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F. No. 06/53/2020-DGTR
Government of India
Ministry of Commerce & Industry
Department of Commerce
(Directorate General of Trade Remedies)
Jeevan Tara Building, 4th Floor, 5, Parliament Street, New Delhi -110001

Dated: 24th February, 2022

FINAL FINDINGS

Case No. ADD (OI) - 45/2020

Subject: Anti-dumping investigation (Material-Retardation) concerning imports of "N, N'-Dicyclohexyl Carbodiimide (DCC)" originating in or exported from China PR.

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

A. BACKGROUND OF THE CASE

2. M/s Clean Science and Technology Limited, erstwhile known as Clean Science and Technology Private Limited (hereinafter also referred to as the "applicant" or the "petitioner" or the "domestic industry" or the "DI") has filed an application before the Designated Authority (hereinafter also referred to as the "Authority") seeking initiation of an anti-dumping investigation concerning imports of "N, N'-Dicyclohexyl Carbodiimide (DCC)" (hereinafter also referred to as "subject goods" or the "product under consideration" or the "PUC") originating in or exported from China PR (hereinafter also referred to as "subject country"), citing reason of material retardation.
3. The Authority, on the basis of prima facie evidence submitted by the applicant issued a public notice vide Notification No. 06/53/2020-DGTR dated 25th February, 2021, published in the Gazette of India, Extraordinary, initiating an anti-dumping investigation in accordance with Rule 5 of the Rules to determine the existence, degree and effect of the alleged dumping of the subject goods, originating in or exported from the subject country, and to recommend the amount of anti-dumping duty, which, if levied, would be adequate to remove the alleged injury in the form of material retardation to the domestic industry.

B. PROCEDURE

4. The procedure described hereinbelow has been followed with regard to the 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 Rule 5(5) of the Anti-Dumping Rules.
b. The Authority issued a public notice dated 25th February, 2021, published in the Gazette of India, Extraordinary, initiating an investigation concerning the imports of the subject goods originating in or exported from the subject country.
c. The Authority sent a copy of the initiation notification to the Embassy of the subject country in India, known producers and exporters from the subject country, known importers / users and the domestic industry as well as the other domestic producers as per the information made available to it by the applicant, and requested them to make their views 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 the subject country in India, in accordance with Rule 6(3) of the Rules. A copy of the non-confidential version of the application was circulated to the other interested parties.
e. The Embassy of the subject country in India was also requested to advise the producers / exporters in 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 to them along with the names and addresses of the known producers/exporters from the subject country.
f. The Authority forwarded a copy of the public notice initiating an anti-dumping investigation to the following known producers/exporters in the subject country and offered an opportunity to them to make their submissions known in accordance with Rule 6(2) of the Rules:

    i. Shandong Huihai Pharmaceutical and Chemical Company Limited
    ii. Zhanhua Jiashi Chemical Company Limited
    iii. Zibo Tiantangshan Chemical Company Limited
    iv. Zhejiang Tianyu Pharmaceuticals Company Limited
    v. Xinjiang Da Jiang Run Yang Chemical Company Limited
    vi. Farmasino Pharmaceuticals (Jiangsu) Company Limited

g. In response to the initiation notification of the subject investigation, the following producer from the subject country has responded by filing a questionnaire response:

    i. Shandong Huihai Pharmaceutical and Chemical Company Limited.

h. The Authority sent Questionnaires to the following known importers / users of the subject goods in India, calling for necessary information in accordance with Rule 6(4) of the Rules.

    i. Aurobindo Pharma Limited
    ii. Mylan Laboratories Limited
    iii. Hetero Drugs Limited
    iv. Dasami Lab Private Limited
    v. Srini Pharmaceuticals Private Limited
    vi. Honour Lab
    vii. Msn Laboratories Private Limited
    viii. Indswift
    ix. Aarti Industries Limited

x. SMS Lifescience

i. The Authority also sent initiation notification to the following associations asking them to intimate all their members regarding the initiation of the investigation and submit response or comments, if any.

i. Indian Chemical Council (ICC)
ii. Federation of Indian Chamber of Commerce and Industry (FICCI)
iii. Associated Chambers of Commerce and Industry of India (ASSOCHAM)
iv. Confederation of Indian Industry (CII)

j. None of the importers and users or associations have submitted response to the questionnaires issued to them by the Authority:

k. The period of investigation (POI) which was proposed by the applicant for the purpose of present investigation was 1st January, 2020 to 30th June, 2020 (6 months). However, the Authority has considered the POI as 1st January, 2020 to 31st December, 2020 (12 months). The injury investigation period covers the periods April 2017-March 2018, April 2018- March 2019, April 2019-December 2019 and the POI.

l. The transaction-wise imports data for the period of investigation and the preceding three years was procured from the DGCI&S. The Authority has relied upon data of DGCI&S for calculating the volume and value of the imports of the subject goods in India.

m. Further information was sought from the applicant to the extent deemed necessary. The verification of the data provided by the domestic industry was conducted to the extent considered necessary for the purpose of the present investigation.

n. The Authority made available the non-confidential version of the submissions made by the various interested parties. A list of all the interested parties was uploaded on the DGTR website along with the request therein to all of them to email the non-confidential version of their submissions to all the other interested parties since the public file was not accessible physically due to the ongoing Covid-19 global pandemic.

o. The domestic industry has submitted the financial data duly certified by the Chartered/Cost Accountant. The non-injurious price (NIP) has been determined based on the examination carried out on the basis of actual data/information available read with the first-year project report furnished by the applicant. The Authority computed the NIP on the basis of the comparison of the actual data available and the first year of the project report. Optimization is done on the basis of the best capacity achieved out of four quarters during the POI and compared with first year project report of the POI period. Optimum cost of production and the cost to make & sell the subject goods in India as per the information furnished by the domestic industry and in accordance with Generally Accepted Accounting Principles (GAAP) and Annexure III to the Rules. Such non-injurious price compared to the actual efficient plant capacity at ***% has been considered to ascertain whether anti-dumping duty lower than the dumping margin would be sufficient to remove material retardation injury to the domestic industry.

p. In accordance with Rule 6(6) of the Rules, the Authority provided opportunity to the interested parties to present their views orally in a public hearing held on 20th August, 2021 through video conferencing. The parties, which presented their views in the oral hearing, were requested to file written submissions of the views expressed orally, followed by rejoinder submissions.

q. A disclosure statement containing the essential facts in this investigation which would have been formed the basis of the final findings was issued to the interested parties on

03.02.2022 and the interested parties were allowed time to comment on the same. The comments on the disclosure statement received from the interested parties have been considered, to the extent found relevant, in this final findings notification.

r. The submissions made by the interested parties, arguments raised and the information provided by the various interested parties during the course of the investigation, to the extent the same are supported with evidence and considered relevant to the present investigation, have been appropriately considered by the Authority in these Final Findings.

s. The Authority, during the course of the investigation, satisfied itself as to the accuracy of the information supplied by the interested parties, which forms the basis of these Final Findings, to the extent possible and verified the data / documents submitted by the domestic industry to the extent considered relevant and possible.

t. The information provided by the interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has accepted the confidentiality claims wherever warranted and such information has been considered as confidential and not disclosed to the other interested parties. Wherever possible, the parties providing the information on confidential basis were directed to provide sufficient non-confidential version of the information filed on confidential basis.

u. Wherever an interested party has refused access to, or has otherwise not provided necessary information during the course of the present investigation, or has significantly impeded the investigation, the Authority has considered such party as non-cooperative and recorded these Final Findings on the basis of the facts available.

v. *** in the NCV of Final Findings represents information furnished by an interested party on confidential basis and so considered by the Authority under the Rules.

w. The exchange rate adopted by the Authority for the subject investigation is 1 US$ = Rs. 74.86.

C. PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE

5. At the stage of initiation, the product under consideration was defined as follows:

> *"3. The product under consideration in the present application is Dicyclohexylcarbodiimide, also known as N, N'-Dicyclohexyl Carbodiimide, DCC and 1, 3-Dicyclohexylcarbodiimide (DCC), originating in or exported from the subject country. DCC is an organic compound with chemical formula (C6H1 1N)2C. It is colourless to pale yellow in colour, occurring in liquid or semi solid form and has a sweet odor. Its primary use is to couple amino acids during artificial peptide synthesis. The low melting point of this material allows it to be melted for easy handling. It is highly soluble in dichloromethane, tetrahydrofuran, acetonitrile and dimethylformamide but insoluble in water and the Chemical Abstracts Service (CAS) Registry number for the subject goods is 538-75-0."*

C.1. Submissions of the other interested parties

6. The other interested parties have not made any submissions with respect to the scope of the product under consideration and the like article.

C.2. Submissions of the domestic industry

7. The domestic industry has submitted as follows with regard to the scope of the product under consideration and the like article:

a. The product under consideration is mainly used in amikacin, glutathione dehydrants, as well as in the synthesis of acid anhydride, aldehyde, ketone, isocyanate.
b. It is also used in peptide and nucleic synthesis. It is a key raw material in antiretroviral drugs like Valaliclovir and Amikacin.
c. The product under consideration produced by the applicant is the like article to the products imported from the subject country.
d. Prior to the establishment of the domestic industry's plant, there was no other producer of the product under consideration, and the entire domestic demand for the product under consideration was catered to by the imports.
e. Considering the high prices of the imports of the product under consideration, the domestic industry began production of the product in order to sell it at a lower price.

C.3. Examination by the Authority

8. The product under consideration in the present investigation is Dicyclohexylcarbodiimide, also known as N, N'-Dicyclohexyl Carbodiimide, DCC and 1, 3-Dicyclohexylcarbodiimide (DCC), originating in or exported from the subject country. DCC is an organic compound with chemical formula (C6H1 1N)2C. It is colourless to pale yellow in colour, occurring in liquid or semi-solid form and has a sweet odor. Its primary use is to couple amino acids during artificial peptide synthesis. The low melting point of this material allows it to be melted for easy handling. It is highly soluble in dichloromethane, tetrahydrofuran, acetonitrile and dimethylformamide but insoluble in water and the Chemical Abstracts Service (CAS) Registry number for the subject goods is 538-75-0.
9. This product is mainly used in amikacin, glutathione dehydrants as well as in the synthesis of acid anhydride, aldehyde, ketone and isocyanate. It is also used in the synthesis of peptides, esters, ethers, nitriles etc. It is a key raw material in antiretroviral drugs like Valaliclovir and Amikacin. DCC is widely used in medical, health, make-up and biological products.
10. The PUC is classified under different custom tariff classification such as 29212990, 29241900, 29242990, 29251900, 29252910, 29252990, 29333990 and 29419090. The PUC, however, has also been imported under many other ITC (HS) codes. The Authority has considered all such ITC (HS) codes. The customs classification is only indicative and not binding in any manner on the scope of the product under consideration.
11. The Authority notes that the applicant is the first producer of the product under consideration in the country and prior to the commencement of the applicant's production, the entire demand for the product under consideration was being met by the imports, most of which came from the subject country. There are no other producers of the product under consideration in the country, and the present application is being filed for examination of the material retardation to the establishment of an industry.
12. The Authority notes that the domestic industry has claimed that the subject goods, which are being dumped into India, are identical to the goods produced by the domestic industry. There are no differences either in the technical specifications, quality, functions or end-users of the dumped imports and the domestically produced subject goods and the product under consideration manufactured by the applicant. The two are technically and commercially substitutable and hence should be treated as 'like articles'

under the Anti-Dumping Rules. Therefore, for the purpose of the present investigation, the subject goods produced by the applicant in India are being treated as 'Like Article' to the subject goods being imported from the subject country.

