

To be Published in Part-I Section-I of Gazette of India-Extraordinary

**F. No. 06/11/2021-DGTR
Government of India
Ministry of Commerce & Industry
Department of Commerce
(Directorate General of Trade Remedies)
Jeevan Tara Building, 5 Parliament Street, New Delhi – 110001**

Dated: 01st August, 2022

**FINAL FINDING
Case No. AD-OI-11/2021**

Sub: Anti-dumping investigation concerning imports of “(4R-Cis)-1,1-Dimethylethyl-6-cyanomethyl-2,2-dimethyl-1,3-dioxane-4-acetate also known as ATS-8” originating in or exported from China PR.

File No. 06/11/2021-DGTR- Having regard to the Customs Tariff Act, 1975, as amended from time to time (hereinafter referred to as the Act) and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules thereof, as amended from time to time (hereinafter referred to as the AD rules), thereof;

A. BACKGROUND OF THE CASE

1. M/s. Arch Pharmalabs Limited (hereinafter also referred to as the “applicant” or the “Petitioner”) filed an application/petition seeking initiation of an anti-dumping investigation concerning imports of “(4R-Cis)-1,1-Dimethylethyl-6-cyanomethyl-2,2-dimethyl-1,3-dioxane-4-acetate also known as ATS-8” (hereinafter also referred to as the “subject goods” or the “Product Under Consideration” or “PUC”) from China PR (also referred to as the “subject country”) before the Designated Authority (hereinafter also referred to as the “Authority”) in accordance with Customs Tariff Act, 1975 as amended from time to time (herein also referred to as the “Act”) and Customs Tariff (Identification, Assessment and Collection of Antidumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 (hereinafter also referred to as the “Rules”).
2. The Authority, on the basis of sufficient evidence submitted by the applicant, issued a public notice vide notification No. 6/11/2021-DGTR dated 2nd August, 2021, published in the Gazette of India, Extraordinary, initiating the subject investigation in accordance with Section 9A of the Act read 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 (ADD), which if levied, would be adequate to remove the alleged injury to the domestic industry.

B. PROCEDURE

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

- a. The Authority notified the Embassy of the subject country in India about the receipt of the present anti-dumping application before proceeding to initiate the investigation in accordance with Sub-Rule (5) of Rule 5 supra.
- b. The Authority issued a public notice dated 2nd August, 2021 published in the Gazette of India Extraordinary, initiating an anti-dumping investigation concerning imports of the subject goods from the subject country.
- c. The Authority sent a copy of the initiation notification dated 2nd August, 2021 to the Embassy of the subject country in India, the known producers and exporters from the subject country, known importers, importer/user associations, the domestic industry and other interested parties, as per the addresses made available by the applicant. The interested parties were advised to provide relevant information in the form and manner prescribed and make their submissions known in writing within the prescribed time-limit, in accordance with Rules 6(2) and 6(4) of the Rules.
- d. The Authority provided a copy of the non-confidential version of the application to the known producers/exporters and to the government of the subject country, through its Embassy in India in accordance with Rule 6(3) of the Rules supra.
- e. The Embassy of the subject country in India was also requested to advise the exporters/producers from their country to respond to the questionnaire within the prescribed time limit. A copy of the letter and questionnaire sent to the producers/exporters was also sent to them along with the names and addresses of the known producers/exporters from the subject country.
- f. The Authority sent questionnaires to the following known producers/exporters in the subject country in accordance with Rule 6(4) of the AD Rules;
 - i. Changzhou United Chemical Co. Ltd
 - ii. China Sinopharm International Corporation Ltd
 - iii. Hangzhou Proserre Chemical Co. Ltd
 - iv. High Hope International Group
 - v. Jiangsu Alpha Pharmaceutical Co. Ltd
 - vi. Zhejiang Medicines & Health Products
 - vii. Zhejiang Hongyuan Pharmaceutical Co. Ltd
- g. In response, the following exporters/producers from the subject country filed exporter's questionnaire response;
 - i. Zhejiang Hongyuan Pharmaceutical Co., Ltd
 - ii. Zhejiang Lepu Pharmaceutical Co., Ltd
 - iii. Hangzhou Proserre Chemical Co., Ltd
 - iv. Jiangsu Yutian Pharmaceutical Co., Ltd
 - v. Jiangsu Alpha Pharmaceutical Co., Ltd
 - vi. Jiangsu Pfri Pharmaceutical Co., Ltd
- h. Also, apart from the exporters, China Chamber of Commerce for Import and Export of Medicines & Health Products (CCCMHPIE) also filed its comments.

