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MINISTRY OF COMMERCE & INDUSTRY
(Department of Commerce)
Directorate General of Anti Dumping & Allied Duties

Notification

New Delhi, the 31st October, 2001

PRELIMINARY FINDINGS

Subject: Anti-dumping investigation concerning imports of Diclofenac Sodium originating in or exported from the China- preliminary findings

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

A. PROCEDURE

2. the procedure described below has been followed:-

- i. The Designated Authority (hereinafter referred to as Authority), under the above Rules, received a written petition from M/s Aarti Drugs Limited, M/s Amoli Organics Ltd., and M/s Kairav Chemicals Ltd., on behalf of the domestic industry, alleging dumping of Diclofenac Sodium (hereinafter referred to as subject goods) originating in and exported from China (hereinafter referred to as subject country) ;
- ii. The Authority notified the Embassy of China in India about the receipt of dumping application made by the petitioner before proceeding to initiate the investigation in accordance with sub-rule (5) of Rule 5 *supra*;
- iii. The Authority issued a Public Notice dated 1st September, 2001 published in the Gazette of India, Extraordinary, initiating anti dumping proceedings concerning imports of Diclofenac Sodium falling under Chapter heading 2942 of Schedule I of the Customs Tariff Act.
- iv. The Authority forwarded copy of the said public notice to the known exporters, importers, industry associations and to the complainants and gave them an opportunity to make their views known in writing.

- v. According to sub-rule (3) of Rule 6 *supra*, the Authority provided a copy of the petition to all the known exporters and Embassy of subject country in India.
- vi. The Authority sent questionnaires, to elicit relevant information, to the following exporters from China:
 - 1. M/s Huazhong Pharmaceutical Company Ltd., Shenzhel, China,
 - 2. M/s Hangzhou Pharmaceutical Factory, Zhejiang Province, China,
 - 3. M/s Shangdong Yan Zhou Pharma, China,
 - 4. M/s Zhejiang Wanma Pharmaceutical Factory, Zhejiang, China
 - 5. M/s Suzhou Long Quan Pharmaceutical Company Ltd., Suzhou, China
- vii. The Embassy of China in New Delhi was also informed about the initiation of investigation and requested to advise the exporters/producers from their countries to respond to the questionnaire within the prescribed time;
- viii. The questionnaire was sent to the following users/importers of subject goods:
 - 1. M/s Wings Pharmaceuticals, New Delhi.
 - 2. M/s Lupin Laboratories Ltd., Mumbai
 - 3. M/s Agio Pharmachem Ltd., Mumbai
 - 4. M/s Natco Pharma(ltd)., Hyderabad.
 - 5. M/s Nicholas Piramal(India) Ltd., Mumbai
 - 6. M/s Bharat Chemicals, Mumbai.
- ix. Among the users/importers, response to the questionnaire was filed only by M/s. Wings Pharmaceuticals. None of the exporters responded to the questionnaire.
- x. Additional information regarding injury was sought from the petitioners, which was also furnished;
- xi. The Authority kept available non-confidential version of the evidence presented by various interested parties in the form of a public file maintained by the Authority and kept open for inspection by the interested parties;
- xii. ***** in this notification represents information furnished by the interested parties on confidential basis and so considered by the Authority under the Rules;
- xiii. The investigation covered the period from 1st January, 2001 to 31st August, 2001;
- xiv. Copies of initiation notice was also sent to FICCI, CII, ASSOCHAM etc., for wider circulation.