D. SCOPE OF THE DOMESTIC INDUSTRY & STANDING

D.1. Views of other interested parties

13. The other interested parties have not made any submissions with regard to the scope and standing of the domestic industry.

D.2. Submissions of the domestic industry

14. The domestic industry has submitted as follows with regards to the scope of the domestic industry and the standing:

a. The applicant declared commercial production in November, 2019 but the production of the product under consideration only began in January, 2020.
b. Prior to the applicant, there were no other producers of the product under consideration in India, and the entire demand for the subject goods was met with the imports from the other countries.
c. The applicant, being the first and the only producer of the product under consideration, holds 100% share in the total domestic production of the subject goods in India.
d. The evidence available on record indicates that the applicant satisfies the requirements of standing as per Rule 2(b) and Rule 5 of the Rules.

D.3. Examination by the Authority

15. Rule 2(b) of the Anti-Dumping 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*".

16. The present investigation has been initiated pursuant to a petition filed by Clean Science and Technology Limited (previously known as Clean Science and Technology Private Limited) as the sole producer of the subject goods in India. The petitioner declared commercial production in November, 2019. However, it actually began production in January, 2020.
17. The Authority notes that the present application is being filed for examination of the material retardation to the establishment of an industry. The Indian industry for the product under consideration is at a nascent stage and is yet to establish itself in the market. As indicated by the applicant, there are no other producers of the product under consideration in India. The applicant is the sole producer of the subject goods, and therefore, holds 100% of the share of total domestic production of the subject goods.

There is also neither any support nor opposition to the present application. The respondent also does not contest the claim of the applicant that it is the sole producer of the subject goods in India. Therefore, the Authority holds that the domestic industry satisfies the necessity of standing as per Rule 2(b) read with Rule 5(3) of the Rules.

E. CONFIDENTIALITY

E.1. Submissions of the other interested parties

18. The other interested parties have submitted as follows with regards to confidentiality.
    a. The petition filed by the domestic industry does not disclose certain essential information which would allow the respondents to adequately make their case.
    b. The domestic industry has claimed excessive confidentiality in its application regarding the costing information.
    c. The non-confidential version of the petition does not allow the interested parties to exercise their right to defense.
    d. Section VI – costing information filed by the domestic industry does not furnish any information whatsoever.
    e. The petitioner has claimed that annual reports and balance sheets are *business proprietary information, not amenable to summarization.* However, it was submitted that the annual reports and the balance sheets are filed before the Ministry of Corporate Affairs annually and are available in the public domain.
    f. Contrary to the petitioner's claim, the respondent does not provide any year-on-year rebate and, therefore, the information in the response filed by the exporter is not insufficient.
    g. The producer has provided all the necessary information in both confidential and non-confidential versions and, therefore, the claim of excessive confidentiality is false.

E.2. Submissions of the domestic industry

19. The domestic industry has submitted as follows with regards to the confidentiality:
    a. The claims that the petitioner has not filed information as required under the relevant Trade Notices is false and must be rejected.
    b. The information contained in the costing formats is business sensitive information that cannot be disclosed to the parties. However, the domestic industry has submitted non confidential versions of the same.
    c. The financial statements produced before the Ministry of Corporate Affairs are not the same as those required by the Authority for trade remedy investigations. The Authority requires more detailed financial statements.
    d. The exporter has suppressed material information and made false claims that it had not received any rebate.
    e. The producer has claimed excess confidentiality and has not disclosed the information regarding corporate structure and shareholding pattern that is available in the public domain.
    f. The producers have failed to disclose the information regarding the volume and the value of the export/import of the subject goods.

E.3. Examination by the Authority

20. The Authority made available the non-confidential version of the information provided by the various parties to all the other interested parties as per Rule 6(7).
21. With regard to confidentiality of the information, Rule 7 of Anti-Dumping Rules provides as follows:

> "***7. Confidential Information:***
> *(1) Notwithstanding anything contained in sub-rules (2), (3) and (7) of rule 6, sub-rule (2) of rule 12, sub-rule (4) of rule 15 and sub-rule (4) of rule 17, the copies of applications received under sub -rule (1) of rule 5, or any other information provided to the designated authority on a confidential basis by any party in the course of investigation, shall, upon the designated authority being satisfied as to its confidentiality, be treated as such by it and no such information shall be disclosed to any other party without specific authorization of the party providing such information.*
> *(2) The designated authority may require the interested parties providing information on confidential basis to furnish non-confidential summary thereof and if, in the opinion of a party providing such information, such information is not susceptible of summary, such party may submit to the designated authority a statement of reasons why summarisation is not possible.*
> *(3) Notwithstanding anything contained in sub-rule (2), if the designated authority is satisfied that the request for confidentiality is not warranted or the supplier of the information is either unwilling to make the information public or to authorize its disclosure in a generalized or summary form, it may disregard such information.*"

22. The information provided by the interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claims. On being satisfied, the Authority has accepted the confidentiality claims, wherever warranted and such information has been considered confidential and not disclosed to the other interested parties. Wherever possible, the parties providing information on confidential basis were directed to provide sufficient non-confidential version of the information filed on confidential basis. The revised NCV format H was circulated to the other interested parties for clear understanding of the data furnished by the DI on the instructions of the Authority.
23. A list of all the registered interested parties was uploaded on the DGTR's website along with the request therein to all of them to email the non-confidential version of their submissions to all the other interested parties since the public file is not accessible physically due to ongoing Covid-19 global pandemic.

F. MISCELLANEOUS ISSUES

F.1. Submissions of the other interested parties

24. The other interested parties have made the following miscellaneous submissions:
    a. The Authority has initiated the present investigation with insufficient facts, and has made a wrong assessment for the initiation of the investigation.
    b. The requirement as per the relevant provisions of law is that the Authority must be satisfied as to the adequacy of the sufficient information.

c. The initiation notification shows that the Authority was satisfied as to the existence of 'prima facie' evidence rather than 'sufficient' evidence. This was allegedly the wrong basis to initiate an investigation.
d. The Authority is required to assess the adequacy and accuracy of the information provided in the application and determine whether the information provided is sufficient.
e. Reliance was placed on WTO Appellate Body reports to argue that the application fails to meet the requirements necessary for the purpose of initiation of this investigation.
f. If the Authority imposes an anti-dumping duty, this would lead to a monopoly in the domestic market since there are no other domestic producers of the subject goods.

F.2. Submissions of the domestic industry

25. The domestic industry has made the following miscellaneous submissions:
    a. The domestic industry is the first and the only industry engaged in the production of the subject goods in India.
    b. The domestic industry declared commercial production in the November, 2019, but commenced commercial production only in January, 2020.
    c. Prior to the domestic industry's entry into the market, the price of the PUC, which was imported from China was Rs. 1,117/kg. However, after the establishment of the domestic industry's plant, the price of the imported goods has drastically reduced.
    d. There is clear indication that the producers are engaging in predatory pricing, and their intention is to drive the domestic industry out of the market.
    e. The domestic industry is in a position to meet the entire demand of the subject goods in India.
    f. The price of the subject goods exported by the domestic industry is much higher than the price at which the subject goods have been sold within the country.
    g. The Authority is required to only determine the accuracy of the information provided in the application and is not required to conduct a detailed inquiry before initiation of an investigation.
    h. The domestic industry has relied upon the orders of the Tribunal to argue that the Authority must only satisfy itself of a prima facie case before initiation of an investigation.
    i. The monopoly prices were charged by the importers of the subject goods before the domestic industry commenced commercial production.

F.3. Examination by the Authority

26. The Authority notes that the present investigation is one for material retardation to the establishment of an industry. Therefore, the Authority would conduct the injury analysis on that basis. The Authority will also assess whether the domestic industry has been established or not.
27. With respect to the claim of the domestic industry that the prices of the imported subject goods decreased after it commenced commercial production, the Authority has examined the same and has conducted a detailed injury analysis.
28. With respect to the contention that the Authority has initiated the present investigation based on 'prima facie' evidence and not 'sufficient evidence', the Authority notes that

prior to initiation of the present investigation, the Authority conducted a prima facie scrutiny of the application filed by the domestic industry and upon being satisfied as to the sufficiency of the information/evidence provided to the Authority, it decided to initiate the investigation. The relevant portion of the initiation notification is as under:

> ***Initiation of Anti-Dumping Investigation***
> *16. On the basis of the duly substantiated written application by or on behalf of the domestic industry, and having satisfied itself, on the basis of the* ***prima facie*** *evidence submitted by the domestic industry, about dumping of the product under consideration originating in or exported from the subject country, material retardation/injury to the domestic industry and causal link between such alleged dumping and material retardation/injury, and in accordance with Section 9A of the Act read with Rule 5 of the Rules, the Authority, hereby, initiates an investigation to determine the existence, degree and effect of any alleged dumping in respect of the product under consideration originating in or exported from the subject country and to recommend the amount of anti-dumping duty, which if levied, would be adequate to remove the material retardation/injury to the domestic industry.*

29. The Authority further notes that the mere use of the words 'prima facie' in the initiation notification rather than 'sufficient evidence' as claimed by the producer/exporter does not have a bearing on the outcome of the Authority's assessment of the application. The Authority finds that this contention of the producer is without any basis. The Authority notes that apart from merely making the claim that a 'prima facie' satisfaction is not the same as 'sufficiency' requirement, the producer/exporter has not provided any indication of the manner in which the Authority had faulted in proposing to initiate the investigation. Nor has the exporter/producer indicated the defects/deficiencies in the application of the domestic industry which warrant its rejection. Therefore, this claim of the exporter/producer is without any basis.
30. Notwithstanding the use of the word 'prima facie' in the initiation notification, the Authority reiterates that it had initiated the present investigation after complying with all the legal requirements contained in the Statutes, and the relevant judicial pronouncements.
31. With regards to the submission that the anti-dumping duty will result in a monopoly for the domestic industry, the Authority notes that before the domestic industry entered the market, there were no Indian manufacturers of the subject goods. The entire demand for the subject goods was being catered to by the imports, mostly from the subject country. Therefore, the importers from the subject country almost had a monopoly in the Indian market for the subject goods before the domestic industry entered the market. The domestic industry's entry and existence in the market would only enrich the competition between the exporters and the domestic industry.