- i. The Authority sent importer's questionnaire to the following known importers/users of subject goods in India calling for necessary information in accordance with Rule 6(4) of the Rules.
 - i. Amoli Organics Pvt. Ltd
 - ii. Aurobindo Pharma Ltd
 - iii. Biocon Limited
 - iv. Dr. Reddy's Laboratories Ltd
 - v. Hetero Labs Ltd
 - vi. Ind-Swift Laboratories Ltd
 - vii. Lupin Ltd
 - viii. Macleods Pharmaceuticals Ltd
 - ix. Enaltec Labs Pvt Ltd
 - x. Sun Pharmaceutical Industries Ltd
 - xi. Cadila Healthcare Ltd

- j. In response, none of the importers/users filed any importer's questionnaire response within the stipulated time. Dr. Reddy's Laboratories Ltd filed the importer's questionnaire response at a belated stage. The following importers/users filed their submissions:
 - i. Amoli Organics Pvt Ltd
 - ii. Dr. Reddy's Laboratories Ltd

- k. All the submissions as above filed are also considered and addressed to the extent found relevant as per the consistent practice of the Authority.

- l. The Authority made available non-confidential version of the evidence presented/made by the various interested parties to the other parties by directing the parties to exchange such submissions via e-mail based on the list of interested parties relevant for the subject investigation made available to all relevant parties on the website of the DGTR.

- m. A request was made to the Directorate General of Commercial Intelligence and Statistics (DGCI&S) to provide the transaction-wise details of imports of subject goods for the past three years, and the period of investigation, which was received by the Authority. The Authority has, relied upon the DGCI&S transaction-wise details of imports data for computation of the volume of imports and its analysis after due examination of the transactions.

- n. The Non-Injurious Price (NIP) has been determined based on the cost of production and the cost to make & sell the subject goods in India based on the information furnished by the domestic industry on the basis of Generally Accepted Accounting Principles (GAAP) and Annexure-III to the Anti-Dumping Rules so as to ascertain whether Anti-Dumping duty lower than the dumping margin would be sufficient to remove injury to the Domestic industry.

- o. The period of investigation for the purpose of the present anti-dumping investigation is from 1st April, 2020 to 31st March, 2021 (12 Months). The injury investigation period has however, been considered as the period from April 2017 - March 2018, April 2018 - March 2019, April 2019 - March 2020 and the POI.

- p. Desk verification of the information provided by the applicant, responding producers and exporters from the subject country to the extent deemed necessary, was carried out by the Authority. Only such verified information with necessary modification/rectification, wherever applicable, has been relied upon for the purpose of present final finding.
- q. In accordance with Rule 6(6) of the Rules, the Authority also provided an opportunity to all the interested parties to present their views orally in a hearing held via video conferencing on 28th October, 2021. All the parties who had attended the oral hearing were provided an opportunity to file written submissions by 8th November, 2021, followed by rejoinders, if any, by 15th November, 2021.
- r. The submissions made by the interested parties during the course of this investigation so far, to the extent supported with evidence and considered relevant to the present investigation, have been appropriately considered and addressed by the Authority, in this final finding.
- s. Information provided by the interested parties on confidential basis was examined with regard to the sufficiency of the confidentiality claim. On being satisfied, the Authority has accepted the confidentiality claims wherever warranted and such information has been considered as confidential and not disclosed to the other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non-confidential version of the information filed on confidential basis.
- t. 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 parties as non-cooperative and recorded the views/observations on the basis of the facts available.
- u. ‘***’ in this final finding represents information furnished by an interested party on confidential basis and so considered by the Authority under the Rules.
- v. The exchange rate adopted by the Authority for the subject investigation is US\$1 = Rs.75.22

C. PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE

- 4. At the stage of initiation, the product under consideration and like article were defined as:

Product under consideration

3. The product under consideration (“PUC”) is “(4R-Cis)-1,1-Dimethylethyl-6-cyanomethyl-2,2-dimethyl-1,3-dioxane-4-acetate also known as ATS-8”. While the chemical name of the product remains “(4R-Cis)-1,1-Dimethylethyl-6-cyanomethyl-2,2-dimethyl-1,3-dioxane-4-acetate”, the product is also known in trade names like ATS-8, ASC-3P, TBIN, Cyano Ketal Compound and Atorvastatin Intermediate wherein ATS-8 is the most commonly used trade name.

4. *ATS-8 is a key intermediate for manufacture of Atorvastatin API (Active Pharmaceutical Ingredient). Atorvastatin drug formulation is widely used to treat for lowering of excess cholesterol condition in the human beings, which can otherwise lead to cardio vascular problems like heart attack and stroke, if not treated. This is a lifesaving drug finding classification under the National List of Essential Medicines (NLEM). The intermediate is manufactured in the form of bulk powder by the company and does not have any separate grades or types.*

5. *The imports of the PUC have been reported under subheadings of Chapter 29 for the purpose charging of duty at the time of imports with highest imports having been reported under subheading numbers 2932 and 2933 though there have been imports under other subheadings like 2915, 2916, 2917, 2918, 2926, 2931 and 2934 also as per the petition.*

Like Article

6. *The applicant has claimed that there is no known difference in the subject goods produced by the Indian industry and the product under consideration produced and exported from the subject country. The two products are comparable in terms of essential product characteristics such as physical & chemical characteristics, manufacturing process & technology, functions & uses, product specifications, pricing, distribution & marketing and tariff classification of the goods. Consumers can use and are using the two interchangeably. The two are technically and commercially substitutable.*

7. *The applicant has claimed that there are no known major differences in the production process employed by the applicant and the exporters from the subject countries. Therefore, for the purposes of the present investigation, the Authority treats the subject goods produced by the applicant in India as "like article" to the product under consideration being imported from the subject country".*

C.1 Submissions of the domestic industry

5. The following submissions have been made by the domestic industry with regard to the product under consideration and like article:
 - i. The product under consideration ("PUC") is "(4R-Cis)-1,1-Dimethylethyl-6-cyanomethyl-2,2- dimethyl-1,3-dioxane-4-acetate also known as ATS-8". While the chemical name of the product remains "(4R-Cis)-1,1-Dimethylethyl-6-cyanomethyl-2,2-dimethyl-1,3-dioxane-4-acetate". The product is also known in trade names like ATS-8, ASC-3P, TBIN, Cyano Ketal Compound and Atorvastatin Intermediate wherein ATS-8 is the most commonly used trade name.
 - ii. ATS-8 is a key intermediate for manufacturing of Atorvastatin API (Active Pharmaceutical Ingredient). The subject goods as covered in the investigation have been produced and sold by the domestic industry in the period including the POI and such goods also have been getting imported into India from China PR in the same period.

- iii. The Authority may treat the subject goods produced by the applicant in India as “like article” to the product under consideration being imported from the subject country.
- iv. It has been contended by a user/importer that some imports of the PUC have been taking place due to purity issues in the subject goods produced by the petitioner. The contention has no basis. In fact, the issue has not been reproduced in writing though raised orally. The petitioner has been producing and supplying the product as per the requirements of the consumers and all such purity levels offered by the exporters have been supplied by the petitioner also. The petitioner has the technical ability to achieve the chemically possible highest level of purity. None of the responding exporters also have raised any product difference in terms of purity or other aspects.

