

Ministry of Commerce & Industry
Department of Commerce
Directorate General of Anti-Dumping & Allied Duties
Udyog Bhawan,

NOTIFICATION

New Delhi, the 21st June , 2002

Subject: Anti dumping investigation concerning imports of Diclofenac Sodium originating in or exported from China PR – Final Findings.

No. 44/1/2001-DGAD – Having regard to the Customs Tariff Act, 1975 as amended in 1995 and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, thereof.

A. PROCEDURE:

2. The procedure described below has been followed with regard to the investigations:-

- i. The Designated Authority (hereinafter referred to as Authority), under the above Rules, received a written petition from M/s. Aarti Drugs Ltd., M/s. Amoli Organics Ltd. & M/s. Kairav Chemicals on behalf of the domestic industry, alleging dumping of Diclofenac Sodium (hereinafter referred to as subject goods) originating in or exported from China (hereinafter referred to as subject country);
- ii. The Authority notified the Embassy of China in India about the receipt of petition made by the petitioners before proceeding to initiate the investigation in accordance with sub rule (5) of Rule 5 supra;
- iii. The Authority on the basis of information and evidence available before it decided to initiate anti dumping investigations against imports of subject goods from the subject country;
- iv. The Authority issued a Public Notice dated the 1st September, 2001 published in the Gazette of India, Extraordinary, initiating anti dumping investigations concerning imports of subject goods from subject country, falling under Chapter Heading 2942 of Schedule I of the Customs Tariff Act.
- v. The Authority notified preliminary findings vide notification dated 31.10.2001 on anti-dumping investigation concerning imports of subject goods from China

- and requested the interested parties to make their views known in writing within forty days from the date of its publication;
- vi. The Authority forwarded a copy of the preliminary findings to the known interested parties, who were requested to furnish their views, if any, on the preliminary findings within forty days from the date of its publication;
 - vii. The Authority also forwarded a copy of the preliminary findings to the Embassy of China in New Delhi with a request that the exporters and other interested parties may be advised to furnish their views on the preliminary findings in the time frame as stipulated in (v) and (vi) above.
 - viii. The Authority provided an opportunity to the interested parties to present their views orally on 04.03.2002. All parties presenting views were requested to file written submissions of their views expressed. The parties were advised to collect copies of the views expressed by the opposing parties and offer rebuttals, if any;
 - ix. The Authority made available the public file to all interested parties containing non-confidential version of evidence submitted by various interested parties for inspection, upon request;
 - x. Arguments made by the interested parties before announcing the preliminary findings, which have been brought out in the preliminary findings notified have not been repeated herein for sake of brevity. However, the arguments raised by the interested parties subsequently have been appropriately dealt in these findings;
 - xi. In accordance with Rule 16 of the Rules *supra*, the essential facts/basis considered for these findings were disclosed to known interested parties and comments received on the same have also been duly considered in these findings;
 - xii. The investigation covered the period from 1st January, 2001 to 31st August, 2001 (eight months).
 - xiii. ***** in this notification represents information furnished by the interested party on confidential basis and so considered by the Authority under the Rules;

B. VIEWS OF PETITIONERS, EXPORTERS, IMPORTERS AND OTHER INTERESTED PARTIES AND EXAMINATION BY AUTHORITY.

3. The views expressed by various interested parties have been discussed in the preliminary findings and also in the disclosure statement. The views which have not been discussed earlier in the preliminary findings and disclosure statement and those now raised in response to the disclosure statement are discussed in the relevant paragraphs herein below to the extent these are relevant as per rules and have a

bearing upon the case. The arguments raised by the interested parties have been examined, considered and, wherever appropriate, dealt in the relevant paragraphs herein below. The Authority confirms, the absence of any response from the exporters in the form and manner prescribed and having made the findings on the basis of the best information available to it as per rule 6(8) supra.

C. PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE

4. Product under consideration in the present investigations is 2-[(2,6-Dichlorophenyl), Amino] Benzene Acetic Acid Mono Sodium Salt; [0-(2,6-Dichloroanilino) Phenyl Acetic Acid Sodium Salt, generally known as Diclofenac Sodium. Its chemical formula is $C_{14}H_{10}Cl_2NaO_2$. DFS is white or slightly yellowish crystalline powder, slightly hygroscopic in nature and sparingly soluble in water. This is used as anti inflammatory and analgesic drug. All types of Diclofenac Sodium are classified in Chapter heading 2942. The investigations are against the product under consideration irrespective of the classification under which they are imported. Customs classifications are indicative only and are in no way binding on the scope of the present investigation.

5. **Like Article:** The subject goods produced by the domestic industry and imported from China closely resemble in terms of characteristics such as physical and chemical characteristics, functions and uses, product specifications, pricing, distribution and marketing and tariff classification of the goods. The two are technically and commercially substitutable. The Indian consumers have used the two interchangeably. Authority, therefore, determines that goods produced by the petitioners is a 'like article' to the subject goods imported from China within the meaning of the Rules.

D. DOMESTIC INDUSTRY:

6. As per Rule 2(b) of the Anti Dumping Rules, "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 which case such producers shall be deemed not to form part of domestic industry."

