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**F. No. 7/29/2021 - DGTR
Government of India
Ministry of Commerce & Industry
Department of Commerce
Directorate General of Trade Remedies
Jeevan Tara Building, Parliament Street, New Delhi-110001**

NOTIFICATION

**FINAL FINDINGS
(Case No. AD (SSR) 24/2021)**

Dated 15th February, 2022

Subject: Sunset Review anti-dumping investigation concerning imports of “Amoxycillin Trihydrate” originating in or exported from China PR.

A. BACKGROUND OF THE CASE

Having regard to the Customs Tariff Act 1975, as amended from time to time (hereinafter also referred to as the ‘Act’) and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules 1995, as amended from time to time (hereinafter also referred to as ‘the Rules’ or ‘AD Rules’) thereof;

1. The Designated Authority (hereinafter referred to as the Authority) initiated an anti-dumping investigation in respect of imports of “Amoxycillin Trihydrate” (hereinafter referred to as “Amoxy” or “PUC” or “Product Under Consideration” or “Subject Goods”) originating in or exported from China PR on 27th April 2016 and after conducting the investigation recommended imposition of definitive duty vide Final Findings No. 14/05/2015-DGAD dated 3rd April 2017 and the anti-dumping duty was imposed by the Central Government vide Notification No. 21/2017-Customs (ADD) dated 16th May 2017.
2. Section 9A(5) of the Act read with Rule 23(1B), inter alia, provides that anti-dumping duty imposed shall, unless revoked earlier, cease to have effect on expiry of five years from the date of such imposition and the Authority is required to review whether the expiry of duty is likely to lead to continuation or recurrence of dumping and injury. In accordance with the above, the Authority is required to review, on the basis of a duly

substantiated request made by or on behalf of the domestic industry, as to whether the expiry of duty is likely to lead to continuation or recurrence of dumping and injury.

3. M/s Aurobindo Pharma Limited (hereinafter referred to as the “applicant” or “domestic industry”) has filed an application before the Designated Authority (hereinafter referred to as the “Authority”), in accordance with the Act and the Rules, for initiation of a sunset review investigation concerning the imports of “Amoxicillin Trihydrate” (hereinafter referred to as “subject goods” or “product under consideration”) originating in or exported from China PR (hereinafter referred to as “subject country”) and have requested extension of the existing duty..
4. On the basis of the duly substantiated application by the domestic industry, the Authority, on the basis of prima facie evidence submitted by the domestic industry and in accordance with Section 9A(5) of the Act read with Rule 23(B) of the Rules, initiated a sunset review investigation vide Notification No. 7/29/2021-DGTR dated 10th September 2021 to review the need for continued imposition of the duties in force in respect of the subject goods, originating in or exported from the subject country by examining whether the expiry of such duty is likely to lead to continuation or recurrence of dumping and injury to the domestic industry.
5. The scope of the present review covers all aspects of the previous investigations concerning import of the subject goods (as defined in the initiation notification F. No. 7/29/2021-DGTR dated 10th September 2021), originating in or exported from the subject country.

B. PROCEDURE

6. The procedure described below has been followed in this investigation:
 - a. The Authority notified the Embassy of the subject country in India about the receipt of the present application before proceeding to initiate the investigation in accordance with Sub-Rule (5) of Rule 5 supra.
 - b. The Authority issued a Notification dated 10th September 2021, published in the Gazette of India, Extraordinary, initiating sunset review anti-dumping investigation on the imports of the subject goods, originating in or exported from the subject country.
 - c. The Authority sent a copy of the initiation notification dated 10th September 2021 to the Embassy of the subject country in India, known producers and exporters from the subject country, known importers/users and other interested parties, as per the available information. The interested parties were advised to provide relevant information in the form and manner prescribed and make their submissions known in writing within the prescribed time-limit.

- d. The Authority provided a copy of the non-confidential version of the application to the known producers/exporters and to the Embassy of subject country in India in accordance with Rule 6(3) of the Rules supra.
- e. The Embassy of the subject country in India was also requested to advise the exporters/producers from their country to respond to the questionnaire within the prescribed time limit. A copy of the letter and questionnaire sent to the producers/exporters was also sent along with the names and addresses of the known producers/exporters from the subject country.
- f. The Authority sent exporters' questionnaires to the following known exporters in the subject country in accordance with the Rule 6(4) of the Rules to elicit relevant information:
 - i. M/s North China Pharmaceutical Co. Ltd
 - ii. M/s CSPC Inner Mongolia Changsheng Pharma Co.
 - iii. M/s Zhejiang Medicines & Health Product I&E Co.
 - iv. M/s Shanghai Sunrise Chemical Co. Ltd.
 - v. M/s Team Crown Trading Limited
- g. Following companies have filed the exporter questionnaire responses as producers/exporters of the product under consideration:
 - i. M/s Inner Mongolia Changsheng Co., Ltd.
 - ii. M/s Sinobright Pharmaceutical Industries Limited
- h. The Authority forwarded a copy of the notification to the following known importers/consumers/user associations of subject goods in India and advised them to make their views known in writing within the prescribed time limit in accordance with the Rule 6(4) of Rules:
 - i. M/s Ajanta Pharma Limited
 - ii. M/s Maxheal Pharmaceuticals (India) Limited
 - iii. M/s Laborate Pharmaceutical India Limited
 - iv. M/s Koprana Limited
 - v. M/s Medi Pharma Drug House
 - vi. M/s Alkem Laboratories Limited
 - vii. M/s Medicef Pharma Private Limited
 - viii. M/s Tuton Pharmaceuticals
 - ix. M/s Flamingo Pharmaceuticals Limited
 - x. M/s Ranbaxy Laboratories Limited
 - xi. M/s Alkem Laboratories Limited
 - xii. M/s Mankind Pharma Limited
 - xiii. M/s Laborate Pharmaceuticals India Limited
 - xiv. M/s Cipla Limited
 - xv. M/s Abbott India Limited
 - xvi. M/s Mcleods Pharmaceuticals Limited
 - xvii. M/s Medreich Limited

- i. None of the importers/users of the subject goods have responded or filed importer/user questionnaire responses.
- j. Letters were sent to other known producers of the subject goods in India, inviting them to participate in the investigation.
- k. The period of investigation for the purpose of the present review is 1st April 2020 to 31st March 2021 (12 months). However, injury analysis covers period April 2017-March 2018, April 2018- March 2019, April 2019-March 2020, and the Period of Investigation.
- l. 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, and the period of investigation, which was received by the Authority. The Authority has relied upon the DGCI&S imports data for computation of the volume & value of imports for injury analysis.
- m. Verification of the information and data submitted by the domestic industry and the responding producers in the subject country was carried out to the extent deemed necessary. Only such verified information with necessary rectification, wherever applicable, has been relied upon for the purpose of these final findings.
- n. The Non-Injurious Price (hereinafter referred to as 'NIP') has been worked out based on the cost of production and cost to make & sell the subject goods in India based on the information furnished by the domestic industry on the basis of Generally Accepted Accounting Principles (GAAP) and Annexure III to the Anti-Dumping Rules.
- o. The Authority held an oral hearing on 8th December 2021 to provide an opportunity to the interested parties to present information orally in accordance with Rule 6(6). Oral hearing was held through video conferencing in view of the special circumstances arising out of the COVID-19 pandemic. All the parties who presented their views in the oral hearing were requested to file written submissions in order to enable opposing interested parties to file rejoinders thereafter.
- p. The submissions made by the interested parties during the course of the investigation and the oral hearing, have been addressed in these final findings, to the extent considered relevant by the Authority.
- q. The information provided by the interested parties on confidential basis was examined with regard to the sufficiency of the confidentiality claim. On being satisfied, the Authority has accepted the confidentiality claims wherever warranted and such information have been considered as confidential and not disclosed to the 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.
- r. Wherever an interested party has refused access to or has otherwise not provided the necessary information during the course of the present investigation, or has

significantly impeded the investigation, the Authority has treated such parties as non-cooperative and recorded its finding on the basis of facts available.