C.2 Submissions by the other interested parties

6. The following submissions have been made by the other interested parties with regard to the product under consideration and like article:
 - i. The product involved in the investigation produced and sold by the Respondent is (4R-Cis)-1,1-Dimethylethyl-6-cyanomethyl-2,2-dimethyl-1,3-dioxane-4-acetate also known as ATS-8.
 - ii. There is no difference in physical/ technical/ chemical characteristics between the PUC exported to India and the PUC sold in the domestic market or exported to other countries.
 - iii. There is no difference between the product produced by the respondent and the product defined by the Authority.

C.3 Examination by the Authority

7. The PUC in the present investigation is “(4R-Cis)-1,1-Dimethylethyl-6-cyanomethyl-2,2-dimethyl-1,3-dioxane-4-acetate also known as ATS-8” originating in or exported from China PR. The product is also known in trade names like ATS-8, ASC-3P, TBIN, Cyano Ketal Compound and Atorvastatin Intermediate wherein ATS-8 is the most commonly used trade name.
8. ATS-8 is a key intermediate for manufacture of Atorvastatin API (Active Pharmaceutical Ingredient). Atorvastatin drug formulation is widely used in treatment for lowering of excess cholesterol condition in the human beings, which can otherwise lead to cardio vascular problems like heart attack and stroke, if not treated.
9. The imports of the PUC have been reported under subheadings of Chapter 29 for the purpose of charging of duty at the time of imports with highest imports having been reported under subheading numbers 2932 and 2933 though there have been imports under other subheadings like 2915, 2916, 2917, 2918, 2926, 2931 and 2934 also as per the petition.
10. With regard to like article, Rule 2(d) of the Anti-Dumping Rules provides as under:

“Like article” means an article which is identical or alike in all respects to the article under investigation for being dumped in India or in the absence of such article, another

article which although not alike in all respects, has characteristics closely resembling those of the articles under investigation;

11. It is noted that there are no contentions raised by the responding parties on the PUC and like article.
12. After considering the information on record, the Authority holds that the product under consideration produced by the domestic industry and imported from the subject country are comparable in terms of physical & chemical characteristics, functions & uses, product specifications, pricing, distribution & marketing and tariff classification of the goods. The goods produced by the domestic industry and imported from the subject country are like articles in terms of the Rules. The two are technically and commercially substitutable. Thus, the Authority holds that the subject goods produced by the domestic industry are like article to the product under consideration imported from subject country within the scope and meaning of Rule 2(d) of Anti-Dumping Rules.

D. SCOPE OF THE DOMESTIC INDUSTRY AND STANDING

D.1. Submissions made by the domestic industry

13. The submissions made by the domestic industry with regard to the scope of the domestic industry & standing are as follows:
 - i. M/s. Arch Pharmalabs Limited is the sole producer of the subject goods in India. The petitioner holds 100% share in the total Indian production.
 - ii. The petitioner has not imported the subject goods from the subject country and the petitioner is also not related to any importer/s or exporter/s of the subject goods from subject country.
 - iii. The petitioner fulfils the criteria under Rule 2 (b) read with Rule 5(3) of the AD Rules to be considered as the domestic industry concerning the subject goods.

D.2. Submission of the other interested parties

14. It is noted that none of the interested parties have raised any contentions on the claims of the petitioner on their qualification as domestic industry and standing therein.

D.3. Examination by the Authority

15. Rule 2 (b) of the AD rules defines the “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. It is noted that the application has been filed by M/s. Arch Pharmalabs Limited. It is also noted that the applicant is the sole producer of the subject goods in India and this claim of the applicant is not disputed by any of the responding interested parties. It is

further noted that the applicant has neither imported the subject goods from the subject country nor are related to any exporter or producer of subject goods in the subject country or any importer of the PUC in India. In view of the above, the Authority considers that the applicants fulfil the criteria of the domestic industry and the standing as laid down under the Indian Anti-dumping Rules. The Authority, holds the petitioner/applicant as the domestic industry within the meaning of the Rule 2(b) of the Rules and the application satisfies the criteria of standing in terms of Rule 5