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

32. Under Section 9A(1)(c) of the Act, the normal value in relation to an article means:

> *"(c) "normal value", in relation to an article, means –*
> *(i) the comparable price, in the ordinary course of trade, for the like article when destined for consumption in the exporting country or territory as determined in accordance with the rules made under sub-section (6); or*

(ii) when there are no sales of the like article in the ordinary course of trade in the domestic market of the exporting country or territory, or when because of the particular market situation or low volume of the sales in the domestic market of the exporting country or territory, such sales do not permit a proper comparison, the normal value shall be either-

(a) comparable representative price of the like article when exported from the exporting country or territory to an appropriate third country as determined in accordance with the rules made under sub-section (6); or

(b) the cost of production of the said article in the country of origin along with reasonable addition for administrative, selling and general costs, and for profits, as determined in accordance with the rules made under sub-section (6):

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

G.1. Submissions of the other interested parties

33. The other interested parties have submitted as follows with regards to the normal value, the export price and the dumping margin.
    a. Designation of China PR as a Non-Market Economy (NME) is not in accordance with applicable laws and procedures.
    b. The relevant provision in Section 15 of China's accession protocol which allowed for treatment of China PR as an NME has expired on 11th December, 2016. Therefore, there are currently no provisions prevailing which allow the Authority to treat China PR as an NME in any investigation.
    c. China has been treated as a Market Economy by the US and EU.
    d. Even if the Authority determines that China is a non-market economy for the purpose of this investigation, the Authority cannot directly resort to calculating the normal value based on the third methodology in Paragraph 7 of Annexure I to the Rules (i.e., *on any other reasonable basis*).
    e. The basic principles of treaty interpretation require China's Accession Protocol to be interpreted in a fair manner.
    f. The issuance of a supplementary questionnaire to prove market economy status is against India's international obligations.

G.2. Submissions of the domestic industry

34. The domestic industry has submitted as follows with regard to the normal value, the export price and the dumping margin:

a. China PR should be treated as an NME in accordance with Article 15(a)(i) of China's Accession Protocol, and the normal value should be determined in terms of Annexure I, Rule 7 of the Rules.
b. Paragraph 8 of Annexure I to the Rules leaves no choice to the Authority to presume that China is an NME, unless the exporters prove otherwise. Therefore, regardless of

the expiry of Section 15(a)(ii) of China's accession protocol, the Authority is bound by Paragraph 8 to presume that China is an NME.

c. Market economy status is not automatic upon the expiry of Section 15(a)(i), but rather it would require China's compliance with the other provisions of Section 15 of the Accession Protocol.
d. The market economy claim of the exporter should not be accepted, as there is significant government intervention in several important sectors of the Chinese economy, warranting the maintenance of non-market economy status of China.
e. The market economy status cannot be granted unless the responding Chinese exporters pass the test in respect of each and every parameter laid down under the rules.
f. The market economy claim of the producers from China was rejected on the same basis in several recent investigations.
g. The market economy status cannot be given unless the responding Chinese exporters establish that the prices of major inputs substantially reflect market values.
h. The market economy treatment must be rejected if the Chinese exporters are unable to establish that their books are consistent with the International Accounting Standards.
i. It is not for the Authority to establish that the responding companies are operating under market economy environment. But it is for the responding Chinese exporters to establish that they are operating under the market economy conditions.
j. The market economy status cannot be granted unless the responding company and its group as a whole make the claim. If one or more companies forming part of the group has not filed the response, the claim for market economy status must be rejected.
k. The normal value in China can thus be determined on the basis of the cost of production in India, duly adjusted, including the selling, general and administrative expenses and profit as per the consistent practice of the DGTR.
l. The responding exporter has not claimed market economy treatment by filing the necessary responses to the questionnaire. Therefore, it must be presumed that the subject country is an NME.
m. As per paragraph 7 of Annexure I to the Rules, the normal value in cases of NME must be constructed by: (a) price or constructed price in a market economy third country; (b) export prices from third country to other country, including India; (c) any other reasonable basis.
n. Since there is no information to construct the normal value through the first two methods, the domestic industry has proposed construction of the normal value based on the third method, i.e., *on any other reasonable basis*.
o. Owing to the dumped imports of the subject goods in India, the price paid in India is not reflective of the appropriate price. Accordingly, the normal value must be determined based on the price payable in India.
p. The petitioner has proposed to consider the cost of production of the domestic industry, along with a reasonable addition for profits.

G.3. Examination by the Authority

35. The Authority had sent questionnaires to the known producers / exporters from the subject country, advising them to provide the information in the form and manner prescribed by the Authority. Only Shandong Huihai Pharmaceutical and Chemical Co., Ltd. has filed the response to the exporters' questionnaire. However, the supplementary questionnaire has not been filed.

G.3.1. Determination of the Normal Value

Examination of Market Economy Treatment

36. The Authority had sent questionnaires to the known producers / exporters from the subject country, advising them to provide the information in the form and manner prescribed by the Authority. None of the producers have filed response to the supplementary questionnaire for claiming the market economy treatment.

Normal value for China PR

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

> **"***Article VI of the GATT 1994, the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ("Anti-Dumping Agreement") and the SCM Agreement shall apply in proceedings involving imports of Chinese origin into a WTO Member consistent with the following:*
>
> *(a) In determining price comparability under Article VI of the GATT 1994 and the Anti-Dumping Agreement, the importing WTO Member shall use either Chinese prices or costs for the industry under investigation or a methodology that is not based on a strict comparison with domestic prices or costs in China based on the following rules:*
>
> *(i) If the producers under investigation can clearly show that market economy conditions prevail in the industry producing the like product with regard to the manufacture, production and sale of that product, the importing WTO Member shall use Chinese prices or costs for the industry under investigation in determining price comparability;*
>
> *(ii) The importing WTO Member may use a methodology that is not based on a strict comparison with domestic prices or costs in China if the producers under investigation cannot clearly show that market economy conditions prevail in the industry producing the like product with regard to manufacture, production and sale of that product.*
>
> *(b) In proceedings under Parts II, III and V of the SCM Agreement, when addressing subsidies described in Articles 14(a), 14(b), 14(c) and 14(d), relevant provisions of the SCM Agreement shall apply; however, if there are special difficulties in that application, the importing WTO Member may then use methodologies for identifying and measuring the subsidy benefit which take into account the possibility that prevailing terms and conditions in China may not always be available as appropriate benchmarks. In applying such methodologies, where practicable, the importing WTO Member should adjust such prevailing terms and conditions before considering the use of terms and conditions prevailing outside China.*
>
> *(c) The importing WTO Member shall notify methodologies used in accordance with subparagraph (a) to the Committee on Anti-Dumping Practices and shall notify methodologies used in accordance with subparagraph (b) to the Committee on Subsidies and Countervailing Measures.*
>
> *(d) Once China has established, under the national law of the importing WTO Member, that it is a market economy, the provisions of subparagraph (a) shall be terminated provided that the importing Member's national law contains market economy criteria as of the date of accession. In any event, the provisions of subparagraph (a)(ii) shall expire 15 years after the date of accession. In addition,*

should China establish, pursuant to the national law of the importing WTO Member, that market economy conditions prevail in a particular industry or sector, the non-market economy provisions of subparagraph (a) shall no longer apply to that industry or sector.

38. The applicant has cited and relied upon Article 15(a)(i) of China's Accession Protocol. The applicant has claimed that producers in China PR must be asked to demonstrate that market economy conditions prevail in their industry producing the like product with regard to the manufacturing, the production and the sale of the product under consideration. It has been stated by the applicant that in case the responding Chinese producers are not able to demonstrate that their costs and price information are market-driven, the normal value should be calculated in terms of provisions of Para 7 and 8 of Annexure- I to the Rules.
39. As per the current international framework emerging from Section 15 of China's Accession Protocol, there is no restrictions in treating China as an NME. It is noted that while the provision contained in Section 15 (a)(ii) has expired on 11.12.2016, the provision under Article 2.2.1.1 of WTO read with the obligation under Section 15(a)(i) of the Accession Protocol requires the criteria stipulated in paragraph 8 of Annexure I of the Rules to be satisfied through the information/data to be provided in the supplementary questionnaire on claiming market economy treatment. Furthermore, Paragraph 8 of Annexure I create a presumption that China PR must be treated as a Non-Market Economy. Therefore, the burden is on the respondent to prove that Market Economy Conditions prevail in the subject country. It is noted that since the responding producer/exporter from China PR has not submitted the response to MET/Supplementary questionnaire in the form and manner provided, the normal value computation is required to be done as per the provisions of paragraph 7 of Annexure I of the Rules.
40. As none of the producers from China PR has claimed determination of the normal value on the basis of their own data/information, the normal value has been determined in accordance with paragraph 7 of Annexure I of the Rules, which reads as under:

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

41. The Authority notes that paragraph 7 of Annexure I stipulate three methods of constructing the normal value for Non-Market Economies: (a) on the basis of price or constructed value in a market economy third country; (b) export price from a third country to other countries, including India; and (c) on any other reasonable basis. The

Authority notes that under the provisions of para (7), the normal value must first be determined on the basis of the price or constructed value in a surrogate country, or the price of the exports from such country to other countries, including India. However, when such basis is not possible, only then the Authority can determine the normal value on any other reasonable basis, including the price paid or payable in India.

42. The Supreme Court has held that as per paragraph 7 of Annexure I to the Rules, the Authority may move to the alternative methods only when it has exhausted the first two methods, that is, the price or the constructed value in a surrogate country, or the price of the exports from a surrogate country to third countries, including India. However, it is to be noted that no information/evidence has been provided by the parties for the construction of the normal value on the basis of the first and the second methods. There is no public data available to the Authority to determine the normal value from the above two methods. In the absence of the above information/evidence, it is not possible for the Authority to determine normal value on the basis of the first or second method. Therefore, the Authority has decided to construct normal value based on the third method, i.e., *on any other reasonable basis including the price actually paid or payable in India*. The Authority has constructed the normal value on the basis of the price paid or payable in India.
43. The Authority has constructed the normal value taking into consideration the highest achieved capacity out of the four quarters during the POI (i.e., ***% capacity utilization). The costs and other expenses have been normated to reflect the highest performance out of the four quarters during the POI. The normal value determined accordingly has been mentioned in the dumping margin table below.

G.3.2. Determination of the Export Price

Export price for Shandong Huihai Pharmaceutical and Chemical Co., Ltd.

44. Shandong Huihai Pharmaceutical and Chemical Co., Ltd. has exported *** MT of the subject goods directly to the unrelated customer in India during the POI. The exporter has claimed adjustments on account of inland transports, port expenses, credit cost, custom declaration expenses, ocean freight and marine insurance wherever applicable, which has been accepted by the Authority. The net export price determined accordingly has been mentioned in the dumping margin table below.