B. PETITIONER'S VIEWS

3. The petitioners, M/s Aarti Drugs Limited, M/s Amoli Organics Ltd., and M/s Kairav Chemicals Ltd., have made the following major points in their submissions:-

- i. They account for a major portion of the production of subject goods. Though some other companies also produce Diclofenac Sodium in India, they are not regular producers and their production is quite small as compared with the production of the petitioner companies. Petitioners have not imported Diclofenac Sodium. Petitioners are not related to any importer/exporter of the subject product.
- ii. There is no known difference in Diclofenac Sodium produced by the Indian industry and Diclofenac Sodium exported from China. Diclofenac Sodium produced by the Indian industry and imported from China are comparable in terms of characteristics such as physical & chemical characteristics, manufacturing process & technology, functions & uses, product specifications, pricing, distribution & marketing and tariff classification of the goods. The two are technically and commercially substitutable. The consumers are using the two interchangeably. Diclofenac Sodium produced by the petitioners and imported from China should be treated as like articles in accordance with the anti-dumping Rules.
- iii. The exporters from China have booked orders for significant quantity through their Indian agents. Significant material has already landed at Indian ports and substantial material is understood to be in transit. The domestic industry has already started losing its customers and should the present trend of order booking continue, the domestic industry would lose more sales.
- iv. The landed price of the imported material is significantly below the selling prices of the domestic industry. While the volume of material actually imported so far in the investigation period may not appear very significant per se, what need be appreciated is that these imports have been made in a relatively short period. Further, should the Chinese continue to offer the material at present prices, the domestic industry would not be able to hold their prices and lose significantly. Already, the domestic industry is being forced to reduce the price due to dumped imports and offers made by the Chinese producers.
- v. The landed price of the imports is significantly below the cost of production of the domestic industry. The price at which material is being exported does not permit recovery of even raw material costs. The domestic industry would be forced to face cash losses in case it has to sell at matching prices. The imports are having severe depressing effect on the prices in the market.
- vi. The Chinese producers are understood to be holding significant capacities for Diclofenac Sodium. Thus, large-scale imports are imminent, should the dumping not be checked at this stage.

- vii. The dumped imports of Diclofenac Sodium are causing injury to the domestic industry who is also facing a threat of further injury from large imports likely to come in near future.
- viii. As the investigation is against import from China, and China being a non market economy, the provision introduced in the Indian anti dumping laws on the non market economy vide amendment dated 15th July 1999 may be followed and the constructed cost of production in India should be used as the normal value.

C. IMPORTERS' AND USERS' VIEWS

4. As stated above only one importer/user M/s. Wings Pharmaceuticals Private Limited have responded to the questionnaire and expressed the following views in their submissions:-

- i. The details of production of Diclofenac Sodium submitted by petitioner companies are hypothetical and not realistic. Mere granting of drug licence to a company doesn't mean that the company is actually producing the product in question. The petitioner companies have not given the actual production and actual consumption figure to justify that there was no shortage of product in the country . Formulation industry which are the sole consumer of the product are not concerned with the installed capacity , they are concerned with that product should be available in market.
- ii. We totally agree with the views that it is the responsibility of Government to safeguard the interest of domestic industry against the cheap imports. At the same time, it may also be seen that the manufacturers don't take the advantage of anti dumping duty by making cartel and dictate the price and supply.
- iii. The exporter in China should also be given an opportunity to present the case.

D. EXAMINATION AND FINDING BY AUTHORITY

5. The submission made by the importers, domestic industry and other interested parties have been examined and considered while arriving at these findings and wherever appropriate have been dealt hereinafter.

6. The Authority confirms, the absence of any direct response from the exporters from China in the form and manner prescribed and having made the findings with regard to exports from China on the basis of the fact available to it as per rule 6(8) *supra*.

7. The cases of new exporters or those stated to be willing to give price undertaking shall be considered, on request, by the Authority in accordance with the Rules *supra*.

E. PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE

8. Petitioners have claimed that all types of Diclofenac Sodium are classified in chapter heading 2942. The investigations are against the product under consideration irrespective of the classification under which they are imported. Customs classifications are indicative only and are in no way binding on the scope of the present investigation.

9. The petitioners have claimed that the goods produced by them are like articles to the goods originating in or exported from subject country. There has been no dispute raised on the definition of the product under consideration and like article by any interested party in the investigation. The Authority, therefore, has determined that the goods being imported are like article to the product under consideration.