E. ISSUES ON CONFIDENTIALITY

E.1. Submissions made by the domestic industry

17. The following submissions have been made by the domestic industry with regard to confidentiality issues:
- i. The excessive confidentiality adopted by the responding parties in their responses have handicapped the domestic industry from filing any effective rebuttals to the submissions/responses by such responding parties.
 - ii. There is no indexation provided in the IQR filed by Dr Reddy's Laboratories in its appendixes concerning volume and price parameters and not providing indexation even at possible places such as on volume and average price information is a clear and blatant violation of anti-dumping rules governing confidentiality.
 - iii. The responding exporters have not disclosed the name of the parties involved in the export value chain and held the enclosures containing such details as confidential. There is no justification given for claiming such basic information as confidential. In any case, the names of parties in the export value chain cannot be confidential in any manner whatsoever and claiming the name of parties involved in the export value chain is a blatant abuse of the confidentiality rules.
 - iv. The exporters have adopted reverse indexation in their response which is not as per the format prescribed by the Authority. Such presentation of data violates the requirements as stipulated by the Authority. This is when the domestic industry has submitted the information as prescribed by the Authority.

E.2. Submissions made by other interested parties

18. The following submissions have been made by other interested parties with regard to confidentiality issues:
- i. The petitioner has not provided a broad description of the manufacturing process employed. The same has been kept confidential on a vague and bald reasoning. The information provided by the domestic industry for these parameters should be disregarded as per Rule 7 of the AD Rules.
 - ii. The petitioner has not submitted the soft format of the transaction wise import data that the Authority has relied on for the initiation of the present investigation. However, in accordance with the Hon'ble CESTAT's decision in Exotic Decor Pvt. Ltd vs. Designated Authority [Final Order No. 50689-50690/2020 dated

12.06.2020 in Anti-Dumping Appeal No. 52233 and 52239 of 2018], this data is required to be shared with all the interested parties.

- iii. The non-confidential version of the petition does not allow for a reasonable understanding of the allegations contained therein. The non-confidential version of the petition clearly violates the requirements specified in Rule-7 of the Rules.
- iv. The non-confidential version of the petition fails to meet the standards laid down in Rule-7 of the Rules and Trade Notice No 1/2013 dated December 09, 2013 issued by the Director General. Part VI costing information of the petition is not part of NCV.
- v. Trade Notice 01/2013 dated 9th December 2013 mandates the petitioner to provide annual reports and balance sheets and the same is not provided. Since the annual accounts and balance sheets are available at MCA Portal on the payment of some fee, the same cannot be claimed as confidential as per the guidelines in trade notice.

E.3. Examination by the Authority

19. With regard to confidentiality of information, Rule 7 of the Rules provides as follows:

“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 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 summarization 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 authorise its disclosure in a generalized or summary form, it may disregard such information.”

20. As required under Rule 6 (7), the Authority made available the evidence presented to it by one interested party to the other interested parties, participating in the investigation. Such information was circulated among the participating interested parties with directions for exchange of such evidences among the interested parties participating in the investigation to avoid physical access to the public file on account of the restrictions put in place in view of the pandemic situation.

21. The Authority notes that the information provided by the domestic industry and other interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claims in accordance with Rule 7 of the Rules. On being satisfied, the Authority has accepted the confidentiality claims, wherever warranted, and such information has been considered confidential.
22. With regard to the contention that the transaction wise import data as per DGCI&S in soft copy is not placed in the public file, the Authority notes that the consolidated data relating to volume and value of imports from all sources of imports has been shared with the interested parties. It is further noted that the Authority had authorized all the interested parties which sought authorization for obtaining DGCI&S transaction-wise data. The import data has been provided to the interested parties as per the Trade notice issued by the Directorate. This being the case no prejudice appears to have been caused to the interested parties.
23. With regard to the contention of the opposing party that the annual report of the petitioner cannot be treated as confidential as the same can be obtained from the website of the Ministry of Corporate Affairs, the Authority notes that the information available on the website of the said Ministry primarily concerns with the administration of Companies Act 2013 and the same can be obtained on payment of a fee only which shows some reasonable restriction on obtaining such information.