- s. In accordance with Rule 16 of the Rules, the essential facts of the investigation were disclosed to the known interested parties vide disclosure statement dated 1st February, 2022 and comments were received thereon. The Authority notes that most of the post disclosure submissions made by the interested parties are mere reiterations of their earlier submissions. However, the post disclosure submissions to the extent considered relevant have been examined and addressed by the Authority in these final findings.
- t. The exchange rate for the POI has been taken by the Authority is USD = Rs 75.22.
- u. *** in these final findings represents information furnished by the interested parties on confidential basis and so considered by the Authority under the Rules.

C. PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE

- 7. The product under consideration in the initiation notification has been described as follows:

6. The product under consideration in the investigation is "Amoxicillin Trihydrate" also known as "Amoxicillin". Amoxicillin Trihydrate is a semi synthetic antibiotic, an analog of ampicillin, with a broad spectrum of bactericidal activity against many Gram-positive and Gram-negative microorganisms. The following types of products are, however, excluded from the scope of the product under consideration:

- i. Amoxicillin Sodium Sterile and. Flucloxacillin Sodium Sterile,*
- ii. Amoxicillin Trihydrate Compacted Ampicillin Trihydrate Compacted and*
- iii. Amoxicillin Trihydrate and Claralunate Potassium.*

7. Amoxicillin is used to reduce the development of drug-resistant bacteria. To maintain the effectiveness of Amoxicillin and other antibacterial drugs, Amoxicillin should be used only to treat infections that are proven or strongly suspected to be caused by bacteria.

8. Amoxicillin being an organic chemical is categorized under Chapter 29 of the Customs Tariff Act under subheading 29411030. The Customs classification is, however, indicative only and in no way binding on the scope of the investigation.

C.1 Submissions made by other interested parties

8. Other interested parties have made no submission regarding the scope of the product under consideration.

C.2 Submissions made by the domestic industry

9. The following submissions have been made by the domestic industry and the companies supporting the application during the course of investigation.
 - a. The Designated Authority in the original investigation had concluded that the goods produced by the domestic industry is a like article to the goods that is imported into the domestic market.
 - b. There has been no major development in the product under consideration with respect to technology and the product produced by the domestic industry continues to remain like article to the imported product.
 - c. The other interested parties have not objected to the scope of the product under consideration.

C.3 Examination by the Authority

10. No submission has been made by any interested party on the scope of the product under consideration. Therefore, the scope of the product under consideration is the same as was defined in the initiation notification reproduced below.

6. The product under consideration in the investigation is "Amoxycillin Trihydrate" also known as "Amoxicillin". Amoxicillin Trihydrate is a semi synthetic antibiotic, an analog of ampicillin, with a broad spectrum of bactericidal activity against many Gram-positive and Gram-negative microorganisms. The following types of products are however, excluded from the scope of the product under consideration:

- i. Amoxycillin Sodium Sterile and. Flucloxacillin Sodium Sterile,*
- ii. Amoxicillin Trihydrate Compacted Ampicillin Trihydrate Compacted and*
- iii. Amoxicillin Trihydrate and Claralanate Potassium.*

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8. Amoxicillin being an organic chemical is categorized under Chapter 29 of the Customs Tariff Act under subheading 29411030. The Customs classification is, however, indicative only and in no way binding on the scope of the investigation.

11. The applicant has claimed that the subject goods exported to India are identical to the goods produced by the domestic industry. The subject goods produced by the domestic industry are comparable to the imported goods from the subject country in terms of technical specifications, manufacturing process & technology, functions & uses, pricing, distribution & marketing, and tariff classification of the goods. The two are technically and commercially interchangeable. Accordingly, for the purpose of the present investigation, the subject goods produced by the applicant is being treated as 'Like Article' to the subject goods being imported from the subject country.

D. DOMESTIC INDUSTRY AND STANDING

12. Rule 2(b) of the Antidumping 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.”

D.1 Submissions made by other interested parties

13. Other interested parties have made no submission regarding the standing of the applicant company as the domestic industry.

D.2 Submissions made by domestic industry

14. The following submissions have been made by the domestic industry and the companies supporting the application during the course of the investigation.
- a. M/s Aurobindo Pharma has provided all the relevant data to the Authority with a request for extension of duties.
 - b. The applicant is one of the eight producers of the subject goods in India.
 - c. The applicant has not imported the subject goods from the subject country.
 - d. The applicant is neither related to the exporter of the subject goods from the subject country nor to the importers of the subject goods in India.
 - e. The application is supported by two other producers of subject goods in India – (a) Centrient Pharmaceuticals India Private Limited and (b) Penam Laboratories Limited.
 - f. The applicant's production accounts for 30% of the Indian production. The applicant's and supporters' share accounts for 65% of the Indian production. Further, there is no opposition to the application.

- g. The applicant constitutes domestic industry within the meaning of Rule 2(b) and rule 5(3) of the Rules.
- h. The other interested parties have not objected to the standing of the domestic industry.

D.3 Examination by the Authority

- 15. The present application has been filed by M/s Aurobindo Pharma Limited. Post filing of the application and before initiation of the investigation, the application was supported by Centrient Pharmaceuticals India Private Limited and Penam Laboratories Limited. Centrient Pharmaceuticals India Private Limited participated in the oral hearing, made submissions during the hearing and thereafter filed written submissions as well, reiterating its support. The company has also provided limited information about its operation.
- 16. The Authority notes that the standing of the domestic industry is not required to be examined during the sunset review particularly when the constituent(s) of the domestic industry remain the same. Nonetheless, the Authority notes that the production of the applicant accounts for a major proportion of the total domestic production. Further, the applicant's and supporters' share cumulatively account for more than 50% of the domestic production. As per the information on record, the applicant has not imported the subject goods during the entire injury period.
- 17. Considering the above, the Authority holds that Aurobindo Pharma Limited constitutes 'Domestic Industry' within the meaning of the Rules. Further, since Centrient Pharmaceuticals India Private Limited has filed only limited information, the company has not been considered as part of the domestic industry for the present investigation.

E. MISCELLEANOUS SUBMISSIONS

E.1 Submissions made by the other interested parties

- 18. The following submissions have been made by the other interested parties during the course of the investigation:
 - a. Responding producer and exporter filed response 25 days after the last date of filing questionnaire response. The EQR was still filed within a reasonable period and the requirements of Rule 6(8) have not been violated and therefore, the response must be taken on record under the inherent discretionary powers of the Authority.
 - b. The Authorities are not entitled to reject the information filed by a party for the sole reason that it was submitted beyond the deadlines for responses to the questionnaires.
 - c. Delay of 25 days is insignificant. The responding exporter has not impeded the investigation in any significant manner.

- d. On the submission that Part II of the SSR Questionnaire was allegedly missed out by the responding foreign producer and exporter, it is submitted that the same was enclosed as annexures to the written submissions filed by the parties.

