imported subject goods partially.
- xv. The Authority can assess performance of the domestic industry to the extent of existence of domestic industry. The Petitioner has provided information for the relevant period. However, considering and appreciating that the relevant period is less than three

years period, the Petitioner has undertaken monthly and then quarterly analysis to establish its case.

- xvi. Growth of the domestic industry in terms of all parameters has remained poor. Being a new company, the domestic industry had expected much better growth in both volume and price parameters. Dumping of the product in the Country is however adversely affecting the growth of the domestic industry in the market.
- xvii. While the test of material injury or a threat of material injury can be applied to an existing domestic industry. In the case of domestic industry yet to be fully established, the test to be applied is that of material injury to the extent of existence and material retardation to the establishment of industry to the extent of targeted performance.
- xviii. In the instant case, the petitioner has commenced commercial production in Oct., 2015. Therefore, the Authority may consider (a) actual performance so far to establish effect of dumping, (b) potential situation in order to establish threat of material injury and (c) whether dumping of the product under consideration is materially retarding the establishment of the domestic industry in India.

H.3. Examination by the Authority

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

40. As regards the impact of the dumped imports on the domestic industry. Para (iv) of Annexure-II of the AD Rules states as follows:

“The examination of the impact of the dumped imports on the domestic industry concerned, shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the Industry, including natural and potential decline in sales, profits, output, market share, productivity, return on investments or utilization of capacity; factors affecting domestic prices, the magnitude of margin of dumping actual and potential negative effects on cash flow, inventories, employment wages growth, ability to raise capital investments.”

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

42. As already highlighted in the initiation notification, the domestic industry has alleged that dumping of PUC in India is materially retarding the establishment of the domestic industry. In this context, the Authority relies upon Rule 4(1)(c)(ii) and Rule 11(1) of AD Rules, which state as under:

Rule 4(1) (c) (ii)

“the injury or threat of injury to an industry established in India or material retardation to the establishment of an industry in India consequent upon the import of such article from the specified countries”.

Rule 11 (1):

“In the case of imports from specified countries, the designated authority shall record a further finding that import of such article into India causes or threatens material injury to any established industry in India or materially retards the establishment of any industry in India”.

43. Since the domestic industry is a new industry and commenced production only in October, 2015, and is yet to be fully established the Authority has also undertaken examination of (a) actual performance to the extent of its existence and (b) material retardation to the domestic industry. Further, in view of short period of existence of the domestic industry, the Authority has also conducted monthly and quarterly analysis of injury parameters.

Assessment of Demand

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

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

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

I. Volume Effects of Dumped Imports

i. Import volumes and market share in imports

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

Yearly Imports

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

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

48. The Authority has also analysed volume of imports and import price on monthly basis which shows that the import price have been on declining trend from July 2015 to June 2016. The decline has been very sharp from January 2016 onwards. It is further noted that the domestic industry commenced full scale commercial production and consumption of the product under consideration in Oct., 2015 which led to the decline in imports. However, Chinese producers reduced their prices drastically in order to regain the market and imports increased from February 2016 onwards.

Monthly Imports and Import Price

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

i. **Market share in Demand**

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

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

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

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

Monthly analysis of Imports

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

52. As regards demand and market share including captive consumption is concerned, share of imports fell from 100% before commencement of commercial production by the domestic industry to 70% in the POI. It is however noted from the monthly analysis of the market

share that the domestic industry was able to sharply increase its market share after commencement of the production. However, with the reduction in the prices by the Chinese producers, the market share of Chinese suppliers increased once again and that of domestic industry fell. Market share of domestic industry reached 86% in Dec., 2015. The same however declined thereafter to 41% in June, 2016.

II. Price Effect of the Dumped imports on the Domestic Industry

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

Price Undercutting

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

III. Economic parameters of the domestic industry

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

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

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

56. It is seen that

- a. The domestic industry has capacity sufficient to cater to the demand for the product in the Country.
- b. Production started in Aug., 2015 and was commercialised in Oct., 2015. Thereafter, production increased till Dec., 2015. However, inventories kept piling up with the captive consumption remaining much below production and consumers not buying from the domestic industry. Thus, even when the domestic industry used part of the production for captive use, the domestic industry could not sell the product in the domestic market.

- c. It is seen that applicant made repeated attempts to sell the product in the market by directly approaching the consumers through emails as also placing an advertisement publicly. However, domestic industry could not succeed in selling the product because of availability of dumped goods in the market. Without any merchant sale of subject goods, the level of inventories kept on increasing, as captive requirements were far below the production and capacities. The level of inventories was at significantly high level in December 2015. Resultantly the domestic industry had to undertake shut down in January 2016.
- d. Even when the domestic industry recommenced commercial production in February 2016, the production remained regulated and the inventory levels remained high. The domestic industry did not succeed in selling the product to the consumers in the Country, as the Chinese producers reduced the prices further.
- e. The domestic industry had projected ***% of capacity utilization and ***MT of production and sales in its first year of operation; however the domestic industry's production, sales and capacity utilization have remained significantly below the projected levels and, in fact, could not even reach half of what was envisaged by the applicant.