Export price for non-cooperating producers/exporters from China PR

45. The export price for all other producers and exporters has been determined on the basis of the facts available.

G.3.3. Determination of Dumping Margin

46. Considering the normal value and the export price for the subject goods, the dumping margin for the subject goods from the subject country is to be determined as follows:

SN	Name of Producer	Constructed Normal Value @ ***% plant capacity	Net Export Price	Dumping Margin	Dumping Margin	Dumping Margin

		(USD/MT)	(USD/MT)	(USD/MT)	(%)	(Range)
China PR						
1.	Shandong Huihai Pharmaceutical and Chemical Co., Ltd	***	***	***	***	0-10
2	Non-cooperative / residual exporters	***	***	***	***	10-20

H. EXAMINATION OF INJURY AND CAUSAL LINK

H.1. Submissions by the other interested parties

47. The other interested party has submitted as follows with regards to the injury and the causal link:

a. The domestic industry cannot claim injury on the basis of material retardation to the establishment of an industry since it has already commenced commercial production, and is, therefore, not an 'unestablished industry'.
b. The Authority must first examine whether the petitioner was yet to find a way into the market or was already established.
c. The injury caused to the petitioner is due to start-up costs, price of raw materials and the buyer's market.
d. The data provided by the petitioner only indicates the normal start up conditions, and the petitioner cannot immediately achieve sales and the market share.
e. There is no increase in the volume of the imports from the subject country during the POI.
f. The petition itself indicates that there is negative price undercutting during the POI. This indicates that the landed price is higher than the non-injurious price.
g. Since this is the case of material retardation, there would be no information regarding the production, capacity utilisation, sales, inventories, market share and the employment. Therefore, there is no basis to claim injury.
h. The exporter reduced its prices after the domestic industry entered the market so that it can compete with the prices of the domestic industry. Therefore, it is the domestic industry that is the price setter, and the exporter is merely responding to the prices set by the domestic industry.
i. The costs of the domestic industry are inflated due to inefficiencies associated with a new plant, low-capacity utilisation and the start-up costs.
j. The domestic industry has admitted that its manufacturing plant was shut down during March, 2020 and April, 2020 due to lockdown. Therefore, the injury to the domestic industry is due to Covid-19 related restrictions.

H.2. Submissions by the domestic industry

48. The domestic industry has made the following submissions with regard to injury and the causal link:

a. Since the domestic industry has just commenced commercial production, it is at a nascent stage of production and, therefore, it cannot be considered to be an established industry.
b. The analysis must be that of material retardation to the establishment of an industry.

c. For material retardation criteria to apply, the industry must be unestablished. It is not necessary that an unestablished industry is the one where no production has commenced.
d. There may be two types of unestablished industries: (a) a developing industry which has not yet commenced commercial production but has made a commercial commitment to commence production; and (b) a nascent industry that has commenced commercial production but is yet to establish itself in the market.
e. The domestic industry began commercial production in November, 2019 and is yet to establish itself in the market.
f. In examining whether a nascent industry has been established or not, the Authority is required to look at the time for which the industry has been operational, whether there is steady production, the amount of production as compared to capacity, whether the domestic industry has achieved its breakeven point and whether the production is intermittent.
g. The volume of the imports increased over the injury period even though the domestic industry set up its plant and commenced production.
h. There is a substantial increase in the volume of the imports during the month of June, 2020, six months after the domestic industry commenced commercial production.
i. Despite the fact that the domestic industry has the capacity to cater to 89% of the total domestic demand, the volume of the imports accounts for almost all of the consumption in India.
j. As compared to 2018-19, the price of the subject goods decreased by 51% during the POI. Further, there was a reduction in price by 25% between November, 2019 and June, 2020.
k. There is positive price undercutting, and this undercutting is not allowing the domestic industry to achieve its targeted prices as per its projection.
l. The import price is much below the projected selling price at 70% capacity. Furthermore, the subject goods are being imported into the country at below the cost of production.
m. Even taken at the optimal capacity utilization of 70%, there is significant price underselling.
n. The economic injury parameters have been assessed based on the projections. There are significant losses, negative return on investments and cash profits even at 70% capacity utilization.
o. The domestic industry is a new entrant in the market and, therefore, it would be forced to set the prices according to the existing market players.
p. The export price of the domestic industry is much higher than the domestic sales price in India.
q. The subject imports are below the costs of sales of the domestic industry.
r. Owing to the dumped imports, the domestic industry has been able to achieve a capacity utilization of only ***%. It has achieved a market share of only ***% when it has the capacity to cater to almost 90% of the domestic market.
s. Even the post-POI data shows that the market share of the domestic industry is less than one-fourth. The domestic industry has been selling at a loss and its export sales are more profitable than the domestic sales.
t. The price of the major raw material of the subject good has increased beyond the landed price of the goods.
u. The purchase orders from the domestic industry's customers/user industry are much below the cost of sales even at 70% capacity utilization.

H.3. Examination by the Authority

49. The Authority has examined the arguments and counterarguments of the interested parties with regard to injury to the domestic industry. The Authority notes that the present case is one for material retardation of the establishment of an industry and not of material injury. There is a need to address certain legal aspects regarding the concept of 'material retardation' to the establishment of an industry prior to proceeding with the injury analysis.

H.3.1. *Material retardation of establishment of industry*

50. Article 3 of the WTO Agreement on the implementation of Article VI of the GATT provides no definition for 'material retardation'. The footnote 9 to Article 3 merely states as follows:

> *Under this Agreement the term "injury" shall, unless otherwise specified, be taken to mean material injury to a domestic industry, threat of material injury to a domestic industry or material retardation of the establishment of such an industry and shall be interpreted in accordance with the provisions of this Article.*

51. Similar is the case with the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, wherein Annexure II merely clubs 'material injury', 'threat to material injury' and 'material retardation' under the definition of 'injury'. There is no further explanation as to what constitutes material retardation to the establishment of an industry.
52. However, it is clear that 'material retardation' applies only to unestablished industries and not industries that are fully established. This is true because it is not logical for the Authority to find that a domestic industry was being injured by the dumped imports (which presupposed that such an industry was already established) and at the same time that the establishment of a domestic industry was materially retarded by those imports. The meaning of 'unestablished industries' has also not been provided in the Anti-Dumping Agreement, or the Act and the Rules. However, there has been a proposal at the WTO for amendment of the Anti-Dumping Agreement which provides some clarity as to the meaning of material retardation and establishment of the industry. The relevant portion of the draft proposal is as under:

> *"3.9. A determination of material retardation of the establishment of a domestic industry shall be based on facts and not merely on allegation, conjecture or remote possibility. An industry may be considered to be in establishment where a genuine and substantial commitment of resources has been made to domestic production of a like product not previously produced in the territory of the importing Member, but production has not yet begun or has not yet been achieved in commercial volumes. In making a determination whether an industry is in establishment, and in examining the impact of dumped imports on the establishment of that industry, the authorities may take into account evidence concerning, inter alia, installed capacity, investments made and financing obtained, and feasibility studies, investment plans or market studies.*

53. Although the above extract is merely a proposal and not binding on the Authority, it would serve as a guidance in conducting an examination of material retardation. Furthermore, the above proposal has been relied upon by the DGTR in the investigations concerning SBR Rubber and Fibre Boards.
54. From the above extract, it may be possible to discern the meaning of 'material retardation' and 'unestablished industry' or 'establishment of an industry'. The Authority notes that it is not necessary that an 'unestablished industry' should be one where production has not commenced. There could be circumstances where an industry has already commenced commercial production but it has not achieved commercial presence in the market. This may be considered to be an 'unestablished industry' as well and the material retardation analysis would be necessary in such cases. This is implicit from the second sentence to proposed Article 3.9 and the footnote No. 14 of the WTO's proposed amendment extracted above. Furthermore, in the SBR investigation the Authority has noted as follows:

"*71. While the test of material injury or threat of material injury can be applied to an existing domestic industry or to the extent of operations that the domestic industry has had in the past, in the case of domestic industry yet to be fully established, the test to be applied is that of material retardation. The Authority notes that the following two conditions are relevant where the test of material retardation may be applicable:*
(i) in case of "developing industry" which has not yet begun commercial production but substantial commitment to commence production has been made;
(ii) in case of "nascent industry" whose commercial production although has begun but the industry has yet to find its place in the market."

55. The United States follows a similar approach in material retardation investigations. The practice mentioned in the US Handbook on procedure is:

"Petitioners may allege that the establishment of an industry in the United States is materially retarded by reason of imports, or sales (or the likelihood of sales) for importation, of the subject merchandise. The statute does not define "material retardation;" however, in considering this issue in past cases, the Commission has begun by examining the question of whether the U.S. industry is "established." If U.S. producers have commenced production of the product, the industry is considered to be established if U.S. producers have "stabilized" their operations. In making this assessment, the Commission has examined the following factors: (1) when the U.S. industry began production; (2) whether the production has been steady or start-and-stop; (3) the size of domestic production compared to the size of the domestic market as a whole; (4) whether the U.S. industry has reached a reasonable "break- even point;" and (5) whether the activities are truly a new industry or merely a new product line of an established firm. If the industry is not established, the Commission considers whether the performance of the industry reflects normal start-up difficulties or whether the imports of the subject merchandise have materially retarded the establishment of the industry."

56. In Morocco – Anti-Dumping Measures on Certain Hot-Rolled Steel from Turkey, the WTO Panel has given some guidance on determining whether there is establishment of an industry. The Panel observed that Article 3.1 does not prescribe a specific

methodology for determining whether an industry has been established. The Authority is allowed to use any reasonable methodology which is based on assumptions and inferences. However, these inferences must be based on facts and positive evidence.