E.2 Submissions by the domestic industry

19. The following submissions have been made by the applicant during the course of the investigation.
 - a. Pharma drugs play a major role in healthcare delivery in the country and continuous supply is necessary to ensure delivery of affordable healthcare to the citizens. Any disruption can have significant adverse impact on the drug security of the country.
 - b. The Government of India is making significant efforts to make Indian pharmaceutical industry self-reliant industry. Production Linked Incentive (PLI) is for promotion of domestic manufacturing, and Amoxicillin is one of the eligible API and Penicillin-G and 6-APA as the Key Starting Materials (KSMs)/Drug Intermediates (DIs).
 - c. A 15,000 MT plant of Penicillin G of the applicant for Rs. 1,392 cores has been approved by the Ministry of Chemicals and Fertilizers. If duties are not extended, then Chinese producers will dump in the country which will not only threaten viability of the subject goods but all efforts going towards backward integration would also fail.
 - d. The committee on drug security constituted by the Department of Pharmaceuticals identified 53 APIs for which the country is heavily dependent on imports. The list of such identified APIs includes Amoxicillin.
 - e. The responding producer has not filed Part II of the questionnaire response. Even when the exporter is fully aware of the relevance & importance of the Part-II of the questionnaire in the sunset review investigation, it has chosen not to file it.
 - f. Either the exporter should be asked to file SSR Part-II, or it should be declared non-cooperative.
 - g. In response to the question seeking information relating to exports to countries other than India in the Part – I, the respondent has referred to export appendixes. However, as per the non-confidential response filed, no such appendix has been filed.
 - h. The foreign producer/exporter should be asked to file complete information, or it should be declared non-cooperative.
 - i. Respondent's exports to European Union had been banned in 2018 by European Medicines Agency's on account of quality. However, no such information has been provided in the response.
 - j. Respondent was required to provide information on the total demand in the country but as per the non-confidential response shared with the applicant, total demand includes the volumes of exports as well.

E.3 Examination by the Authority

20. Barring Inner Mongolia Changsheng Co., Ltd, no other producer from China PR has filed any response. Even Inner Mongolia Changsheng Co., Ltd has filed a delayed response. On their submission regarding the delay in filing the questionnaire response, the Authority notes that it is not appropriate to accept the response filed by them because (a) it is significantly delayed, (b) no convincing reason has been accorded justifying the submission of response at such a belated stage (c) the questionnaire response has major deficiencies and does not contain vital information required for likelihood determination, (d) the information relevant for likelihood analysis, filed only after the conduct of oral hearing, is insufficient and unreliable, in as much as identical production has been reported for all the relevant years. Considering the facts mentioned above, it is therefore considered appropriate not to accept the questionnaire response filed by Inner Mongolia Changsheng Co., Ltd.

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

F.1 Normal Value

21. Under Section 9A (1)(c) of the Act, 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 countries or territory as determined in accordance both 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 countries or territory, or when because of the particular market situation or low volume of the sales in the domestic market of the exporting countries 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 countries or territory or an appropriate third countries as determined in accordance with the rules made under sub-section (6): or*
 - b. the cost of production of the said article in the countries 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 countries other than the countries of origin and where the article has been merely transhipped through the countries of export or such article is not produced in the countries of export or there is no comparable price in the countries of export, the normal value shall be determined with reference to its price in the countries of origin.

F.2 Submissions made by the other interested parties

22. The following submissions have been made by the other interested parties:
- a. Claims of the applicant itself show that dumping margin and injury margin have declined tremendously from the original case. This suggests the present anti-dumping duty is not warranted anymore.

F.3 Submissions made by the domestic industry

23. The following submissions have been made by the domestic industry:
- a. The Authority is required to consider China as a non-market economy country. Since the only responding producer from China did not claim market economy treatment, the Authority is required to determine normal value in accordance with Para 7 of Annexure – I to the Anti-Dumping Rules.
 - b. European Union holds 13% share in the total imports into India. As there have been significant imports of the subject goods from European Union to India throughout the injury period, export price from European Union to India should be considered as normal value for China PR.
 - c. Responding producer has not claimed market economy treatment.
 - d. Export price from European Union to the rest of the world could not be adopted as the customs classification in European Union is not dedicated to the PUC and several different products fall under the classification.
 - e. Approach to consider imports from non-subject country has been considered for normal value in various other investigations by the Authority.
 - f. Dumping margin calculated by the applicant using export price of European Union as normal value is not only above de-minimis but also significant. It shows that dumping has continued.

F.4 Examination by the Authority

24. The Authority sent questionnaires to the known producers/exporters from the subject country, advising them to provide information in the form and manner prescribed by the Authority. The following producers/exporters from the subject country have filed exporter's questionnaire response. However, the Authority has not accepted the questionnaire response for the reasons mentioned at Para 20 of this final findings.
- a. Inner Mongolia Changsheng Co. Ltd.
 - b. Sinobright Pharmaceutical Industries Limited

F.4.1 Normal Value Determination

China PR

25. Article 15 of China's Accession Protocol in 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 methodologies for identifying and measuring the subsidy benefit which take into account the possibility that prevailing terms and conditions in China PR 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 PR.
- c. The importing WTO Member shall notify methodologies used in accordance with sub paragraph (a) to the Committee on Anti-Dumping Practices and shall notify methodologies used in accordance with sub paragraph (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.

26. It is noted that while the provision contained in Article 15 (a) (ii) has expired on 11.12.2016, the provision under Article 2.2.1.1 of WTO read with obligation under 15 (a) (i) of the Accession Protocol require criterion stipulated in para 8 of the Annexure I of the Rules to be satisfied through the information/data to be provided in the supplementary questionnaire on claiming the market economy status. It is noted that since the responding producers/ exporters from China PR have not submitted response to the supplementary questionnaire in the form and manner prescribed, the normal value computation is required to be done as per provisions of para. 7 of Annexure I of the Rules.
27. The Authority notes that none of the producers/exporters from China PR has filed the supplementary questionnaire response to rebut the presumptions as mentioned in para 8 of Annexure - I of the Rules. Under these circumstances, the Authority has to proceed in accordance with para 7 of Annexure - I of the Rules, which reads as under:

“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.”

28. Para 7 of Annexure I to the AD Rules lays down hierarchy for determination of normal value and provides that normal value shall be determined on the basis of the price or constructed value in a market economy third country, or the price from such a third country to other countries, including India, or where it is not possible, 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. The Authority notes that the normal value is required to be determined having regard to the various sequential alternatives provided under Para 7.

29. The applicant has also claimed normal value on the basis of the export price of the subject goods from European Union to India. In this regard, the Authority notes the decision of the Hon'ble CESTAT in the case of Kuitun Jinjiang Chemical Industry Co. Ltd. vs. Union of India, wherein it was held that when normal value is determined based on exports from a market economy third country to India, the relevant criteria for determining appropriate market economy third country is the volume of exports from such country and that the country should not be dumping during the period of investigation. It is noted that around 12% of imports of the subject goods into India are from European Union, which is above the de-minimis limit, and there is no anti-dumping measure in force and thus the imports from European Union cannot be considered as dumped. Therefore, CIF price from European Union is representative in nature. Accordingly, the Authority holds to determine the normal value for China PR on the basis of import price into India from EU.
30. For the purpose of normal value determination, the import price from European Union to India has been adjusted with ocean freight, marine insurance and other adjustments on account of port charges, bank charges etc to arrive at ex-factory price. The normal value so determined is shown below in the dumping margin table.

F.4.2 Export Price

China PR

Inner Mongolia Changsheng Co. Ltd., China PR

31. Since questionnaire response filed by Inner Mongolia Changsheng Co. Ltd, a producer of subject goods in China PR, has not been accepted for the reasons mentioned above, the export price has been determined on the basis of import price reported in Indian customs data, as determined from the data provided by the DGCIS. Further, the net export price at ex-factory level has been determined after making due adjustments, and the same is shown in the dumping margin table below.

F.4.3 Dumping Margin

32. Considering the normal value and export price determined, as explained above, it is noted that the dumping margin for China PR is more than the de-minimis limit prescribed under the Rules.

DUMPING MARGIN TABLE

SN	Particulars	Normal value	Net export price	Dumping Margin	Dumping Margin	Range
		USD/KG	USD/KG	USD/KG	%	%
1	Any producer/ exporter from China	***	***	***	***	55-65%

G. EXAMINATION OF INJURY AND CAUSAL LINK

G.1 Submissions made by the other interested parties

33. The submissions of the other interested parties with regard to injury and causal link are as under:

- i. Volume of imports have declined by the period of investigation whereas the price has increased from Rs1530/Kg in the base year to Rs1848/Kg.
- ii. The trend of price when the duty is already in force shows that the exporters are periodically increasing the prices.
- iii. Despite the growth in the volume parameters, the domestic industry has seen a growth in the price parameters.
- iv. The domestic industry is not under any price pressure from imports.
- v. The applicant wants to remain silent on the cause of current injury to avoid questions on injury when the duty is in force. Other causes of such injury need to be identified so that the likelihood also can be examined fairly.
- vi. Reasons other than imports including Covid-19 have impacted the performance of the applicant and it is likely to suffer continued injury on account of such other reasons as the pandemic is still on.