The definition of domestic industry given above is further clarified by Article 5.4 of WTO Anti Dumping Agreement which reads as follows:

".....The application shall be considered to have been made 'by or on behalf of the domestic industry' if it is supported by those domestic producers whose collective output constitutes more than fifty percent of the total production of the like product produced by that portion of the domestic industry expressing either support for or opposition to the application. However, no investigation shall be initiated when domestic producers expressly supporting the application account for less than 25% of the total production of the like product produced by the domestic industry. "

The petition has been filed by M/s. Aarti Drugs Ltd., M/s. Amoli Organics Ltd. & M/s. Kairav Chemicals Ltd., on behalf of the domestic industry. Authority, therefore, has determined that the petitioners account for a major proportion of domestic industry and therefore have a standing to file the petition on behalf of domestic industry under the Rules above said.

E. DUMPING

7. Normal Value: As brought out in the preliminary findings, the Designated Authority sent questionnaires to known exporters of the subject goods in China. The Authority wrote to the Embassy of China in India also with a request to advise the exporters from China to respond to the Authority. However, none of the exporters from China responded to the Authority and have not furnished any information. Thus the exporters from China have preferred non- cooperation with the Designated Authority in this case. Thus Rule 6(8) is attracted and the Designated Authority is fully justified in proceeding with the best information available. The Authority, therefore, holds that none of the exporters from China have cooperated with the Authority as envisaged under the Rules. The domestic industry has furnished information with regard to the normal value in China based on the constructed cost of production. In view of non-cooperation from the exporters from China, the Authority has determined normal value in China on the basis of the constructed cost of production.

8. Export Price: Large exports of Diclofenac Sodium from China have started very recently. There is no separate dedicated code for Diclofenac Sodium under the Customs Classification. Data compiled by the DGCI&S is not available for the product under consideration. In view of the same, the data has been compiled from Customs Daily Lists and information received from the Commissioner of Customs. The export price is, therefore, calculated at CIF level. Further, adjustments has been made on account of ocean freight, marine insurance, commission, port handling to arrive at net export price on the basis of evidence provided by domestic industry.

9. Dumping Margin: The principles governing the determination of normal value, export price and the dumping margin as laid down in the Custom Tariff Act and the Anti Dumping Rules are elaborated in Annexure-I to the Rules. The normal value for China based on constructed cost of production works out to US\$ ***** per Kg. The net export price worked out on the basis of similar parameters and allowing adjustments works out to US\$ ***** per Kg. The dumping margin for exports of the subject goods from China comes to 68% of the export price.

F. INJURY AND CAUSAL LINK

10. The Authority took into account all indices regarding injury while doing the final determination. This involved all relevant parameters viz., volume of dumped imports and their effect on price in the domestic market and its consequent effect on domestic producers in terms of parameters mentioned in Annexure II para 4 of the Rules such as natural and potential decline in sales, profits, output market share, productivity, return on investments or utilization of capacity; factors affecting domestic prices, the magnitude of the margin of dumping; actual and potential negative effects on cash flow inventories, employment, wages, growth, ability to raise capital investments etc. While determining the non-injurious price for the like article for the domestic industry, the Authority considered the optimum cost of production for the domestic industry taking into account the normated best consumption norms and the actual price of the raw materials during the POI which went into the production of the product under consideration. Also, while arriving at the injury margin, the Designated Authority took into account optimum capacity utilization for arriving at a fair selling or non-injurious price. Authority also holds that analysis of various parameters affecting domestic industry would be more appropriate by comparing performance in the investigation period with reference to immediate preceding years, particularly when the imports have started in the investigation period itself.

11. On the basis of the evidence available, the following parameters show existence of injury to the domestic industry caused by dumped imports from China :-

- a. Imports from the subject countries increased significantly from nil till before the beginning of the investigation period to about 60.77 MT in the investigation period. There were no imports of the subject goods prior to the investigation period.
- b. The share of the imports from China in total demand of the subject goods in India increased significantly considering the short period in which the imports have taken place.
- c. There was decline in production, sales and capacity utilization of the domestic industry. Though the production of the domestic industry increased from 377

MT in 98-99 to 434 MT in the investigation period (on annualized basis), the same declined in the investigation period when compared to 1999-00 and 2000-01 (582 MT and 537 MT respectively).

The capacity utilization of the domestic industry declined from 59.9% in 1998-99 to 53.62% in the investigation period. The decline is more significant as compared to 1999-00 and 2000-01 (71.8% and 66.3% respectively).

Even though production show increase in the investigation period as compared to 1998-99, it is found that the domestic industry has enhanced capacity in 1999-2000 as compared to 1998-99 by 28%.