57. The issue before the Panel was regarding the "establishment" of an industry for the purpose of determination of "material retardation". The Panel observed that the Authority has the discretion in deciding which parameters are relevant to determine whether a new industry has been established. One of the parameters considered to be relevant by the Panel was whether the production constitutes a new 'product line' of an existing company. If an existing industry/company merely introduces a new product line, this may not be considered as an "unestablished industry". To examine this factor, the Authority would have to look into the degree of overlap in the use of overall infrastructure of the producer (including customer contacts, distribution channels, existing productive, commercial, research, and administrative assets etc.). A greater degree of overlap with the old infrastructure would mean that it is less likely that a new industry has been established. The relevant portion of the Panel's observation is as under:

7.211. We note, at the outset, that we do not pronounce ourselves on these factors or whether they are either prescriptive or definitive for determining whether the domestic industry is unestablished. We accept that a relevant factor may be whether the domestic industry is the only producer of the like product in question in the market. ***At the same time, we note that whilst there could be only one producer of that product in the market, where that product constitutes merely a new "product line" of an existing industry and benefits from the existing production, marketing and other operations, such shared operations may play an important role in determining whether a distinct new industry has been established. If an existing industry chooses to introduce a new product unlike any other product currently being produced, the introduction of that new product will not necessarily result in the creation of a new industry. It may still be perceived as the introduction of a new product line into the existing industry, depending on the degree to which the overall infrastructure (including the productive, commercial, research, and administrative assets) of the existing industry is implicated. The greater the degree of overlap in the use of overall infrastructure, the less likely the perception that the introduction of the new product marks the establishment of a new industry****. The fact that a domestic industry is defined by Article 4.1 of the Anti-Dumping Agreement by reference to like product, and that there are no pre-existing producers of that like product in the domestic market, does not preclude the possibility of that domestic industry utilizing existing infrastructure, such as customer contacts and distribution channels, in its introduction of that like product in the domestic market.*

58. Therefore, one of the aspects that has to be seen in determining whether or not the industry is in existence is whether the product constitutes merely a new product line within an existing industry. If this is the case, the Authority must analyse the level of overlap with the overall use of the existing infrastructure in the new product line.
59. With regard to the injury assessment, the WTO Panel has given the following guidance:

7.233. ***Further, we consider that the obligation in Article 3.4 to evaluate each of the listed 15 injury factors applies as much to an investigation of injury in the form of material retardation as it does to that of material injury or threat of***

material injury. *This is so for the following reason: Article 3.1, read in light of footnote 9 of the Anti-Dumping Agreement, requires that a determination of material retardation be based on positive evidence and objective examination of inter alia "the consequent impact of [dumped] imports on domestic producers". As explained above, the examination of the impact of dumped imports on domestic industry, in turn, must, in accordance with the terms of Article 3.4, include an evaluation of all relevant factors including the 15 injury factors listed in that provision. It follows that a determination of material retardation must be based on an examination of the impact of dumped imports on domestic producers, and that examination must include an evaluation of the 15 injury factors listed in Article 3.4. Our approach is consistent with the finding by the panel in Egypt – Steel Rebar that "the Article 3.4 factors must be examined in every investigation, no matter which particular manifestation or form of injury is at issue in a given investigation". Nothing in the text of Article 3 supports Morocco's argument that an investigating authority is not required to address the Article 3.4 factors "with the same rigor" in a material retardation analysis as in a material injury analysis.*"

H.3.2 ***Material retardation to the establishment of the Domestic Industry in the present investigation***

60. The Authority notes that prior to the domestic industry's entry into the market for the subject goods, the entire demand for the subject good in India was being satisfied by the imports, mostly from the subject country. The domestic industry had set up its plant in November, 2019, but commenced commercial production in January, 2020. There is no other domestic producer of the subject goods in India. In order to ascertain whether the domestic industry is an unestablished industry or an existing industry, the Authority has examined the following factors:

a. **When the domestic industry began its production?**

61. As submitted by the domestic industry, its manufacturing plant was set up in November, 2019, but commercial production commenced only in January of 2020. The production of the subject goods began only during the POI, and there have been no other domestic producers of the subject goods. Although the production of the subject goods has commenced, the production has not reached substantial commercial volumes. Therefore, it is clear that the domestic industry has been in existence for a very short period of time, and cannot be considered to be an existing industry on this parameter.

b. **Whether the production of the subject good is merely a new product line in an existing industry?**

62. The WTO Panel has observed that if the production of the industry is merely a new product line in an existing industry, it may not be a case of material retardation. However, the Panel stressed that what is important is the degree to which the existing infrastructure is utilized for the production of the product under consideration. The applicant was incorporated in the year 2006, and its first plant was set up in 2009. Apart from the subject goods, the applicant also produces various other products, and also exports its products to 25 other countries. The applicant has two units operating in Kurkumbh MIDC, Pune. The applicant has stated that for the production

of the subject goods, it proposes to set up a new automated plant in the same premises of its existing facilities. The details of the plant and machinery that is proposed to be set up is given in the project report submitted by the applicant. The Authority notes that the PUC is a newly introduced chemical product among a series of other products manufactured by the domestic industry. As submitted by the domestic industry, its manufacturing plant of the PUC was set up in November, 2019, but commercial production commenced only in January, 2020. Therefore, the domestic industry has been in existence for a very short period of time, and cannot be considered to be an existing industry on this parameter.

63. As noted above, the WTO Panel has observed that what is important is not the introduction of a new product line itself, but rather the degree of overlap with the existing infrastructure of the industry. The Authority also notes that since a new plant/production line is being set up to manufacture the product under consideration in the same premises, the domestic industry may be making utilization of its existing management/infrastructure to manufacture the product under consideration.

c. Size of production compared to the size of the domestic market as a whole

64. The applicant is the only Indian producer of the subject goods. However, the market share claimed by the applicant during the POI is merely ***%, and the imports from the subject country were more than 4 times the total domestic production. As per the DGCI&S data including the various HS codes under which the PUC was imported, the market share of the applicant reflects as ***% during the POI.

d. **Stability of production**

65. The Authority notes that the production of the applicant has commenced only during the POI, and the production on a month-on-month basis does not give indication that the production of the applicant has been increasing. The applicant has also indulged in the exports of the PUC during the POI.

66. The Authority notes that since the manufacturing plant of the PUC was set up in November, 2019 but commercial production commenced only in January, 2020, the domestic industry has been in existence for a very short period of time and, therefore, it cannot be considered to be an existing industry on this parameter. The Authority notes though the company is undisputedly an existing and established company, engaging in the production and sale of a number of other products, which are not the subject matter of the present investigation, yet at the same time, there is no dispute that as far as the product under consideration is concerned, the applicant company is the sole and new producer of the same in the country. As far as the production and sale of the product under consideration is concerned, the same is undisputedly a new product and with no past history of production. Further, the domestic industry is required to be considered in relation to a company engaged in production of like article in India. The rules require that the effect of the dumped imports should be assessed in relation to the domestic production of the like article when available data permits separate identification of that production. Thus, material retardation to establishment of the domestic industry is required to be examined with reference to the product and not with reference to the company. It is quite possible that the company is already well-established. What is however relevant is whether the industry with reference to the product under consideration is well established. The establishment of the industry with reference to PUC is required to be seen considering the length of operations of the company

concerning the production and sale of the product in the country. Undisputedly, on this account, there is no dispute that the industry is a new industry with regard to product under consideration.

67. The Authority has examined four parameters (time period of production, overlap of existing infrastructure, size of production and stability of production) which are relevant for determining whether or not the industry has been established. Based on a thorough assessment of all four parameters, the Authority concludes that the Applicant is a not an established industry, but is a new and nascent industry in the production of the product under consideration.

68. The Authority conducted the injury analysis based on the legal position discussed above. The Authority notes that the domestic industry has not been able to provide the information regarding injury parameters since it has been in existence for a very short period of time. The domestic industry has, therefore, proposed to conduct the injury analysis based on projections of its performance as per its project report. The examination by the Authority has been made on the basis of best achieved plant capacity (i.e., ***% capacity utilization) among all four quarters during the POI. Although this methodology in evaluating the injury parameters would take into consideration start-up costs, inefficiencies and low-capacity utilization associated with new industries, since the domestic industry was not in existence during the injury investigation period, the Authority has examined each parameter on a quarterly basis during the POI. The injury analysis made by the Authority hereunder addresses the various submissions made by the interested parties.

I. ASSESSMENT OF DEMAND / APPARENT CONSUMPTION

69. For the purpose of the present investigation, on the basis of the data received from the DGCI&S, the Authority has defined the demand or the apparent consumption of the product concerned in India as the sum of the domestic sales of the domestic industry and the imports under various tariff heads from all sources. The Authority notes that there is some data variation between the data provided in application and the DGCI&S data received by the DGTR. The Authority considered the total imports made under different tariff heads, which was not available in the data provided to the applicant by the DGCI&S. The demand so assessed is given in the table below.

Particulars	**Unit**	**2017-18**	**2018-19**	**Apr'19-Dec'19 (A)**	**Apr'19-Dec'19**	**POI**	**POI (Q1)**	**POI (Q2)**	**POI (Q3)**	**POI (Q4)**
Sales of domestic industry	Kgs	-	-	-	-	***	***	***	***	***
Trend	*Indexed*	-	-	-	-	-	*100*	*1,387*	*7,386*	*5,808*
Subject imports	Kgs	***	***	***	***	***	***	***	***	***
Trend	*Indexed*	*100*	*125*	*66*	*66*	*130*	*100*	*91*	*96*	*85*
Other Countries imports	Kgs	***	-	***	***	***	***	***	-	***

Trend	*Indexed*	*100*	-	*168*	*168*	*1*	*100*	*10*	-	*5*
Total Demand	Kgs	***	***	***	***	***	***	***	***	***
Trend	*Indexed*	*100*	*125*	*66*	*66*	*144*	*100*	*94*	*116*	*101*
Market share of domestic industry	%	-	-	-	-	***	***	***	***	***
Trend	*Indexed*	-	-	-	-	*100*	*100*	*1,469*	*6,380*	*5,766*
Market share of Subject imports	%	***	***	***	***	***	***	***	***	***
Trend	*Indexed*	*100*	*100*	*99*	*99*	*91*	*100*	*96*	*83*	*84*
Market share of other countries imports	%	***	-	***	***	***	***	***	-	***
Trend	*Indexed*	*100*	-	*252*	*336*	*0*	*100*	*10*	-	*5*

70. It is seen that the total demand for the subject goods has increased from 2017-18 to 2018-19. In the calendar year 2019, the demand for the subject goods has been low. However, the demand has increased during the POI to the highest level. Although the volume of the imports overall has dipped during the year 2019, the volume of the imports from the subject country during the POI is substantially higher than the sales of the domestic industry. Furthermore, the domestic industry has submitted that it has the capacity to cater to 89% of the total domestic demand. However, due to the imports, the domestic industry has only ***% share in the domestic market. The Authority however notes that with respect to the total demand in India, the domestic industry may not cater to 89% of the domestic demand. Even at DI's most optimum level of production during the POI, (i.e., at 70% capacity utilization), the production of the domestic industry would be *** Kg, which is about ***% of the total demand that is also achievable in the fifth year only as per the project report furnished by the DI. Moreover, taken at 80% capacity utilization, the production of the domestic industry would be *** Kg. It is seen that even at an overestimated capacity utilization, the volume of subject imports is much higher than the potential domestic production. However, the capacity to cater the domestic market by the domestic industry even at 80% capacity utilization would be ***% only.