F. MISCELLANEOUS SUBMISSIONS

F.1. Submission of other interested parties

24. The following submissions have been made by the exporter/ producer/ other interested parties with regard to various issues:
 - i. If anti-dumping duty is imposed on the subject imports, the respondents will have to purchase most of their requirement from the petitioner.
 - ii. Though the petitioner may already be supplying the PUC to the users, when the quantum of supply increases, any change in vendor of raw material involves significant changes required to be made at all levels considering the heavily regulated pharmaceutical industry.
 - iii. Any change in vendor will require following fresh vendor approval process, which takes approximately 1 year. Further, a change in vendor of raw material will also require the respondents' customers to mention the change in source in their regulatory filings. The amendment in regulatory filings may take approximately 6-7 months. Switching a vendor is extremely difficult and a time and cost intensive exercise.
 - iv. Further, the imposition of anti-dumping duty would result in a monopolistic market situation as the petitioner is claiming to be the only manufacturer of the PUC in India. This may significantly alter the present market situation where the users are able to import at competitive prices considering that there are various exporters of the PUC from the subject country.

- v. Imports from China PR were necessary to bridge the gap between the total demand and supply by the petitioner in the domestic market.
- vi. The petitioner has not brought forth any substantive evidence to establish the conditions for initiation of the anti-dumping investigation, while the investigating authority has not carried out appropriate, enough scrutiny to the related facts. The initiation of the present investigation is totally baseless, and the investigating authority ought to terminate the current investigation.
- vii. The petitioner is suffering injury since 2009-10. If the petitioner had suffered such severe injury from the imports from the subject country, then why they had not come before the Authority at that time. It appears that there were some other reasons which caused injury to the domestic industry that further led it to become a sick unit which have not been provided in the petition.
- viii. The Authority is requested to examine the report submitted before BIFR in which the reasons for company becoming sick are clearly provided.

F.2. Submissions made by the domestic industry

25. The following miscellaneous submissions have been made by the domestic industry:
- i. It has been elaborated in the petition that the petitioner faced shutdown during 2013-2016 period and the petitioner recommenced its production from FY2016-17 based on a financial Restructuring Agreement (Rehabilitation/Revival Package) reached with M/s JM Financial Asset Reconstruction Company Ltd. The accrual of debt was primarily the result of adverse business environment created by unfairly priced imports and its cascading effects.
 - ii. It is evident in the letter addressed to BIFR dated 27.1.2016 that *the operations of the Company have been adversely affected from the financial year commencing from 1st April, 2013 due to lower pricing margins as a result of large-scale dumping from China PR accompanied with unfavorable Government policies for the bulk drug industry.* Thus, injurious dumping has been a major cause of losses in the past as well.
 - iii. Also, the BIFR order referring the company under SICA, 1985 recorded the statement of the company in reply to a question from the Special Bench about the cause of the accumulated losses of the Company after its net worth had turned positive in 2004. The Counsel of the Company stated that *the company's profits dipped due to paucity of working capital, which were further exacerbated by massive dumping of Drugs & Pharma products by China in Indian and international markets.*
 - iv. JMFARC invested in the petitioner for long time realizing its potentials which has helped the petitioner to recommence its production. Thus, any apprehensions on the continuity of the petitioner as a reliable producer of the subject goods based on its past issues have no basis at this juncture.