F. DOMESTIC INDUSTRY

10. The petition has been filed by M/s Aarti Drugs Ltd., Amoli Organics Ltd., and M/s Kairav Chemicals Ltd.. The petitioners account for a major proportion of the total Indian production. The petitioners satisfy the criteria of standing to file the petition on behalf of the Domestic Industry in terms of Rule 5(3) (a) of the Rules supra.

G. DUMPING & EXAMINATION OF CLAIMS MADE ON NORMAL VALUE & EXPORT PRICES

Normal Value

11. Under Section 9A(1)© normal value in relation to an article means:

- i. "The comparable price, in the ordinary course of trade, for the like article when meant for consumption in the exporting country or territory as determined in accordance with the rules made under sub-section(6); or
- ii. when there are no sales of the like article in the ordinary course of trade in the domestic market of the exporting country or territory, or when because of the particular market situation or low volume of the sales in the domestic market of the exporting country or territory, such sales do not permit a proper comparison, the normal value shall be either –

- a. comparable representative price of the like article when exported from the exporting country or territory or an appropriate third country as determined in accordance with the rules made under sub-section (6); or
- b. the cost of production of the said article in the country of origin along with reasonable addition for administrative, selling and general costs, and for profits, as determined in accordance with the rules made under sub-section (6)";

Separate provisions have been made in the Anti Dumping Rules for non market economy countries vide amendments notified on 15.07.1999 and 31.05.2001.

12. The Authority sent questionnaires to all the known exporters for the purpose of determination of normal value in accordance with Section 9A(1)(c). However, none of the exporters from China responded to the Authority and have not furnished any information. The Authority, therefore, holds that none of the exporters from China have cooperated with the Authority as envisaged under the Rules. The domestic industry has furnished information with regard to the normal value in China based on the constructed cost of production. In view of non-cooperation from the exporters from China, the Authority has determined normal value in China on the basis of the constructed cost of production.

Export Price

13. Large exports of Diclofenac Sodium from China have started very recently and the data are not available from Director General of Commercial Intelligence & Statistics(DGCI&S) for the period from July to September, 2001 when most of imports have taken place. Also there is no separate dedicated code for Diclofenac Sodium in the Customs Classification. In view of above, the data has been compiled from Customs Daily Lists. Further adjustments has been given on account of freight, marine insurance, commission, port handling etc., to arrive at net export price on the basis of evidence provided by domestic industry.

Dumping Margin

14. The principles governing the determination of normal value, export price and the dumping margin as laid down in the Custom Tariff Act and the Anti Dumping Rules are elaborated in Annexure I to the Rules. The normal value for China based on the constructed cost of production works out to US\$ *** per kg. The net export price worked out on the basis of similar parameters and allowing similar adjustments works out to US\$ *** per kg. The dumping margin for exports of the subject goods from China comes to 77% of the export price.

H. INJURY

15. Rule 11 of Anti Dumping Rules reads as follows:

"Determination of Injury:

- i. In the case of imports from specified countries, the designated authority shall record a further finding that import of such article into India causes or threatens material injury to any established industry or materially retards the establishment of any industry in India;
- ii. The designated authority shall determine the injury to domestic industry, threat of injury to domestic industry, material retardation to establishment of domestic industry and a causal link between dumped imports and injury, taking into account all relevant facts, including the volume of dumped imports, their effect on price in the domestic market for like articles and the consequent effect of such imports on domestic producers of such articles and in accordance with the principles set out in Annexure II to these rules."