J. VOLUME EFFECT OF THE DUMPED IMPORTS

71. With regard to the volume of the dumped imports, the Authority is required to consider whether there has been a significant increase in the dumped imports, either in absolute terms or relative to production or consumption in India. For the purpose of the injury

analysis, the Authority has relied upon the transaction wise import data procured from DGCI&S. The import volumes of the subject goods from the subject country and share of the dumped imports during the injury investigation period are as follows:

Particulars	**Unit**	**2017-18**	**2018-19**	**Apr'19-Dec'19 (A)**	**Apr'19-Dec'19**	**POI**	**POI (Q1)**	**POI (Q2)**	**POI (Q3)**	**POI (Q4)**
Subject Country- China PR	Kgs	8,03,800	10,06,767	5,30,080	3,97,560	10,45,780	2,81,407	2,55,675	2,69,434	2,39,264
Trend	*Indexed*	*100*	*125*	*66*	66	*130*	*100*	*91*	*96*	*85*
Others	Kgs	3,996	-	6,701	5,026	24	21	2	-	1
Trend	*Indexed*	*100*	-	*168*	168	*1*	*100*	*10*	-	*5*
Total Imports	Kgs	8,07,796	10,06,767	5,36,781	4,02,586	10,45,804	2,81,428	2,55,677	2,69,434	2,39,265
Trend	*Indexed*	*100*	*125*	*66*	66	*129*	*100*	*91*	*96*	*85*
Subject Imports in relation to										
Total imports	%	100	100	99	99	100	100	100	100	100
Trend	*Indexed*	*100*	*100*	*99*	*132*	*100*	*100*	*100*	*100*	*100*
Indian Production	%	-	-	-	-	***	***	***	***	***
Trend	*Indexed*	-	-	-	-	*100*	*100*	*87*	*53*	*45*
Indian Demand	%	***	***	***	***	***	***	***	***	***
Trend	*Indexed*	*100*	*100*	*99*	*132*	*91*	*100*	*96*	*83*	*84*

72. The Authority notes that the volume of imports of the product under consideration from the subject country has been substantial throughout the investigation period. Major imports are from the subject country only. During the time when the production of the domestic industry commenced, the imports from the subject country were more than *** times the domestic production. However, it is seen that DI is able to secure almost ***% market share in the total demand.

K. PRICE EFFECT OF THE DUMPED IMPORTS

73. In terms of Annexure II (ii) of the Rules, with regard to the effect of the dumped imports on prices, the Authority is required to consider whether there has been a significant price undercutting by the dumped imports as compared with the price of the like product in India, or whether the effect of such imports is otherwise to depress prices to a

significant degree or prevent price increases, which otherwise would have occurred, to a significant degree. In this regard, a comparison has been made between the landed price of the imports from the subject country with the net sales realization of the domestic industry for the subject goods.

a. **Price undercutting**

74. To determine the price undercutting, a comparison has been made between the landed value of the product and the average selling price of the domestic industry, net of all rebates and taxes, at the same level of trade.

China	UoM	POI
Net Sales Realization	Rs. /Kg	***
Landed Value	Rs. /Kg	589
Price Undercutting	Rs. /Kg	(***)
Price Undercutting	%	(***)%

75. It is noted that price undercutting is negative for the subject country in the period of investigation. However, the domestic industry has stated that it has been forced to sell the product under consideration at a very low price due to the allegedly dumped imports. The domestic industry has stated that it intended to sell the product under consideration at Rs. 900 per Kg, but was constrained to sell it at a lower price. Furthermore, the domestic industry submits that the exporters/producers initially sold the subject goods at a much higher price, but have reduced the price after the domestic industry entered the market. The Authority notes that DI is selling the PUC in the market below the landed value of the PUC from the subject country.
76. The Authority further notes that even when the price undercutting is negative, still the DI can suffer injury as it has been forced to sell the product under consideration at a very low price due to the allegedly dumped imports.

b. **Price suppression/depression**

77. In order to determine whether the effect of the imports is to depress prices to a significant degree or prevent price increases which otherwise would have occurred, the costs and prices over the injury period have been compared with the landed value.

Particulars	**Unit**	**2017-18**	**2018-19**	**2019-20**	**Apr' 20 – Dec' 20 (POI)**	**POI (A)**
Landed Value	Rs/Kg	600	1,281	1,231	589	589
Trend	Indexed	100	213	205	98	98
Net selling price of domestic industry	Rs/Kg				***	***
Trend	Indexed	-	-	-	100	100
Cost of Sales	Rs/Kg	-	-	-	***	***
Trend		-	-	-	100	100

78. The domestic industry has projected a price of Rs. 900 per kg. However, the landed value of imports is Rs. 589 per kg in the period of investigation. The Authority focuses

on such reasons as well that the domestic industry is in a situation of price suppression and not able to raise the sales price to the projected level. However, it is noted that DI is not in a situation of price depression since the landed value is higher than selling price of DI.

L. ECONOMIC PARAMETERS OF THE DOMESTIC INDUSTRY

79. Annexure II to the Rules provides that the examination of the impact of the dumped imports on the domestic industry should include an objective and unbiased evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including actual and potential decline in sales, profits, output, market share, productivity, return on investments or utilization of capacity, factors affecting domestic prices, the magnitude of the margin of dumping, actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital investments. The various injury parameters relating to the domestic industry are discussed below.

a. Capacity, production, capacity utilization and sales

80. The performance of the domestic industry with regards to capacity, production, capacity utilization and sales is as follows:

Particulars	**Unit**	**2017-18**	**2018-19**	**Apr'19-Dec'19 (A)**	**Apr'19-Dec'19 (A)**	**POI**	**POI (Q1)**	**POI (Q2)**	**POI (Q3)**	**POI (Q4)**
Capacity Per annum	Kg	-	-	-	-	***	***	***	***	***
Trend	*Indexed*	-	-	-	-	*100*	*100*	*100*	*111*	*133*
Production	Kg	-	-	-	-	***	***	***	***	***
Trend	*Indexed*	-	-	-	-	*100*	*100*	*105*	*180*	*187*
Capacity Utilization	%	-	-	-	-	***	***	***	***	***
Trend	*Indexed*	-	-	-	-	*100*	*100*	*105*	*162*	*140*
Domestic Sales	Kg	-	-	-	-	***	***	***	***	***
Trend	*Indexed*	-	-	-	-	*100*	*100*	*1,387*	*7,386*	*5,808*

81. The Authority notes that the domestic industry has a total capacity of ***Kg. The capacity utilization of the domestic industry has remained at near to projected level of ***% during the POI.

b. Market share

82. The market share of the domestic industry and the subject imports is compared below. There are no other domestic producers of the product under consideration.

Particulars	Unit	2017-18	2018-19	Apr'19-Dec'19 (A)	Apr'19-Dec'19 (A)	POI	POI (Q1)	POI (Q2)	POI (Q3)	POI (Q4)
Domestic Industry	%	-	-	-	-	***	***	***	***	***
Trend	*Indexed*	-	-	-	-	*100*	*100*	*1,469*	*6,380*	*5,766*
Subject Countries	%	***	***	***	***	***	***	***	***	***
Trend	*Indexed*	*100*	*100*	*99*	*99*	*91*	*100*	*96*	*83*	*84*
Other countries	%	***	-	***	***	***	***	***	-	***
Trend	*Indexed*	*100*	-	*252*	*252*	*0*	*100*	*10*	-	*5*
Total	%	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00

83. It is seen that the market share of the domestic industry has started growing after the commencement of the commercial production. The market share of the domestic industry during the period of investigation was only ***%.

c. **Inventories**

84. The inventories with the domestic industry over the injury period are as below:

Particulars	Unit	2017-18	2018-19	Apr'19-Dec'19	Apr'19-Dec'19 (A)	POI	POI (Q1)	POI (Q2)	POI (Q3)	POI (Q4)
Opening	Kg	-	-	-	-	-	-	***	***	***
Closing	Kg	-	-	-	-	***	***	***	***	***
Average Inventory	Kg	-	-	-	-	***	***	***	***	***
Trend	*Indexed*	-	-	-	-	*100*	*100*	*141*	*225*	*340*

85. It is seen that the inventories of the domestic industry have shown a consistent pattern of growth throughout the period of investigation, indicating an accumulation of stock on a quarterly basis.

d. **Profitability, cash profits and return on capital employed**

86. The profitability, return on investment and cash profits of the domestic industry over the injury period are as follows:

Particulars	Unit	2017-18	2018-19	Apr'19-Dec'19	Apr'19-Dec'19 (A)	POI	POI (Q1)	POI (Q2)	POI (Q3)	POI (Q4)
Cost of sales	₹/Kg	-	-	-	-	***	***	***	***	***
Trend	*Indexed*	-	-	-	-	*100*	*100*	*100*	*100*	*100*
Selling price	₹/Kg	-	-	-	-	***	***	***	***	***

Trend	*Indexed*	-	-	-	-	*100*	*100*	*89*	*78*	*78*
Profit per unit	₹/Kg	-	-	-	-	(***)	(***)	(***)	(***)	(***)
Trend	*Indexed*	-	-	-	-	*(100)*	*(100)*	*(307)*	*(524)*	*(532)*
Total Profit/(Loss)	Rs. Lacs	-	-	-	-	(***)	(***)	(***)	(***)	(***)
Trend	*Indexed*	-	-	-	-	*(100)*	*(100)*	*(4,259)*	*(38,675)*	*(30,906)*
Cash Profit	Rs. Lacs	-	-	-	-	***	_	_	_	_
Trend	*Indexed*	-	-	-	-	*(100)*	_	_	_	_
Profit before Interest and tax	Rs. Lacs	-	-	-	-	(***)	_	_	_	_
Trend	*Indexed*	-	-	-	-	*(100)*	_	_	_	_
Return on Capital Employed	%	-	-	-	-	(***)	_	_	_	_
Trend	*Range*	-	-	-	-	*(0-10)*	_	_	_	_

87. The cost of sales of the domestic industry is Rs. ***/Kg. However, the selling price of the domestic industry during the POI (and in each quarter) is below the cost of sales – indicating that the domestic industry is incurring losses. The Authority notes that the profits per unit and the return on capital employed have not only remained negative but also been below the projected levels throughout the POI.

e. **Employment, wages and productivity**

88. The Authority has examined the information relating to employment, wages and productivity, as given below.

Particulars	**Unit**	**2017-18**	**2018-19**	**Apr'19-Dec'19**	**Apr'19-Dec'19 (A)**	**POI**	**POI (Q1)**	**POI (Q2)**	**POI (Q3)**	**POI (Q4)**
No. of Employees	Nos.	-	-	-	-	***	***	***	***	***
Trend	*Indexed*	-	-	-	-	*100*	*100*	*122*	*116*	*113*
Salaries & Wages	Rs. Lacs	-	-	-	-	***	***	***	***	***
Trend	*Indexed*	-	-	-	-	*100*	*100*	*1,240*	*5,779*	*4,520*
Productivity per day	Kg/Day	-	-	-	-	***	***	***	***	***
Trend	*Indexed*	-	-	-	-	*100*	*100*	*105*	*180*	*187*

89. It is seen that the number of employees of the domestic industry has mostly remained the same. The productivity per day has increased on a quarterly basis.

f. **Growth**

90. It is noted that both the volume and profitability parameters of the domestic industry have witnessed negative growth in the period of investigation. The applicant has claimed that such decline in the period of investigation is due to the impact of Covid-19 pandemic. However, the plant of the domestic industry was shut down only for 10-12 days due to Covid-19 pandemic and the total domestic demand has increased to its highest level during the POI.

g. **Ability to raise capital investment**

91. The Authority notes that the ability of the domestic industry to raise capital investment has not been affected due to the subject imports in the POI.

h. **Factors affecting prices**

92. The Authority notes that the volume of imports during the period of investigation was significant and, therefore, may have created a strain on the prices of the domestic industry. The selling price of the domestic industry may have been affected by the subject imports.

i. **Magnitude of dumping**

93. It is noted that the subject goods are being dumped into India with respect to actual performance of the applicant industry and also when optimized to the quarterly capacity utilization during the POI.