G.2 Submissions made by the domestic industry.

34. The domestic industry has submitted as follows: -

- a. Performance of the domestic industry has improved post imposition of anti-dumping duties in 2017.
- b. Duty paid landed price of the subject goods has enabled the domestic industry to charge prices above the cost of production.
- c. While the volume parameters show a decline in the period of investigation, it is attributable to the decline in the demand of the subject goods.
- d. Demand of the subject goods increased till the year 2019-20 but declined in the proposed period of investigation due to Covid-19.
- e. Imports have declined due to decline in the demand in the period of investigation.
- f. Price undercutting is positive in all the years except 2019-20.
- g. Production of the domestic industry was significantly lower than the capacity and domestic sales was also lower than the production.

- h. Market share of the subject imports increased except 2019-20. While the market share of the domestic industry has declined.
- i. Profit per unit earned by the domestic industry declined in the year 2018-19 and increased thereafter.
- j. With Chinese dumping of Penicillin G and 6-APA the production of the applicant became unviable, and it stopped the production of 6-APA. The domestic industry is making the PUC from imported 6 APA.
- k. Current profitability of the applicant appears reasonable only due to the fact that the domestic industry is sourcing 6 APA from the market and then processing it to produce the subject goods and it is also protected against dumping of the PUC.
- l. There is no viability even at present in producing Penicillin G, 6-APA and then Amoxy. It is for this reason that the GOI has accepted the need for PLI incentive in this industry.
- m. Had the domestic industry captively produced Penicillin G and then 6-APA and then used it for production of Amoxy, it would have suffered losses.

G.3 Examination by the Authority

- 35. Rule 11 of the Rules read with Annexure-II provides that an injury determination shall involve an 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...*”. 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. For the examination of the impact of the dumped imports on the domestic industry in India, indices having a bearing on the state of the industry such as production, capacity utilization, sales volume, inventory, profitability, net sales realization, the magnitude and margin of dumping, etc. have been considered in accordance with Annexure II of the Rules.
- 36. In consideration of the various submissions made by the interested parties in this regard, the Authority has examined the current injury, if any, to the domestic industry before proceeding to examine the likelihood of continuation/ recurrence of dumping and injury in the event of revocation of existing duty.
- 37. Centrient Pharmaceuticals India Private Limited has provided information on capacity, production, sales, selling price, cost of sales and profit per unit for the injury period. However, since the complete costing information has not been provided, the Authority

has not considered the selling price, cost of sales and profit per unit for Centrient Pharmaceuticals India Private Limited for the purpose of injury analysis. Information on production and domestic sales have been considered for calculating Indian production and demand.

38. The Authority has taken note of the various submissions made by the domestic industry and other interested parties on injury and causal link and has analysed the same considering the facts available on record and applicable laws. The injury analysis made by the Authority ipso facto addresses submissions made by the domestic industry and other interested parties.

G.3.1 Assessment of Demand

39. The Authority has determined demand or apparent consumption of the product in India, as the sum of domestic sales of the Indian producers and imports from all sources. The demand so assessed is given in the table below.

SN	Particulars	UOM	2017-18	2018-19	2019-20	POI
1	Sales of applicant	MT	***	***	***	***
	Trend	Indexed	100	85	112	55
2	Sales of supporters	MT	***	***	***	***
	Trend	Indexed	100	106	106	100
3	Sales of other Indian producers	MT	***	***	***	***
	Trend	Indexed	100	188	263	104
4	Imports from China PR	MT	***	***	***	***
	Trend	Indexed	100	142	115	95
5	Import from other countries	MT	***	***	***	***
	Trend	Indexed	100	43	23	64
6	Demand	MT	***	***	***	***
	Trend	Indexed	100	114	132	81

It is seen that the demand of the subject goods increased till the year 2019-20 but declined in the period of investigation. The domestic industry has claimed that the decline is due to the shrinkage in demand due to COVID-19.

G.3.2 Volume effect of dumped imports

Import volume and share of subject country

40. The effects of the volume of dumped imports from the subject country as well as imports from the other countries have been examined by the Authority as follows.

SN	Particulars	UOM	2017-18	2018-19	2019-20	POI
1	Subject country China PR	MT	***	***	***	***
	Trend	Indexed	100	142	115	95
2	Subject country imports in relation to-					
A	Indian Production	%	***	***	***	***
	Trend	Indexed	100	137	91	116
B	Demand/Consumption	%	***	***	***	***
	Trend	Indexed	100	125	87	118
C	Total Imports	%	75-85%	90-100%	90-100%	80-90%

41. It is seen that the volume of dumped imports of the product under consideration from the subject country increased in the year 2018-19. However, the imports declined thereafter in the year 2019-20 and further declined in the period of investigation. The decline in dumped imports can be attributed to the decline in demand as well as imposition of anti-dumping duty in force. While the imports have declined in absolute terms, they have increased in relative terms in the period of investigation.

G.3.3 Price effect of dumped imports

42. 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 alleged dumped imports as compared to the price of the like products in India, or whether the effect of such imports is otherwise to depress prices or prevent price increases, which otherwise would have occurred in normal course.
43. Accordingly, the impact on the prices of the domestic industry on account of dumped imports of the subject goods from the subject country has been examined with reference to price undercutting and price suppression/depression, if any. For the purpose of this analysis the cost of sales and Net Sales Realization (NSR) of the domestic industry have been compared with the landed price of imports from subject country.

a. Price undercutting

44. Price undercutting has been determined by comparing the landed price of imports from the subject country with the net sales realisation of the domestic industry in India.

SN	Particulars	UOM	2017-18	2018-19	2019-20	POI
1	Net Sales Realisation	₹/Kg	***	***	***	***
2	Landed Price	₹/Kg	***	***	***	***
3	Price Undercutting	₹/Kg	***	***	***	***
4	Price Undercutting	%	***	***	***	***
5	Price Undercutting	Range	10-20%	0-10%	(0-10)%	0-10%

45. It is seen that the landed price of imports is below the selling price of the domestic industry, resulting in positive price undercutting.

b. Price suppression/depression

46. In order to determine whether the dumped imports are suppressing or depressing the domestic prices or whether the effect of such imports is to depress prices to a significant degree or prevent price increases which otherwise would have occurred to a significant degree, the Authority has examined the changes in the costs and prices over the injury period.

SN	Particulars	UOM	2017-18	2018-19	2019-20	POI
1	Cost of Sales	₹/Kg	***	***	***	***
	Trend	Indexed	100	130	109	118
2	Selling Price	₹/Kg	***	***	***	***
	Trend	Indexed	100	116	99	109
3	Landed Price	₹/Kg	***	***	***	***
	Trend	Indexed	100	125	118	121

47. It is seen that the cost of sales, selling price and landed price of imports have all increased in the POI. The imports have not had suppressing or depressing effect on the prices of the applicant.

G.3.4 Impact on economic parameters of the domestic industry

48. Annexure - II to the Anti-Dumping Rules requires that the determination of injury shall involve an objective examination of the consequent impact of these imports on domestic producers of such products. The Anti-Dumping Rules further provide that the examination of the impact of the dumped imports on the domestic industry should include an objective evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including actual and potential decline in sales, profits, output, market share, productivity, return on investments or utilization of capacity: factors affecting domestic prices, the magnitude of the margin of dumping actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital investments. Accordingly, various injury parameters relating to the domestic industry are discussed herein below.

a. Capacity, production, capacity utilization and sales.

49. The Authority has considered capacity, production, capacity utilization and sales volume of the domestic industry over the injury period.