- v. The petitioner has been in operation for the past four years after the restructuring which itself shows the revival was a credible one and the debt issues as such is behind the petitioner now.
- vi. Having resurrected from its past issues, the petitioner is only vulnerable to the unabated dumped and injurious imports of the subject goods from China PR and anti-dumping duties to arrest the same will help the petitioner to operate prudently in the time to come.
- vii. The performance during the past four years after the revival package clearly underscores the credibility of the revival package and it may be noted that the benefit of the revival package can only be fully accomplished by the petitioner once anti-dumping measures are put in place to stop dumped and injurious imports of ATS-8 from China PR and we pray for such measures at the earliest.
- viii. The petitioner still has about 50% capacity unutilized and the demand supply gap cited is not any ground to deny ADD in the present matter. The contentions have no legal or factual basis when the domestic industry is sitting on unutilized capacity.
- ix. It is a settled jurisprudence that the demand-supply gap cannot justify dumped imports and the ruling of the Hon'ble CESTAT in DSM Idemitsu Ltd Vs DA matter is applicable in this matter also. The present case is not about demand supply gap, but about the inability of the Indian producer to utilize its capacity to any prudent level.
- x. Though the present capacity of the domestic industry which is *** MT is not sufficient to meet the entire Indian demand as found during the POI which is *** MT, the domestic industry can meet close to 50-60% of such demand but the fact of the matter is that the capacity of the domestic industry was underutilized to the tune of about 40-50% during the POI. It is also submitted that the domestic industry has plans to increase the capacity further to *** MT by March 2022 and the domestic industry will be able to meet more than 80-90% of the demand thereafter with the increased capacity. The plans to increase the capacity will all be derailed if the dumping is continued unabated without any ADD in place
- xi. The IQR filed by Dr. Reddy's Laboratories Limited show that the company filed the IQR on 20.10.2021 which is much after the deadline to submit the information set by the Authority. The delay is totally unexplained and the response is rejectable.

F.3. Examination by the Authority

- 26. The Authority has considered the views of the interested parties, as follows:
 - i. With regard to the contention that if anti-dumping duty is imposed on the subject imports, the respondents will have to purchase most of their requirements from the petitioner warranting significant changes in the vendor which involves significant process, the Authority notes that imposition of anti-dumping duty would not restrict imports from the subject country in any way, and, therefore, would not affect the

availability of the products to the consumers. The purpose of imposition of an anti-dumping duty, in general, is to eliminate injury caused to the domestic industry by the unfair trade practices of dumping so as to re-establish a situation of open and fair competition in the Indian market, which is in the general interest of the country.

- ii. With reference to the contention of demand-supply gap, it is noted from the facts of the present case that the demand for the product during the POI was *** MT against which the production of the domestic industry was *** MT against a capacity of *** MT. Thus, the domestic industry has the capacity to meet almost 40-50% of the Indian demand. Though the production by the petitioner was not sufficient to meet the reported Indian demand during the POI, which could have been due to dumped imports from the subject country, however, a gap in demand and supply cannot be a reason for depriving the domestic industry from seeking redressal against dumped imports causing injury.
- iii. With regard to the contention that ADD will lead to monopoly of the petitioner and any such measures shall be against the public interest, it is recognized that the imposition of anti-dumping duty might affect the price levels of the product manufactured using the subject goods and consequently might have some influence on relative competitiveness of this product. However, fair competition in the Indian market will not be reduced by any anti-dumping measure, particularly if the levy of the anti-dumping duty is restricted to an amount necessary to redress the injury to the domestic industry. On the contrary, imposition of anti-dumping measure would remove the unfair advantages gained by dumping practices, prevent the decline in the performance of the domestic industry and help maintain availability of wider choice to the consumers of the subject goods.
- iv. With regard to the contention that the petitioner has not brought forth any substantive evidence to establish the conditions for initiation of the anti-dumping investigation, it is noted that the case was initiated after satisfying those sufficient evidences as required under the rules were available to justify the initiation.
- v. With regard to the contention that Dr. Reddy's Laboratories Limited filed the IQR at a belated stage, the Authority notes that Dr. Reddy's Laboratories Limited have not filed the IQR within the stipulated time. However, the submissions of the said party are proposed to be considered and addressed to the extent found relevant in this investigation.
- vi. With regard to the contention that the petitioner is suffering injury since 2009-10 and the Authority must examine the cause of such injury from the report submitted before BIFR in which the reasons for company becoming sick must have been provided, the Authority notes that the BIFR report has taken cognizance of various causes for the financial condition of the company including dumping of subject goods from the subject country being claimed as one of them. The injury period of present investigation is 2017-18, 2018-19, 2019-20 and the POI and the scope of the present investigation covers developments during this period alone.