With regard to threat of material injury, the anti-dumping Rules state as under:

"A determination of a threat of material injury shall be based on facts and not merely on allegation, conjecture or remote possibility. The change in circumstances, which would create a situation in which the dumping would cause injury, must be clearly foreseen and imminent. In making a determination regarding the existence of a threat of material injury, the Designated Authority shall consider, inter-alia, such factors as:

- a. a significant rate of increase of dumped imports into India indicating the likelihood of substantially increased importation;
- b. sufficient freely disposable or an imminent, substantial increase in capacity of the exporter indicating the likelihood of substantially increased dumped exports to Indian market, taking into account the availability of other export markets to absorb any additional exports.
- c. whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further imports; and ;
- d. inventories of the article being investigated."

16. In considering the effect of the dumped imports on prices, it is considered necessary to examine whether there has been a significant price undercutting by the dumped imports as compared with the price of the like product in India, or whether the effect of such imports is otherwise to depress prices to a significant degree. For the examination of the impact on the domestic industry in India, the Authority considered such further indices having a bearing on the state of industry as production, sales, stock, profitability, net sales realisation etc. On examination of the evidence, it has

been found that there is an increase in production, sales, and capacity utilisation of the domestic industry. However, there has been a decline in the selling price towards the end of the period of investigation on account of the cheap imports. Also there is increase in the closing stocks with the domestic industry and also temporary suspension of production for short periods. However, the most significant parameter evidencing injury and threat of further injury, is the price undercutting as per the evidence available with the Authority. The rate of increase of imports during the period of investigation and the corresponding fall in the market share of the domestic industry are the parameters clearly showing the injury being suffered by the domestic industry. On the basis of the evidence available before the Authority, it is determined that the domestic industry has suffered injury and is suffering further threat of injury during the period of investigation

I. CAUSAL LINK

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

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

J. INDIAN INDUSTRY'S INTEREST

18. The purpose of anti dumping duties in general is to eliminate dumping which is causing injury to the domestic industry and to re-establish a situation of open and fair competition in the Indian market which is in the general interest of the country.

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

availability of the product to the consumers. The consumers could still maintain two or even more sources of supply.

K. CONCLUSIONS

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

- i. Diclofenac Sodium has been exported to India from China below its normal value;
- ii. the Indian industry has suffered injury and there is threat of more injury being inflicted on domestic industry;
- iii. the injury has been caused by the dumped imports from China;

21. The Authority considers it necessary to impose an anti dumping duty provisionally, pending final determination, on all imports of Diclofenac Sodium from China in order to remove the injury to the domestic industry. The margin of dumping determined by the Authority is indicated in the paragraphs above. The Authority proposes to recommend the amount of anti dumping duty equal to the margin of dumping or less, which if levied, would remove the injury to the domestic industry. For the purpose of determining injury, the landed value of imports is proposed to be compared with the non injurious selling price of the petitioner companies determined for the period of investigation.

22. Accordingly, the Authority recommends that the provisional anti dumping duties be imposed from the date of notification to be issued in this regard by the Central Government on all imports of Diclofenac Sodium falling under Custom Heading 2942 originating in or exported from Peoples Republic of China pending final determination. The anti dumping duty shall be US \$ 3.44 per kg. for all exporters/manufacturers from China.

23. Landed value of imports for the purpose shall be the assessable value as determined by the Customs under the Customs Act, 1962 and all duties of customs except duties under sections 3, 3A, 8B, 9 and 9A of the Customs Tariff Act, 1975.

L. FURTHER PROCEDURE

24. The following procedure would be followed subsequent to notifying the preliminary findings:-

- a. The Authority invites comments on these findings from all interested parties and the same would be considered in the final findings;

- b. Exporters, importers, petitioner and other interested parties known to be concerned are being addressed separately by the Authority, who may make known their views, within forty days from the date of preliminary findings. Any other interested party may also make known its views within forty days from the date of publication of these findings;
- c. The Authority would provide opportunity to all the interested parties for making oral submissions which have to be rendered thereafter in writing;
- d. The Authority would conduct further verification to the extent deemed necessary;
- e. The Authority would disclose essential facts before announcing final findings.

L.V. Saptharishi,
Designated Authority