SN	Particulars	UOM	2017-18	2018-19	2019-20	POI
1	Capacity	MT	***	***	***	***
	Trend	Indexed	100	100	108	108
2	Production	MT	***	***	***	***
	Trend	Indexed	100	82	117	55
3	Capacity Utilisation	%	***	***	***	***
	Trend	Indexed	100	82	108	51
4	Domestic Sales	MT	***	***	***	***
	Trend	Indexed	100	85	112	55

50. It is seen that: -

- a. The domestic industry has expanded its capacity in the year 2019-20.
- b. The production, capacity utilization and sales of the domestic industry declined in the year 2018-19, increased thereafter in the year 2019-20 but has declined again in the period of investigation.
- c. The decline in production, capacity utilization and sales during the POI is due to the decline in the demand.

b. Market share of the domestic industry in demand

51. The effect of the dumped imports on the market share of the domestic industry have been examined.

SN	Particulars	UOM	2017-18	2018-19	2019-20	POI
1	Share of applicant	%	***	***	***	***
	Trend	Indexed	100	75	85	68
2	Share of supporters	%	***	***	***	***
	Trend	Indexed	100	93	80	124
3	Share of other Indian producers	%	***	***	***	***
	Trend	Indexed	100	165	199	129
4	Share of imports from China	%	***	***	***	***
	Trend	Indexed	100	125	87	118
5	Share of imports from other countries	%	***	***	***	***
	Trend	Indexed	100	38	18	79

52. It is seen that the market share of the domestic industry, other domestic producers and imports from the subject country have kept on fluctuating year on year giving no clear trend during the injury period.

c. Inventory

53. Inventory position of the domestic industry over the injury period is given below: -

SN	Particulars	UOM	2017-18	2018-19	2019-20	POI
1	Opening Inventory	MT	***	***	***	***
2	Closing Inventory	MT	***	***	***	***
3	Average Inventory	MT	***	***	***	***
	Trend	Indexed	100	65	139	217

54. It is seen that the inventory with the domestic industry declined in 2018-2019. However, inventories increased once again thereafter in 2019-20 and further increased in the period of investigation.

d. Profit or loss, cash profits and return on investment.

55. Performance of the domestic industry has been examined in respect of profits, cash profits and return on capital employed.

SN	Particulars	UOM	2017-18	2018-19	2019-20	POI
1	Cost of Sales	₹/Kg	***	***	***	***
	Trend	Indexed	100	130	109	118
2	Selling Price	₹/Kg	***	***	***	***
	Trend	Indexed	100	116	99	109
3	Profit / Loss	₹/Kg	***	***	***	***
	Trend	Indexed	100	59	62	75
4	Profit / Loss	₹ Lacs	***	***	***	***
	Trend	Indexed	100	50	69	41
5	Cash Profit	₹ Lacs	***	***	***	***
	Trend	Indexed	100	51	70	42
6	PBIT	₹ Lacs	***	***	***	***
	Trend	Indexed	100	57	81	41
7	ROCE	%	***	***	***	***
	Trend	Indexed	100	58	75	74

56. The profit, cash profit, profit before interest and tax (PBIT) have declined steeply in the POI. The decline though is partly attributable to the decline in demand also.

e. Employment, wages and productivity

57. The situation of the domestic industry with regard to employment, wages and productivity was examined.

SN	Particulars	UOM	2017-18	2018-19	2019-20	POI
1	No of Employees	Nos	***	***	***	***
	Trend	Indexed	100	110	113	97
2	Salary & Wages	₹ Lacs	***	***	***	***
	Trend	Indexed	100	91	91	69
3	Productivity per day	MT/Day	***	***	***	***
	Trend	Indexed	100	82	117	55
4	Productivity per Employee	MT/Nos	***	***	***	***
	Trend	Indexed	100	75	103	57

58. It is seen that employment levels of domestic industry increased till the year 2019-20 but declined in the period of investigation. The salary and wages of the domestic industry have declined over the injury period. The productivity per employee and per day declined in 2018-19, increased in 2019-20 but declined again in the period of investigation.

f. Growth

59. Examination of growth parameters of the domestic industry during the injury period is shown below.

SN	Particulars	UOM	2018-19	2019-20	POI
1	Production	Y/Y	-18%	42%	-53%
2	Sales	Y/Y	-18%	32%	-53%
3	Profit/(Loss) per unit	Y/Y	-41%	5%	21%
4	Inventory	Y/Y	-35%	114%	56%
5	Market Share	Y/Y	-25%	13%	-19%
6	Profit before Tax	Y/Y	-50%	38%	-40%
7	Cash Profit	Y/Y	-49%	37%	-39%
8	PBIT	Y/Y	-43%	42%	-50%
9	ROI	Y/Y	-42%	29%	-1%

60. The profit per unit of the domestic industry has recorded a positive growth in the POI. All other parameters show a negative growth due to decline in demand.

g. Magnitude of dumping

61. It can be seen that the dumping margin is not only more than *de-minimis* but also substantial.

h. Ability to raise fresh capital

62. The domestic industry has expanded its capacity in the injury period. It is seen that the current performance of the domestic industry is sufficient to attract fresh capital for further investment.

i. Factors affecting domestic prices

63. The anti-dumping duty in force has ensured that the dumped imports do not have any adverse impact on the prices of the domestic industry.

Conclusion on injury

64. The Authority based on overall analysis holds that the domestic industry has not fully recovered from injury.

H. CAUSAL LINK

65. As per the AD Rules, the Authority, inter alia, is required to examine whether factors other than dumped imports are injuring or are likely to cause injury to the domestic industry, so that the injury caused by these other factors may not be attributed to the dumped imports. While the present investigation is a sunset review investigation and causal link has already been examined in original investigation, the Authority still examined whether other known listed factors are likely to cause injury to the domestic industry. It was examined whether other factors listed under the AD Rules are likely to contribute to the injury suffered by the domestic industry.

a. Volume and price of imports from third country

66. Besides the subject country, imports above de-minimis limits are from European Union. However, it is seen that the landed price of imports from European Union is significantly above the selling price and the non-injurious price of the domestic industry. Therefore, imports from third countries are neither causing nor likely to cause injury to the domestic industry.

b. Contraction in Demand and / or change in pattern of Consumption

67. It is seen that the demand of the subject goods has declined in the period of investigation. The demand in period of investigation was much below the demand in the base year and 2019-20. The applicant has submitted that the decline in demand is due to Covid -19 pandemic. This contraction of demand thus is temporary and the demand is expected to get back to the normal post-pandemic. Thus, it cannot be a contributing factor for injury.

c. Development of technology

68. The Authority notes that technology for production of the product has not undergone any change. Further, the responding producer has also not stated that there is any development in technology. Therefore, it is not something that can cause injury to the domestic industry.

d. Trade restrictive practices

69. The Authority notes that there is no trade restrictive practice. Therefore, it is not something that can cause injury to the domestic industry.

e. Export performance

70. It is seen that the exports of the domestic industry have also declined in the period of investigation. In any case, Authority has considered data for the domestic operations only. Any possible deterioration in the export performance of the domestic industry, therefore, cannot be a cause for the injury to the domestic industry.

f. Performance of other products

71. The Authority has considered the data relating to the performance of the subject goods only in this investigation and therefore the performance of other products produced and sold by the domestic industry is not included in the injury analysis and therefore cannot be attributed to injury.

I. MAGNITUDE OF INJURY MARGIN

72. The Authority has determined the NIP for the domestic industry on the basis of the principles laid down in the Anti-Dumping Rules read with Annexure III, as amended. The NIP of the product under consideration has been determined by adopting the information/data relating to the cost of production provided by the domestic industry and duly certified by the practicing accountant for the period of investigation. The NIP has been considered for comparing the landed price from the subject country for calculating injury margin. For determining the NIP, the best utilisation of the raw materials and utilities has been considered over the injury period. Best utilisation of production capacity over the injury period has been considered. Extraordinary or non-recurring expenses have been excluded from the cost of production. A reasonable return (pre-tax @ 22%) on average capital employed (i.e., average net fixed assets plus average working capital) for the PUC was allowed as pre-tax profit to arrive at the NIP as prescribed in Annexure III of the Rules.