M. MAGNITUDE OF INJURY MARGIN

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

SN	Name of producers	Non-injurious price	Landed price	Injury margin	Injury margin	Injury margin
		(USD/MT)	(USD/MT)	(USD/MT)	(%)	(Range)
China PR						
1	Shandong Huihai Pharmaceutical and Chemical Co., Ltd.	***	***	***	***	10-20
2	Non-cooperative / residual exporters	***	***	***	***	20-30

N. NON-ATTRIBUTION ANALYSIS

95. As per the Rules, the Authority, inter-alia, is required to examine any known factors other than the dumped imports which at the same time are injuring the domestic

industry, so that the injury caused by these other factors may not be attributed to the dumped imports. The factors which may be relevant in this respect include, inter-alia, the volume and prices of the imports not sold at dumped prices, contraction in demand or changes in the patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and the productivity of the domestic industry. It has been examined below whether factors other than dumped imports could have contributed to the injury, which has resulted in the material retardation to the establishment of the domestic industry:

a. **Volume and price of imports from third country**

96. The Authority notes that the imports from third country are miniscule and do not affect the analysis whatsoever. The imports from third country after the year 2017-18 have been nil, and the subject country is the only country that is exporting the subject goods into India.

b. **Contraction in demand**

97. It is noted that the demand of the subject goods was increasing at a healthy rate. The demand for the subject goods during the POI is far higher than any previous years examined.

c. **Changes in pattern of consumption**

98. There has been no material change in the pattern of consumption of the product under consideration which is likely to cause injury to the domestic industry.

d. **Trade restrictive practices and competition between the foreign and domestic producers**

99. The imports of the subject goods are not restricted in any manner and are freely importable in the country.

e. **Startup costs, inefficiencies associated with newly established industries**

100. The Authority notes that the present investigation is one for material retardation. The domestic industry has declared commercial production in November, 2019, but commenced commercial production in January, 2020. In the case of material injury investigation, the Authority examines the injury period of 3 years and the POI for determination of injury, however, since the industry has been established only in 2019-20 and no such material injury data is available. Therefore, the domestic industry has produced evidence of injury parameters on a quarterly basis during the POI. The domestic industry is at a nascent stage of production, and is incurring operational and startup costs associated with a newly established industry, and if the Authority constructs the normal value taking into considerations the highest achievable capacity at the projected level of 70%, it would reduce the cost. The Authority has conducted the injury analysis based on the best achieved capacity of the domestic industry among all four quarters of the POI (i.e., ***% capacity utilization). The Authority notes that

start-up costs, inefficiencies and low-capacity utilization associated with new industries is a relevant factor in determining causality of the injury.

f. **Developments in technology**

101. The Authority notes that there has been no material change in the technology for the production of the product.

g. **Export performance**

102. The domestic industry has stated that it exports its products to over 25 countries across the globe. Further, the domestic industry also exported significant quantities of the subject goods manufactured by it during the POI. However, the Authority considered only the domestic sales for injury analysis.

h. **Productivity**

103. The Authority notes that the productivity of the domestic industry was maintained at the projected levels during the POI even though there was shutdown of plant for almost 10-12 days during the POI.

O. POST-DISCLOSURE STATEMENT COMMENTS:

104. The other interested parties have not submitted any post disclosure statement comments. Only the domestic industry has made the following comments on the disclosure statement issued by the Authority. The submissions made by the domestic industry are summarised as under:

a. Shandong Huihai Pharmaceutical and Chemical Co. Ltd. provides a rebate of US$1 per kg to Indian customers, and the contrary claims by the exporter is false.
b. The volume of the subject imports has increased by 30% during the POI as compared to the base year.
c. Although the imports have not depressed the prices of the domestic industry, the low-priced imports have forced the domestic industry to sell the subject goods below its target price.
d. The month-wise data shows that price undercutting is positive for 6 months, and negative for 5 months.
e. Despite the capacity utilisation of the domestic industry being at nearly the projected levels, it is able to sell only 47% of its production in the domestic market.
f. Even with all the domestic sales and the export sales combined, the inventories of the domestic industry stand at 38% of the total production.
g. The domestic industry is unable to capture the potential market share due to the dumping of the subject goods. Even at the projected capacity utilisation, the domestic industry would lose market share.
h. The domestic industry has the potential to cater to 69% of the demand in India at optimum capacity utilisation. However, during the POI, the market share of the domestic industry was 12%, and during the post-POI period, market share was 24%.

i. The total production capacity of the domestic industry is enough to cater to almost 90% of total domestic demand.
j. Even at 80% capacity utilisation, the market share of the domestic industry would be 5.86 times its current market share.
k. Even at the optimum capacity utilisation, the domestic industry will incur losses and record negative return on investment.
l. The imports have increased significantly even after the domestic industry had commenced production.
m. The import prices were reduced by 52% after the domestic industry entered the market. As a result, the domestic industry was forced to sell below its cost of production.
n. The imports are priced below the domestic industry's actual as well as potential cost of production and sales.
o. The price of the domestic industry's goods is far below its targeted price.
p. While sales of the applicant have shown positive growth, the profitability parameters have declined.
q. The price of the major raw material, i.e., cyclohexylamine has increased, and is now priced higher than the landed value of the subject goods.
r. The domestic industry has also not been able to benefit from the decline in mark up of raw materials, i.e., cyclohexylamine.
s. The Authority can also consider the post-POI data to evaluate the injury parameters.
t. Post-POI data has also been considered by the Authority in investigations concerning 'Chlorinated Polyvinyl Chloride Resin', 'Styrene Butadiene Rubber and Resin' or 'other organic substances bonded wood'.
u. Post-POI data will establish the following: -
    i. The market share of the domestic industry is only 24%, while imports command three-fourths of the market.
    ii. Price of the imports has declined further, adding to the strain on prices of the domestic industry.
    iii. The recent orders placed by customers on the domestic industry indicate that the prices agreed in the post-POI transactions are much lower than the price during the POI, and consequently, the loss is much higher.
    iv. The performance of the domestic industry has significantly deteriorated in terms of profits, cash profits and return on investment.
    v. Despite the ample demand of the product under consideration in India, the domestic industry is not able to make sufficient number of sales in India. The domestic industry's export sales are significantly high since the export markets are more attractive than the Indian market.
v. The applicant is among the largest global manufacturers of several drugs produced by it, including the product under consideration. The applicant is new in the product, and is not new in the industry.
w. The applicant deals in high-quality products, as a result of which, it is engaged in business with well-known Indian and global customers, and has supplied the product under consideration to its existing customers.
x. The adverse performance of the domestic industry is not on account of any inefficiencies or start-up costs. This is evident from the fact that the plant

would have been sufficiently profitable if the import prices prevailing earlier had sustained.

y. The imposition of the duty in the present investigation is in the interest of the public due to the following reasons:
   i. It would provide a level playing field for the newly established domestic producer to become viable and competitive;
   ii. It would reduce the cost of the product under consideration to the consumer as the imports would now not be priced exorbitantly; and
   iii. It would ensure that there is a stable domestic producer of the product.

z. If the domestic industry's production of the product under consideration is unviable at a nascent stage, it may be compelled to shut down its plant.

aa. The applicant has recently set up capacities in India by investing a large sum of money. Therefore, there is a need to protect the investments made by the Applicant.

bb. Before the domestic industry commenced production, the exporters had intentionally charged exorbitant prices for the subject goods because of the lack of competition in India.

cc. The applicant is a company that adopts environmentally friendly production processes, and has due regard to sustainable development. Therefore, the imposition of the duty would be in the interest of the public at large.

dd. The domestic industry is the sole producer of the product under consideration in India, and if the situation of dumping persists, it would be constrained to close its operations. In case of shut down of the Applicant's plant, the consumers in India would be entirely dependent on the exporters.

ee. The domestic industry has the capacity to cater to a substantial portion of the demand in India, which would advance India's interest of becoming self-sufficient.

ff. The exporters have not produced any evidence to indicate that the duty would have an adverse impact on the users.

gg. The impact of the duty on the downstream product is miniscule since the subject good is not a key raw material and does not constitute a major proportion of the cost of the finished goods.

hh. The imposition of duty would contribute towards reducing India's trade deficit.

ii. Since the subject good is being imported from China PR, the domestic industry is essentially competing with an industry that does not operate under market economy conditions.

jj. The Government of China PR provides significant support to its industry.

kk. There are certain inconsistencies in the data related to total profits/loss, cash profits and PBIT considered by the Authority in the Disclosure Statement.

O.1 Examination by the Authority

105. The Authority notes that most of the submissions made by the domestic industry in response to the disclosure statement are repetitive in nature and the domestic industry has largely reiterated earlier submissions. Further, the other interested parties have not even responded to the disclosure statement issued by the Authority. The Authority has examined the submissions made by the domestic industry below to the extent found relevant and not addressed elsewhere.