Profit/Loss, Return of Investment

57. Profits earned by the domestic industry were as follows:

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

58. It is noted that

- a. The domestic industry intended to do merchant sales, however, they have only captively consumed the product. In the absence of merchant sales, profits, cash profits and ROI have been determined considering the transfer price.
- b. The domestic industry is suffering significant financial losses in captive transfers of the product. Consequently, the cash flow and ROI is also significantly negative.
- c. The Chinese producers reduced the prices for the product, which further led to significant financial losses, negative ROI and negative cash flows from the captive consumptions.

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

ii. **Productivity, employment and wages**

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

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

iii. **Magnitude of Dumping**

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

iv. **Growth**

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

v. **Ability to raise capital investment**

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

vi. **Factors Affecting Domestic Prices**

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

vii. **Overall assessment of Injury**

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

H. Other Known Factors & Causal Link

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

(a) Volume and prices of imports from third countries

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

(b) Contraction in demand:

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

(c) Changes in the pattern of consumption: -

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

(d) Trade restrictive practices of and competition between the foreign and domestic producers: -

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

(e) Developments in technology: -

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

(f) Export performance:

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

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

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

I. Magnitude of Injury and injury margin

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

S.No	Producer	Exporter	NIP USD/Kg	Landed Price USD/Kg	Injury Margin USD/Kg	Injury Margin (%)	Injury Margin% Range
1.	Jiangxi Chibang Pharmaceutical Co., Ltd	Jiangxi Chibang Pharmaceutical Co., Ltd	***	***	***	***	10-20

2.	Jiangxi Chibang Pharmaceutical Co., Ltd	<ul style="list-style-type: none"> i. Zhejiang Chemicals Import & Export Co., Ltd. ii. Zhejiang Hengdian Apelo Imp.& Exp. Co., Ltd. 	***	***	***	***	20-30
3.	M/s. Yancheng XinAnzhou Pharmaceutical Co., Ltd.	<ul style="list-style-type: none"> i. Zhejiang Chemicals Import & Export Co., Ltd. ii. Zhejiang Hengdian Apelo Imp.& Exp. Co., Ltd. iii. Zhejiang Ueasy Business Service Co., Ltd. iv. Zhejiang Xinyang Import & Export Co., Ltd. 	***	***	***	***	10-20
4.	M/s. Inner Mongolia Yuanhong Fine Chemical Co., Ltd	<ul style="list-style-type: none"> i. Dreamland Creation Inc. ii. Zhejiang Ueasy Business Service Co., Ltd iii. Zhejiang Yuanhong Medical & Chemical Technology Co., Ltd iv. China Sinopharm International Corporation 	***	***	***	***	20-30
5.	M/s. Jiangxi Dadi Pharmaceutical Limited Liability Company	Zhejiang Hengdian Apelo Imp. & Exp. Co., Ltd	***	***	***	***	0-10
6.	M/s. Zhejiang Yuanhong Medical and Chemical Technology Co., Ltd	<ul style="list-style-type: none"> i. Zhejiang Medicines & Health Products Co., Ltd ii. China Sinopharm International Corporation iii. Zhejiang Chemicals Import & Export Co., Ltd. iv. Zhejiang Xinyang Import & Export Co., Ltd. 	***	***	***	***	5-15

		v. Dreamland Creation Inc. vi. Shanghai Changyu Chemical Technology Co., Ltd					
7.	All Others	All Others	***	***	***	***	25-35

J. Indian Industry's Interest & Other issues:

75. The Authority notes that the purpose of anti-dumping duties, in general, is to eliminate injury caused to the domestic industry by the unfair trade practices of dumping so as to re-establish a situation of open and fair competition in the Indian market, which is in the general interest of the country. Imposition of anti-dumping measures would not restrict imports from the subject country/territory in any way, and, therefore, would not affect the availability of the product to the consumers.

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

K. CONCLUSIONS

77. Having regard to the contentions raised, information provided and submissions made by the interested parties and facts available before the Authority as recorded in this finding and on the basis of the above analysis of the state of dumping and consequent injury, the Authority concludes that:

- i. The subject goods have been exported to India from the subject country at prices less than their normal values in the domestic market of the exporting country;
- ii. The dumping margins of the subject goods imported from the subject country are substantial and above de minimis;
- iii. The domestic industry has been materially retarded due to the dumped imports of subject goods from the subject country;
- iv. Provisional antidumping duties are required to be imposed in order to address injury being suffered by the domestic industry during investigation.