73. Based on the landed price and NIP determined as above, the injury margin determined by the Authority is as indicated in the table below.

INJURY MARGIN TABLE

SN	Particulars	NIP	Landed Price	Injury Margin	Injury Margin	Range
		USD/KG	USD/KG	USD/KG	%	%
1	Any producer/exporter from China	***	***	***	***	5-15%

J. LIKELIHOOD OF RECURRENCE OF INJURY

J.1 Submissions made by the other interested parties

74. The following submissions have been made by the other interested parties during the course of the investigation:
- a. Contention of high export orientation is not substantiated. For the responding producer, only 40-45% of its production during the period of investigation was exported and such a percentage do not show export orientation.
 - b. Indian Authority treats Export Oriented Units (EOU) and even producers with very high exports still as eligible domestic producers to seek duty and in such a context, calling 40-45% exports as high export orientation has no meaning.
 - c. Countrywide numbers claimed by the applicant shows that about 56% of the production was exported during the period of investigation whereas the same was only 42% during the year 2019.
 - d. Even in third country exports, prices moved from 89 points to 90 points in the period of investigation.
 - e. Upon examination of information submitted by the producer and the parameters as per clause (vii) of Annexure II of the AD Rules show that none of the parameters show any likelihood of dumping and injury in case of their exports if the duties are allowed to expire and the claims made by the petitioner to the contrary are not substantiated.
 - f. Facts relied by the applicant do not show that the excess capacity shall be diverted to India in the event of expiry of duties as there are no markets to absorb such capacities.
 - g. Capacity utilization was more than 90% in case of the responding producer which leaves no significant idle capacity and the same is applicable at country-level.
 - h. The applicant has claimed the lowest idle capacity at 7% in the year 2019. The exports during the same period were at 12800 MT showing that the subject country has a strong domestic market and is not dependent on the export market.
 - i. Exports were lower at 12587 MT during 2018 when the idle capacity was highest at 28% showing that the exporters are not under any pressure of any such idle capacities that exports are made at dumped rates to ease the idle capacity.
 - j. The applicant could not show that expiry of existing duty is likely to lead to continuation or recurrence of dumping and injury to domestic industry in any manner whatsoever as envisaged in Rule 23 (1B).

J.2 Submissions made by the domestic industry

75. The following submissions have been made by the domestic industry during the course of the investigation: -

- a. More than 40% of the production in China is being exported. India being a lucrative market, export-oriented producers will try to shift their surplus production to India.
- b. There are significant idle capacities in China to the extent of 27% in 2020. Therefore, the producers in China will always be exploring other markets in order to utilise idle capacity. Cessation of duties is likely to open the flood gates for imports in India which will eventually capture the domestic market.
- c. Exports to India occupy a 7% share in total exports from China and exports to India are priced higher as compared to other countries. Cessation of duties will provide the producers in China an opportunity to divert their low-priced exports to India.
- d. India is a net importer of Active Pharmaceutical Ingredient, and Indian pharmaceutical industry relies heavily on imports of API to produce drugs. Thus, for the biggest API manufacturer and exporter (China), India will become an attractive market option if the duties are allowed to expire.
- e. Chinese Government is heavily promoting the Active Pharmaceutical Ingredient industry through subsidies, tax incentives and establishment of special R&D parks to encourage the development of new products and processes in the pharmaceutical sector. Chinese producers are faced with surplus capacities and addition of more capacities is likely to encourage these producers to ship their production to the export market.
- f. Almost entire exports from China PR to third countries are at dumped prices. Therefore, the Chinese producers are not only dumping in the Indian market but also in other countries.
- g. 51% exports from China PR to third countries are at injurious prices. Cessation of duties will lead to these exports being diverted to India as Indian market offers better prices. The associated volumes of injurious exports are more than the demand in India.
- h. 46% exports from China PR to third countries are below prices in India. Chinese producers will try to divert their exports to Indian market to fetch better prices. The associated volumes of these exports which can be diverted to India are around 108% of the demand.
- i. 61% of imports into India are at prices below the domestic industry prices. It is only due to anti-dumping duty in force that these imports have not had any adverse price effect on the domestic industry prices.
- j. As per the information available with applicant, share of responding producer in total imports from China is 33%.
- k. As per the market information with the applicant, the responding producer only holds around 10-12% of the total capacity of the subject goods in China.
- l. Even assuming that all the producers in China are operating at 90% capacity utilization, with the total capacities being around 33,000 MT in China, the idle capacities will be 3,300 MT, which is more than 60% of the current demand in India.

- m. Chinese producers have idle capacities which are more than 140% of the demand in India.

J.3 Examination by the Authority

- 76. The present investigation is a sunset review of duties imposed on the imports of subject goods from China PR. Under the Rules, the Authority is required to examine whether cessation of the existing duty is likely to lead to continuance or recurrence of dumping and injury to the domestic industry.
- 77. There are no specific methodologies available to conduct such a likelihood analysis. However, Clause (vii) of Annexure II of the Rules provides, inter alia, factors which are relevant for threat of injury and the same factors may be used for likelihood analysis in a sunset review as well:
 - a. A significant rate of increase of dumped imports into India indicating the likelihood of substantially increased importation.
 - b. Sufficient freely disposable, or an imminent, substantial increase in, capacity of the exporter indicating the likelihood of substantially increased dumped exports to Indian markets, taking into account the availability of other export markets to absorb any additional exports.
 - c. Whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further imports; and
 - d. Inventories of the article being investigated.
- 78. The Authority has examined various indicators relevant to the assessment of likelihood of injury to the domestic industry, having regard to the above listed parameters. Further, the Authority has also examined other relevant factors which could have a bearing on the likelihood of continuation or recurrence of dumping and consequent injury to the domestic industry.

J.3.1 The level of current dumped imports into India indicating the likelihood of substantially increased importation.

- 79. In order to examine the rate of increase in imports which could indicate the likelihood of further increase, the Authority has examined the trend of volume of imports over the injury period, both in absolute terms and in relation to production and consumption in India.

SN	Particulars	UOM	2017-18	2018-19	2019-20	POI
1	Imports from China PR	MT	***	***	***	***
	Trend	Indexed	100	142	115	95
2	Imports in relation to: -					
A	Indian Production	%	***	***	***	***
	Trend	Indexed	100	137	91	116
B	Demand/Consumption	%	***	***	***	***
	Trend	Indexed	100	125	87	118
C	Total Imports	%	***	***	***	***
	Trend	Indexed	100	114	117	106

80. It is seen that while the import volume has declined in absolute terms due to decline in demand, the imports in relation to production and consumption have increased during the POI as compared to that in the base year as well as in the preceding year (i.e 2019-20). Further, it is also seen that while the imports have declined, the same has nevertheless continued to remain significant despite anti-dumping duty in force, both in absolute and relative terms. The volume and share of imports, coupled with the import price shows likelihood of further increase in imports if duty expires.

J.3.2 Whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices and would likely increase demand for further imports.

81. The Authority considered the imports in the POI, cost of production, and selling price of the domestic industry in order to examine if imports are likely to have depressing or suppressing effect on domestic prices. It is seen that there were significant imports of the product below the selling price of the domestic industry. It is thus seen that the imports are likely to occur at a price that will have depressing or suppressing effect on domestic prices and would likely increase demand for further imports.

SN	Particulars	Below cost of sales	Below net sales realization	
			Volume MT	Landed Price of import Rs. /kg
1	Imports in MT	***	***	***
3	Share of imports in total imports %	5-15%	55-65%	

Total Imports: *** MT, Average landed price of imports: ***, Average net selling price of the domestic industry: ***.