106. The Authority notes that the present case is one for material retardation of the establishment of an industry and not of material injury. As noted above, for the purpose of material retardation investigations, the Authority must first conclude that the industry is not already in existence, or that the industry has recently been established and is yet to find its place in the market. The Authority has examined the certain factors relevant to determining whether or not the domestic industry is an unestablished industry in paragraphs 59 to 66 above. However, subsequent to the issuance of the disclosure statement, the domestic industry has made post-disclosure comments, whereby it has indicated that the decline in its performance is not due to start-up costs.
107. The present case is one for material retardation of the establishment of an industry and not of material injury. As noted above, for the purpose of material retardation investigations, the Authority must first conclude that the industry is not already in existence, or that the industry has recently been established and is yet to find its place in the market. The Authority notes that the applicant is undisputedly an existing and established company, engaging in the production and sale of a number of other products, which are not the subject matter of the present investigation. However, it is very important to note that in in relation to the product under consideration, the applicant is a new entrant in the market. Furthermore, there is no dispute that as far as the product under consideration is concerned, the applicant company is the sole and new producer of the same in the country. As noted by the WTO Panel in Morocco – Anti-Dumping (Turkey) that what is important is not merely the introduction of a new product line itself, but rather the degree of overlap with the existing infrastructure of the industry. The WTO Panel has made it clear that even if an applicant has been in existence and produces other products, the Authority must still focus on the 'degree of overlap' in use of overall infrastructure. The Authority notes that the applicant has set up a new automated plant in its premises for the production of the product under consideration. The details of the plant and machinery that is set up is given in the project report of the applicant. The Authority notes that since a new plant is being set up to manufacture the product under consideration, the domestic industry would not be making utilization of its existing infrastructure to manufacture the product under consideration. Furthermore, the Authority notes that the raw materials and the production process used in the manufacture of the product under consideration is entirely different from its other products, thereby reducing any overlaps with existing infrastructure.
108. The Authority has examined four factors (overlap of existing facilities, time of establishment, size of the industry and stability of production) which are relevant for determining whether the industry has been established. In terms of overlap of existing infrastructure, the Authority has already concluded that there is no overlap between the production of the PUC and the existing infrastructure of the applicant. As far as the production and sale of the product under consideration is concerned, the same is undisputedly a new product, with no past history of production in India. The manufacturing plant of the PUC was set up in November, 2019 but commercial production commenced only in January, 2020, the domestic industry has been in existence for a very short period of time and, therefore, it cannot be considered to be an existing industry on this parameter. Furthermore, the size of the applicant's production of the subject goods is currently very small, and the production of the PUC is not stable at present. Therefore, as per all four parameters which are relevant for examining whether or not the industry is in existence, the Authority concludes that the industry is not an established industry.

109. The Authority also considers that that as per the Anti-Dumping Agreement as well as the Customs Tariff (Anti-Dumping) Rules, the definition of the 'domestic industry' is in relation to the 'like article'. The 'domestic industry' has been defined as '…the domestic producers as a whole engaged in the manufacture of the like article…'. Therefore, it is clear that the injury in the form of material retardation must be established in relation to the 'product under consideration' or the 'like article'. From a conjoint reading of the above definition along with the decision of the WTO Panel, the Authority notes that the rules require that the effect of the dumped imports should be assessed in relation to the domestic production of the like article. Thus, material retardation to establishment of the domestic industry is required to be examined with reference to the product and not with reference to the applicant as a whole. It is quite possible that the company is already well-established in the production of non-subject goods. What is however relevant is whether the industry with reference to the product under consideration is well established. The establishment of the industry with reference to PUC is required to be seen considering the length of operations of the company concerning the production and sale of the product in the country. Thus, as far as the domestic industry for the production of the subject good is concerned, this no dispute that the Applicant is the only producer in the country and has been in existence for a very short period of time. The Authority, therefore, concludes that on all parameters examined above, the Applicant is not an existing industry for the production of the product under consideration.

110. The statements made by the domestic industry regarding its business with some of the largest domestic and global players in the pharmaceutical industry suggests that the applicant is well established in the production of other products in the pharmaceutical market which are not under investigation. However, as far as product under consideration is concerned, despite these past credentials of the domestic industry, it is not able to sell even to the extent of its production. Further, the domestic industry has not been able to produce and sell despite existence of sufficient production capacities with it and its established position in the pharmaceutical sector. The above statements make it clear that despite being well established company in business in the pharmaceutical market for over a period of 17 years, the domestic industry has not been able to produce and sell profitably a new product developed. The applicant could, benefit from its existing presence in the pharmaceutical market. However, it is still suffering injury. This indicates the injurious effects of the dumped imports. In fact, the level of protection determined for the domestic industry is considering its level of operations and had the company being a new company at new location and without any other past history of production, the level of protection determined could have been higher, considering that the NIP of such a company could have been higher than determined at present.

111. Apart from the subject goods, the domestic industry also manufactures several other products. Furthermore, the production of the product under consideration is taking place in a new plant established by the domestic industry within its existing premises. The domestic industry has two manufacturing units in Kurkumbh MIDC and produces several products. Therefore, the non-injurious price determined must be lower than what it might have been in case of a stand-alone company and production plant. In the light of these factors, the Authority holds that although the applicant is an already existing company, it has commenced production of a new product which was not earlier produced in the country, and whose establishment is being retarded by the dumping of the product in the country.

112. It could be contended that the performance of the domestic industry is positive in certain parameters like levels of production, negative price undercutting and absence of price depression. It is, however, seen that the performance of the domestic industry is much adverse as compared to what it could have been in the absence of dumping in the country. The domestic industry could have sold to the extent of its production, would not have faced piling up of inventories and would have been able to earn profit, cash profit and positive return on investments.

P. INDIAN INDUSTRY'S INTERESTS & OTHER ISSUES

P.1 Views of the other interested parties

113. The petitioner will not be able to meet the domestic demand. In case of the imposition of the duty, the petitioner can easily manipulate the price and can create monopoly in the market. This will adversely affect the downstream industry which is against the public interest. The duty will have negative impact on several user industries, which form part of MSME and SME sector.

P.2 Views of the domestic industry

114. The submissions made by the domestic industry are as follows:

a. Before the commencement of the production by the domestic industry, there was a monopoly of exporters in the domestic market. They charged higher prices for the product. As soon as the domestic producer entered the market, the exporters reduced the price of the subject goods with clear intent to prevent the domestic industry from gaining a foothold in the market and to force the domestic industry to shut down its operation. In the absence of the duties, the domestic industry will be forced to shut down its operation and the consumer will have to buy the subject goods from the producers in the subject country.
b. The imposition of duty on the subject goods is in public interest. The duty would allow the domestic industry to find a place and establish itself in the market. If the domestic industry now leaves the market, the consumers would solely depend upon the subject imports. The prices would not be fair and competitive. The exporter might sell the subject imports at a higher rate.
c. The domestic industry is newly established in the domestic market for the PUC. If they are not able to compete in the market due to the dumped imports, they would have no option but to shut down their operation.
d. The domestic industry has sufficient capacity to fulfil the entire domestic demand in the country. The imposition of duties will promote Aatmanirbar Bharat Mission.
e. There is no evidence that in case of imposition of duties, it would adversely affect the users of the product under consideration.
f. The product is consumed by major pharmaceutical industries. Therefore, the user industry does not constitute producers in the MSME sector.

P.3 Examination by the Authority

115. As per the data available on record, the domestic industry has enough capacity to cater to the entire demand in India. The product is used in pharmaceutical sector. There is no

evidence on record that the consumers comprise only the MSME industry. In any case, the price of the product was higher in India before the commencement of commercial production in India. Further, even if there is demand-supply gap in the country, the same does not justify dumping of the product in the country by foreign producers. The imports can always occur at reasonable and fair prices. The proposed duty shall not restrict the imports. The cost of the product is not a major cost in the production of the downstream products.

116. The Authority considers that the imposition of the anti-dumping duties will create fair competition in the Indian market. The imposition of the proposed measure would remove the unfair advantages gained by the dumping practices, allow the domestic industry to establish in the market, prevent its decline and help maintain availability of the subject goods to the consumers. The purpose of anti-dumping duties, in general, is to eliminate injury caused to the domestic industry by the unfair trade practices of dumping, so as to reestablish a situation of open and fair competition in the Indian market, which is in the general interests of the country. Imposition of the anti-dumping duties, therefore, would not affect the availability of the product to the consumers. The Authority notes that the imposition of the anti-dumping measures would not restrict imports from the subject country in any way and, therefore, would not affect the availability of the product to the consumers.

Q. CONCLUSION & RECOMMENDATIONS

117. Having regard to the contentions raised, the information provided, the submissions made and the facts available before the Authority as recorded in the above findings, the Authority concludes that:

a. The product under consideration has been exported to India at a price below the normal value, resulting in dumping. The dumping margin is positive and significant.

b. The dumping of the subject goods has materially retarded the establishment of domestic industry in India. The examination of the subject imports and the performance of the domestic industry clearly shows that the volume of the subject imports in absolute and relative terms has remained high even after commencement of the commercial production in India. The imports are priced below the target prices of the domestic industry leading to price suppression. At current prices, the domestic industry will not be able to achieve its target performance. The domestic industry has not been able to produce the product to the extent it could have produced. Further, despite significant demand for the product in the country, the domestic industry has not been able to sell even to the limited extent it has produced, and has been faced with significant inventories. The domestic industry is suffering significant financial losses and negative return on investment.

c. The material retardation to the establishment of the domestic industry in India is due to the subject dumped imports.

d. The information on record shows that the non-imposition of the anti-dumping duty will adversely and materially impact the indigenous production, while imposition of the anti-dumping duty will not materially impact the consumers or the downstream industry or the public at large.

e. On the basis of the information provided by the interested party and the investigation conducted, the Authority is of the view that imposition of the anti-dumping duty will not be against the public interest.

118. The Authority notes that the investigation was initiated and notified to all the interested parties and adequate opportunity was given to the domestic industry, the exporter, the importers and the other interested parties to provide positive information on the aspect of dumping, injury and causal link. Having initiated and conducted the investigation into dumping, injury and causal link in terms of the provisions laid down under the Anti-Dumping Rules, the Authority is of the view that imposition of the anti-dumping duty is required to offset the dumping and consequent injury. The Authority considers it necessary to recommend imposition of the anti-dumping duty on the imports of the subject goods originating in or exported from the subject country.

119. Having regards to the lesser duty rule followed, the Authority recommends imposition of anti-dumping duty equal to the lesser of the margin of dumping and the margin of injury so as to remove the injury to the domestic industry. Accordingly, the Authority recommends imposition of the anti-dumping duty on the imports of subject goods originating in or exported from the subject country, from the date of notification to be issued in this regard by the Central Government, equal to the amount mentioned in Col. 7 of the duty table appended below. The landed value of the imports for this purpose shall be the assessable value as determined by the Customs under Customs Act, 1962 and applicable level of the customs duties except duties levied under Section 3, 3A, 8B, 9, 9A of the Customs Tariff Act, 1975.

DUTY TABLE

SN	Heading	Description	Country of Origin	Country of Export	Producer	Amount	Unit	Currency
1	2	3	4	5	6	7	8	9
1.	29212990, 29241900, 29242990, 29251900, 29252910, 29252990, 29333990, 29419090	N, N'-Dicyclohexyl Carbodiimide*	China PR	Any country including China PR	Shandong Huihai Pharmaceutical and Chemical Company Limited	493.73	MT	USD
2.	- do -	N, N'-Dicyclohexyl Carbodiimide*	China PR	Any country including China PR	Any other than that mentioned at SN 1.	826.75	MT	USD
3.	- do -	N, N'-Dicyclohexyl Carbodiimide*	Any country other than China PR	China PR	Any	826.75	MT	USD

**Also known as DCC, Dicyclohexylcarbodiimide, 1, 3-Dicyclohexylcarbodiimide*

R. FURTHER PROCEDURE

120. An appeal against the order of the Central Government that may arise out of this recommendation shall lie before the appropriate forum.

(Anant Swarup)
Designated Authority