- d. There has been a decline in the selling prices, which is more prominent towards the end of the period of investigation on account of the cheap imports. Selling price of the domestic industry on indexed basis declined from 100 in 1998-99 to 87% (in the investigation period).
- e. The Authority notes that even though the cost of production has also declined (by 5%), the decline in selling price is more than the decline in the cost of production.
- f. The landed value of imports was significantly below the selling prices of the domestic industry, resulting in significant price undercutting in the Indian market. The level of price undercutting varied between 23% to 34% in the investigation period. Further, the Authority notes that the significant price undercutting has to be seen alongwith the decline in the selling prices.
- g. The price at which the domestic industry has been forced to sell did not permit recovery of full cost of production, causing financial losses to the domestic industry.
- h. The landed value of imports was significantly below the cost of production and non-injurious price of the domestic industry causing price suppression/depression in the Indian market.
- i. Profitability of the domestic industry has been affected. The selling price of the domestic industry was about 14% lower as compared to cost of production.

12. Causal Link: In determining whether material injury to the domestic industry was caused by the dumped imports, the Authority took into account the following facts:-

- i. Substantial imports of subject goods from China at dumped prices forced the domestic industry to reduce its selling prices to un-remunerative level which has resulted in a situation of price undercutting in the Indian market.
- ii. The imports from China suppressed the prices of the product in the Indian market to such an extent that the domestic industry was prevented from

recovering its full cost of production and earn a reasonable profit from the sale of subject goods in India.

- iii. The imports from China have taken over significant market share in a very short period. As a direct consequence, the domestic industry lost significant market share. The decline in the market share of the domestic industry resulted in decline in their sales and hence production and capacity utilization.
- iv. The landed price of imports from China was below the selling price of the domestic industry. As a direct consequence, the domestic industry was forced to significantly reduce the prices.
- v. The imports from China forced the domestic industry to sell the product at prices below its cost of production and non-injurious price.
- vi. The price undercutting which the domestic industry has faced from the imports has directly resulted in significant increase in the imports.
- vii. There are no known imports of the subject goods from other countries. Demand of the product has not shown a declining trend. Further, no arguments with regard to technological upgradation, etc. have been brought out by any opposing interested party.

13. The substantial increase in import of subject goods from China at low price which is not sufficient to recover full cost of production resulting in severe price undercutting clearly establishes the causal link between the injury already suffered as well as threat of further injury being faced by the domestic industry with the phenomena of dumping of subject goods from China in a very short period. The Authority, therefore, confirms its conclusion in preliminary findings that there is an obvious causal link between the dumping of subject goods from China and the injury being caused to the domestic industry during the period of investigation.

G. INTEREST OF INDIAN INDUSTRY AND OTHER ISSUES

14. It has been argued by some of the importers and users that the interest of the users of Diclofenac Sodium should be taken into account while imposing anti dumping duty. They have requested to reconsider the imposition of anti dumping duty on Chinese Diclofenac Sodium since the threat of imports serves as a check on the prices of the local producers.

15. In this context the Authority reiterates paragraphs 18 and 19 of its preliminary findings wherein it is stated that the purpose of anti dumping duties in general is to eliminate dumping which is causing injury to the domestic industry and to re-establish a situation of open and fair competition in the Indian market which is in the general interest of the country. The Authority recognizes that the imposition of anti dumping

duties might affect the price levels of the products manufactured using Diclofenac Sodium and consequently might have some influence on relative competitiveness of these products. However, fair competition on the Indian market will not be reduced by the anti dumping measures. On the contrary, imposition of anti dumping measures would remove the unfair advantages gained by dumping practices, would prevent the decline of the domestic industry and help maintain availability of wider choice to the consumers of subject goods. The Authority notes that the imposition of anti dumping measures would not restrict imports from China PR in any way, and therefore, would not affect the availability of the product to the consumers. The consumers could still maintain two or even more sources of supply.

16. Evidently, imposition of anti dumping duty would not adversely affect the consumers/users of Diclofenac Sodium in India in the long run. It would rather lead to survival of domestic industry and keep wider choice to the consumers in India. The very purpose of the imposition of anti dumping duty is to create situation of fair competition in the Indian market in which both domestic producers and foreign producers can compete. Imposition of anti dumping duty would not lead to restriction on imports in any way.

H. FINAL FINDINGS

17. The Authority has, after considering the foregoing, come to the conclusion that :

- i. Diclofenac Sodium has been exported to India from China below its normal value;
- ii. The Indian industry has suffered injury;
- iii. The injury has been caused by the dumped imports from China;

18. The Authority proposes to recommend the amount of anti-dumping duty equal to the margin of dumping or less, which if levied, would remove the injury to the domestic industry. For the purpose of determining injury, the landed price of imports is proposed to be compared with the non injurious selling price of the petitioner companies determined for the period of investigation. Landed value of imports for the purpose has been determined as the assessable value as determined by the Customs under the Customs Act, 1962 and all duties of customs except duties under sections 3, 3A, 8B, 9 and 9A of the Customs Tariff Act, 1975.

19. The Authority recommends imposition of definitive anti dumping duty of US\$ 3.06 per/kg on all imports from Peoples' Republic of China Diclofenac Sodium following under Custom Heading 2942

20. Subject to the above, the Authority confirms the preliminary findings dated 31st October, 2001.

21. An appeal against this order shall lie before the Customs, Excise and Gold (Control) Appellate Tribunal in accordance with the Act, *supra*.

L V SAPTHARISHI,
Designated Authority