J.3.3 Idle or unutilised capacities

82. Information with respect to surplus capacities in the subject country is given below.

SN	Particular	2017	2018	2019	2020
1	Capacity in MT	36,000	36,000	36,000	36,000
2	Production in MT	27,528	23,737	30,682	24,113
3	Idle capacity in MT	8,472	12,263	5,318	11,887
4	Idle capacity as % of				
A	Chinese capacity	24%	34%	15%	33%
B	Indian demand	***	***	***	***
C	Range	135-145%	170-180%	60-70%	235-245%

Source: 2019 China Pharmaceutical Statistics Annual Report.

83. It is seen that there are significant idle capacities with the Chinese producers. It is seen that the idle capacities in China are more than 200% of the demand for the product in India.

J.3.4 Export orientation

84. Information with respect to export orientation in the subject country is given below.

SN	Particular	2017	2018	2019	POI
1	Total Production in MT	27,528	23,737	30,682	24,113
2	Total Exports in MT	11,611	12,587	12,800	13,428
3	Export orientation in %	42%	53%	42%	56%
4	Export as % of Indian demand	***	***	***	***
5	Exports as % of Indian demand (in Range)	185-195%	180-190%	160-170%	265-275%

Source: Data sourced from [Topease.com] – The export data provider in China

85. The information provided by the applicant shows that a significant share of production is being used by the Chinese producers for export purpose. Further, it is also seen that exports being undertaken by the Chinese producers are more than double the demand in India.

J.3.5 Third country dumping

86. Information with respect to third country dumping is given below.

SN	Country	Third country exports in MT	Dumped exports in MT	% of dumped exports	% of Indian Demand
1	China PR	11,624	11,608	100%	***%

Source: Data sourced from [Topease.com] – The export data provider in China

87. As per the information provided by the applicant, entirety of Chinese exports to third countries are at dumped prices. These exports constitute ***% of the Indian demand.

J.3.6 Third country injurious exports

88. Information with respect to third country injurious exports is given below:

SN	Country	Third country exports in MT	Injurious exports in MT	% of injurious exports	% of Indian Demand
1	China PR	11,624	2,526	22%	***%

89. As per the information provided by the applicant, 22% of Chinese exports to third countries are at injurious prices, which constituted ***% of Indian demand.

J.3.7 Price attractiveness

90. Information with respect to price attractiveness is given below. The Authority has compared the third country export price with the price prevailing in India:

SN	Country	Third Country Exports in MT	Exports below Indian prices in MT	% of Exports below Indian prices	% of Indian Demand
1	China PR	11,624	10,668	92%	***%

Source: Data sourced from [Topease.com] – The export data provider in China

91. As per the information provided by the applicant, 92% of exports to third countries are at prices below Indian prices and constitutes *** % of Indian demand.

K. Conclusion on likelihood of dumping and injury

92. It is noted that dumping of the subject goods is likely to continue in the event of cessation of ADD. Further, the domestic industry is once again likely to suffer injury in the event of cessation of ADD. The information on record sufficiently demonstrates that there are significant idle capacities with the Chinese producers, which are more than the Indian demand. Further, the producers in China are highly export oriented. Significant proportion of Chinese exports to third countries are at dumped and injurious prices and

at prices below the prices to India. It is thus very likely that the Chinese producers will divert their third country low price exports to Indian market and utilise their idle capacities to increase their exports to the Indian market once duties are allowed to lapse. Thus, all these indicate that in the event of cessation of duty the Chinese producers are likely to intensify export of the subject goods to India at dumped prices and cause further injury to the domestic industry. Therefore, the Authority concludes that there is a likelihood of continuation/recurrence of injury to the domestic industry in the event of cessation of duty.

L. INDIAN INDUSTRY'S INTEREST AND PUBLIC INTEREST

L.1. Submissions by other interested parties

93. The participating producer has made no submission to show that extension of anti-dumping duties will be against public interest.

L.2. Submissions by the domestic industry

94. The domestic industry has made the following submissions with regard to the public interest: -

- a. There has not been any material change in the price of formulation after the imposition of duty. This itself shows that there shall be no adverse effect of continuation of the present duty.
- b. The product is majorly used in the production of Amoxicillin Capsules and Amoxicillin syrup. The impact of duty on Amoxicillin Capsules and Amoxicillin syrup is 0.50% and 0.14% respectively.
- c. There are 7 producers in India who have a combined capacity of more than 12,000 MT per annum. Against this capacity, demand in Indian market so far, at its peak, was only about 9,000 MT. In fact, India has been exporting the PUC and has significant export potential.
- d. The expression public interest does not limit itself to consumer industry's interest alone and it is a much wider term, which covers in its ambit the domestic industry's interest and ultimately interests of public at large.
- e. Amoxicillin Trihydrate is amongst very few products where there is an export surplus. Not only is it adding to country's foreign exchange reserves but is also helping in making India a 5 trillion \$ economy. Duties have ensured that the domestic industry operated in a market free from trade distortions.
- f. Imports from the subject country have continued to enter at dumped prices and are likely to increase if the duties are not extended.
- g. Producers in the subject country will only operate with the objective of maximisation of their revenue and have no stake and interest in long term development of the market and consumers in India.

- h. Chinese producers are totally out of purview of Indian competition law and therefore if Chinese producer resort to any abnormally high pricing, Govt. of India will be helpless and will have no mechanism available to take remedial action thereon.
- i. About 15-20 of consumers have imported the product from China. However, none of these consumers have participated in the present investigation. This itself shows that the existing duties did not have any significant impact on their performance.
- j. The objective of anti-dumping duty is to ensure fair competition and not to prevent imports. Imports will continue to happen from all the sources.
- k. Producers in China enjoy significant unfair advantage, and operate under non-market economy conditions, which allows them access to raw materials and other key inputs, including labour, capital and utilities, at artificially lower costs. This allows them to export the subject goods to India at unfairly low prices, which the Indian industry is not able to compete.
- l. Viability of the consumers cannot be dependent on access to raw material at unfair and dumped prices. The consumers have set up their plants considering fair market conditions
- m. While the domestic producers for subject goods have a legitimate claim to be protected against unfair competition, the consumers cannot claim a right to availability of product at dumped prices.

L.3. Examination by the Authority

- 95. During the course of the investigation, steps were taken to examine whether the imposition of the anti-dumping duties will be against the public interest. Gazette notification initiating the investigation was issued inviting views from all the interested parties, including importers, consumers and other interested parties. The Authority also prescribed a questionnaire for the consumers to provide the relevant information with regard to the present investigation, including the possible effect of the anti-dumping on their operations. The Authority sought information inter-alia on interchangeability and substitutability of the subject goods supplied from different sources, ability of the consumers to switch different sources, effect of the anti-dumping duties on the consumers, factors that are likely to accelerate or delay the adjustment to the new situation caused by imposition of anti-dumping duties, impact of imposition of the present duty. No user participated in the present investigation.
- 96. The applicant has also provided information on the impact of duty by quantifying impact on two end products - Amoxycillin Capsules and Amoxycillin Syrup. No other party has provided any information regarding impact of ADD on the prices of the applicant. It is noted that the impact of duty on the end products is very minimal.

97. The Authority notes that the Indian pharma industry is of critical importance to the Indian economy and public at large. Continuation of duty would act as a safety net for the Indian pharma producers against unfair trade practices. Therefore, the extension of the duties will be in the larger public interest.
98. It is also seen that the Indian Industry is capable of catering to the entire demand for the product in the country. There is no demand -supply gap.
99. The world is now mainly towards resilient supply chains. Over dependent on one country or reign for essential products may not be in public interest. It is recognized that a presence of healthy domestic industry is ultimately in the interest of the users. It is further seen that the prices offered by the domestic industry remained competitive and are in line with the import prices excluding anti-dumping duty, which also shows that the applicant has not taken any undue benefit of duty to scale up their prices. The recent experience in the Covid-19 period has also shown that the public at large is likely to suffer, if the products are not sufficiently available in the domestic market.
100. It is further noted that the purpose of anti-dumping duty, is to re-establish a situation of open and fair competition in the Indian market. which is in the public interest, Imposition of anti-dumping measures would neither restrict imports from the subject country, nor would not affect the availability of the product to the consumers.
101. The Authority thus is of the opinion that the continuation of the present anti-dumping duty on the imports of product under consideration from subject country would not be against public interest.