L. RECOMMENDATIONS

78. The Authority notes that the investigation was initiated and notified to all interested parties and adequate opportunity was given to the exporters, importers and other interested parties to provide positive information on the aspect of dumping, injury and causal links. Having initiated and conducted a preliminary investigation into dumping, injury and causal links between dumping and injury to the domestic industry in terms of the Rules laid down and having provisionally established positive dumping margin against the subject country, as well as material retardation to the establishment of the domestic industry caused by such dumped imports, the Authority is of the view that imposition of provisional duty is necessary to prevent injury being caused by the dumping of subject goods pending completion of the investigation. Therefore, Authority considers it necessary and recommends provisional anti-dumping duty on imports of subject goods from the subject country in the form and manner described hereunder.

79. Having regard to the lesser duty rule followed by the authority, the Authority recommends imposition of provisional anti-dumping duty equal to the lesser of margin of dumping and margin of injury, so as to remove the injury to the domestic industry. Accordingly, provisional antidumping duty equal to the amount indicated in Col 8 of the table below is recommended to be imposed from the date of notification to be issued in this regard by the Central Government, on all imports of subject goods originating in or exported from the subject country.

Duty Table

SN	Sub Heading or Tariff Item*	Description of Goods	Country of origin	Country of Export	Producer	Exporter	Duty Amount	Unit of Measure	Currency
1	2	3	4	5	6	7	8	9	10
1.	29419030 29152990 29163990 29183090 29189900 29349900	O-acid or Ofloxacin Acid	China PR	China PR	Jiangxi Chibang Pharmaceutical Co., Ltd	Jiangxi Chibang Pharmaceutical Co., Ltd	4.94	Kg	US\$
2.	29411090 29419090 29420090	O-acid or Ofloxacin Acid	China PR	China PR	Jiangxi Chibang Pharmaceutical Co., Ltd	i. Zhejiang Chemicals Import & Export Co., Ltd. ii. Zhejiang Hengdian Apelo Imp.& Exp. Co., Ltd	7.50	Kg	US\$
3.		O-acid or Ofloxacin Acid	China PR	China PR	M/s. Yancheng XinAnzhou Pharmaceutical Co., Ltd.	i. Zhejiang Chemicals Import & Export Co., Ltd.	5.04	Kg	US\$

						<ul style="list-style-type: none"> ii. Zhejiang Hengdian Apelo Imp.& Exp. Co., Ltd. iii. Zhejiang Ueasy Business Service Co., Ltd. iv. Zhejiang Xinyang Import & Export Co., Ltd. 			
4.		O-acid or Ofloxacin Acid	China PR	China PR	M/s. Inner Mongolia Yuanhong Fine Chemical Co., Ltd	<ul style="list-style-type: none"> i. Dreamland Creation Inc. ii. Zhejiang Ueasy Business Service Co., Ltd iii. Zhejiang Yuanhong Medical & Chemical Technology Co., Ltd iv. China Sinopharm International Corporation 	8.55	Kg	US\$
5.		O-acid or Ofloxacin Acid	China PR	China PR	M/s. Jiangxi Dadi Pharmaceutical Limited Liability Company	Zhejiang Hengdian Apelo Imp. & Exp. Co., Ltd	0.03	Kg	US\$
6.		O-acid or Ofloxacin Acid	China PR	China PR	M/s. Zhejiang Yuanhong Medical and Chemical Technology Co., Ltd	<ul style="list-style-type: none"> i. Zhejiang Medicines & Health Products Co., Ltd ii. China Sinopharm International Corporation iii. Zhejiang Chemicals Import & 	3.57	Kg	US\$

						Export Co., Ltd. iv. Zhejiang Xinyang Import & Export Co., Ltd. v. Dreamland Creation Inc. vi. Shanghai Changyu Chemical Technology Co., Ltd			
7.	29419030 29152990 29163990	O-acid or Ofloxacin Acid	China PR	China PR	Any combination other than mentioned in SI No-1 to 6 above		8.79	Kg	US\$
8.	29183090 29189900 29349900 29411090 29419090 29420090	O-acid or Ofloxacin Acid	China PR	Any country other than China PR	Any	Any	8.79	Kg	US\$
9.		O-acid or Ofloxacin Acid	Any country other than China PR	China PR	Any	Any	8.79	Kg	US\$

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

N. FURTHER PROCEDURE

The procedure as below would be followed subsequent to notifying the preliminary findings:

- i. The Authority invites comments on these provisional findings from all the interested parties and the same, considered relevant by the Authority, would be considered in the final findings.
- ii. Exporters, importers, the applicant and other interested parties known to be concerned are being addressed separately by the Authority, who may make their views known, within forty days from the date of the publication of these preliminary findings.
- iii. Any other interested party may also make known its views within forty days from the date of publication of these findings.
- iv. The Authority would conduct further verification to the extent deemed necessary.

- v. The Authority may hold oral hearing to hear the interested parties orally before notifying the final findings.
- vi. The Authority would disclose the essential facts as per the Anti-dumping Rules before announcing the final findings.

Dr. Inder Jit Singh
Additional Secretary & Designated Authority