M. POST DISCLOSURE STATEMENT COMMENTS

M. 1. Submissions by the other interested parties

102. The following post-disclosure submissions have been made by the other interested parties:
 - a. Grounds provided to reject the responses are highly unjust and not reasonable and also undermines the jurisprudence set by WTO in US– Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan [WT/DS184/AB/R].
 - b. The rejection of responses amounts to smothering the basic principles of natural justice and contravenes certain past decisions of the Authority wherein responses were accepted even after significant delays.
 - c. It would have been fair if Authority had brought deficiency to the knowledge of the exporters and given the opportunity to clarify instead of rejecting the whole thing.

- d. Considering the response of the producer would show a different picture of absence of likelihood of dumping and injury in the event of expiry of present duties.
- e. The rejection of responses contravenes the WTO decision in Certain Hot-Rolled Steel Products in which it was held that investigating authorities should not be entitled to reject information as untimely if the information is submitted within a reasonable period of time.

M. 2. Submissions by the domestic industry

103. The following post-disclosure submissions have been made by the domestic industry:

- a. Appellate Body Report in the case of China – Countervailing and Anti-Dumping Duties on Grain Oriented Flat-Rolled Electrical Steel from the United States held that all facts leading to the decision of whether or not to apply measures have to be disclosed.
- b. Article 6.9 and judgment of the Hon’ble High Court in the case of Nirma Limited Vs. Union of India [2017 (358) E.L.T. 146 (Guj.)] also state that all the facts considered by the Authority for arriving at the final conclusion have to be disclosed in the disclosure statement.
- c. The Authority has not disclosed essential facts in regard to price suppression/depression, economic parameters of the applicant and idle or unutilised capacities in the subject countries.
- d. Applicant has not been disclosed the complete working of the non-injurious price including Format B, D, expenses allowed/disallowed, net fixed assets considered, and capital employed details and is therefore unable to offer any comments.
- e. Non-injurious price should be modified to the extent variable expenses have been normated treating them as fixed expense.
- f. Net fixed asset and working capital of the applicant considered for calculating non injurious price are grossly lower than the figures reported by the applicant.
- g. Very fact of providing PLI benefit shows that Government recognises that the production of these key starting raw materials or intermediates shall otherwise be unviable as compared to Chinese producers.
- h. If duties are not extended, then investments made by applicant in Amoxycillin and also in the upstream product of Pen-G and 6-APA intended for production of Amoxycillin would become unviable.
- i. All the submissions of the applicant on public interest have not been considered.
- j. The Authority has rejected the response filed and there is no participation now. The Authority may as per its past practice consider extending the present residual duty to all Chinese producers/exporters.

M. 3. Examination by the Authority

104. It is noted that most of the submissions made by the interested parties on the statement are mere reiterations of their earlier submissions. The Authority examined these submissions at the time of issuance of the disclosure state those submissions made by the domestic industry and the other interested parties disclosure statement that have not been examined and addressed by the Authority are addressed hereinunder.
105. The Authority notes that the last date for filing response was 17th of October Inner Mongolia which is the only participating producer/exporter in investigation has submitted its questionnaire response only on 15th of November i.e., with a delay of 28 days. It is further noted that for filing a delayed response said producer/exporter, no extension request was sought from the Authority simply means that the deadline for filing the response ended on 17th of October. Had the producer/exporter would have sought any extensions regarding filing on a reasonable ground, the Authority might have been in a position to accept. Contrary, no positive action from the said producer/exporter was ever initiated. It is also not denied that the said producer/exporter has tried cooperating with the Authority by filing its response in a case where no other producers/exporters have cooperated. The Authority appreciates this fact but at the same time it is noted that the response has been filed with a significant delay and without providing reasons and is also deficient thereby the same cannot be accepted. In view of this the Authority finds no merit in the arguments of the producer/exporter with respect to rejection of its questionnaire response and maintains its decision to disregard the response filed by M/s Inner Mongolia.
106. With regard to the submission made by the applicant domestic industry regarding computation of the non-injurious price and the disclosure thereof, the Authority notes that non-injurious price has been determined in accordance with Annexure 1, Rules and the consistent practice of the Authority and the same has been disclosed to the applicant domestic industry.
107. With regard to the submission on the public interest, It is noted that all submissions on public interest have been duly considered.
108. With regard to the submission of the domestic industry regarding non-disclosure of certain essential facts, the Authority notes that all the facts considered by the Authority for arriving at the conclusion have been adequately disclosed in the disclosure statement.

N. CONCLUSION

109. Having regard to the contentions raised, information provided and submissions made and facts available before the Authority as recorded in the above findings and on the basis of the above analysis of the likelihood of continuation of dumping and recurrence of injury to the domestic industry, the Authority concludes that:
- a. There is continued dumping of the subject goods from the subject country.
 - b. There is high export orientation of the Chinese producers.
 - c. The Chinese producers of the subject goods hold huge idle capacities with them, which account for more than double of total Indian demand.
 - d. Almost entirety of Chinese exports to third countries, accounting for more than twice the Indian demand of subject goods, are at dumped prices.
 - e. Significant proportion of Chinese exports to third countries are at injurious prices.
 - f. More than 90% of Chinese exports to third countries are at prices below export prices to India.
 - g. All these factors of third country dumping huge idle capacities, price attractiveness of the Indian exports and significant exports despite prevailing existence of anti-dumping duty clearly demonstrate likelihood of continuation of dumping and aggravation of injury to the domestic industry in case of withdrawal of the anti-dumping duty.
 - h. Factors such as no demand-supply gap, no participation of users, minimal impact of anti-dumping duty on end products and inter-se competition among Indian producers establish that there may not be any adverse effect of duties on the consumers or downstream industry.

O. RECOMMENDATION

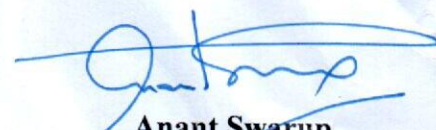
110. The Authority notes that the investigation was initiated and notified to all the interested parties and adequate opportunity was given to the applicant, exporters and other interested parties to provide information on the aspects of dumping, injury and the causal link. Having concluded that there is likelihood of continuation/ recurrence of dumping and injury to the domestic industry in the event of cessation of existing anti-dumping duty on imports of subject goods from China PR, the Authority is of the view that continuation of anti-dumping duty is required on the imports of subject goods from China PR.
111. Under these circumstances, the Authority considers it appropriate to recommend continuation of anti-dumping duty on the imports of subject goods from China PR. Anti-dumping equal to the amount indicated in Col. 7 of the duty table below is recommended to be extended from the date of notification to be issued in this regard by the Central Government for a period of five (5) years on all imports of the subject goods mentioned in Column 3 of the duty table from China PR.

DUTY TABLE

SN	Heading/ Subheading	Description of goods	Country of origin	Country of export	Producer	Amount	Unit	Currency
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1	29411030	Amoxicillin/ Amoxicillin Trihydrate	China PR	Any country including China	Any	1.96	KG	US \$
2	29411030	Amoxicillin/ Amoxicillin Trihydrate	Any country other than China	China PR	Any	1.96	KG	US \$

P. FURTHER PROCEDURE

112. An appeal against the order of the Central Government that may arise out of this recommendation shall lie before the Customs, Excise and Service Tax Appellate Tribunal in accordance with the relevant provisions of the Act.


Anant Swarup
(Designated Authority)