G. MARKET ECONOMY TREATMENT (MET), NORMAL VALUE, EXPORT PRICE & DETERMINATION OF DUMPING MARGIN

G.1. Submissions made by the domestic industry

27. The following submissions have been made by the domestic industry concerning the determination of normal value, export price and dumping margin;
- i. The petition shows significant dumping taking place in the import of the subject goods from China PR and the dumping margin as per the petition is in the range of 40-50% which is above the thresholds required under the rule and also very significant.
 - ii. China PR should be treated as a non-market economy country and the normal value in case of the producers/exporters from China PR should be determined in accordance with para-7 read with para 8 (2) and (3) of Annexure I of the Rules. In terms of Para 8 in Annexure 1 to the Rules, it is presumed that the producers of the subject goods in China PR are operating under non-market economy conditions. None of the responding producers/exporters from China PR have rebutted the NME presumption by filing the applicable Questionnaire. Therefore, normal value of the subject goods in China PR has been estimated in terms of Para 7 of Annexure 1 to the Rules.
 - iii. The petitioner has estimated normal value for the subject country on the basis of cost of production in India, duly adjusted, as there is no reasonable information available to determine the normal value of the product based on the price in a market economy third country or constructed value in a market economy third country, or the price from such a third country to other country, including India. The product is primarily produced in India and China PR and there are no imports into India from any other countries.
 - iv. Dumping is apparently adopted as a strategy to decimate the Indian production base for the PUC and it should be noted that the import price from China PR have been much lower than the cost of production, albeit adjusted cost of production of the domestic industry, causing serious injuries to the domestic industry.

G.2. Submission of other interested parties

28. The following submissions have been made by the other interested parties concerning the determination of normal value, export price and dumping margin;
- i. In accordance with relevant provisions of the Protocol on China's accession to the WTO, the "surrogate country" practice in Anti-Dumping actions should be lacking in multilateral legal basis since 11th Dec, 2016. Such practice is bound to expire from then on.
 - ii. Exporters are surprised to note that the Director General has issued a separate questionnaire to exporters from China PR seeking voluminous information from exporters from China PR with regard to claims of Market Economy status. China PR had been treated as a Non-Market Economy country by India in the past.
 - iii. Section 15 (a) (ii) of the Protocol on the Accession of the People's Republic of China to the World Trade Organization expired on December 11, 2016. After that date, India no longer has a legal basis under the agreements of the World Trade Organization to calculate normal value in anti-dumping investigation of Chinese products using the non-market economy methodology.

- iv. The Authority may grant “market economy status” to China PR based on the development of market economy of China; conduct any normal value calculation in accordance with Article 2 of the Anti-Dumping Agreement; and at the very least, apply the data on costs and prices provided by the Company in this response for the determination of the normal value rather than applying analogue country data in this instigation.
- v. Dumping margin should be determined based on the information provided by the producers/exporters from China PR.
- vi. The applicant did not provide any evidence for the deductions made under the categories of ocean freight, marine insurance, port expenses, inland freight, commission and bank charges.
- vii. The petitioner has claimed adjustment of non-refundable VAT without enclosing any evidence that VAT paid by Chinese exporters to the Government is non-refundable. The Authority should seek evidence from the petitioner and the participating Chinese exporters on the same.
- viii. The petitioner has submitted the updated import data on 23.09.2021. The Authority is requested to calculate the export price by considering the actual import data submitted by the petitioner.

G.3. Examination by the Authority

Normal value

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

(i) the comparable price, in the ordinary course of trade, for the like article when meant for consumption in the exporting country or territory as determined in accordance with the rules made under sub-section (6); or

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

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

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

Provided that in the case of import of the article from a country other than the country of origin and where the article has been merely transshipped through the country of export or such article is not produced in the country of export or there is no comparable

price in the country of export, the normal value shall be determined with reference to its price in the country of origin.

30. The Authority sent questionnaires to the known producers/exporters from the subject country, advising them to provide information in the form and manner prescribed by the Authority. The following producers/exporters have filed the response in the prescribed exporter questionnaire responses:

- i. Zhejiang Hongyuan Pharmaceutical Co., Ltd
- ii. Zhejiang Lepu Pharmaceutical Co., Ltd
- iii. Hangzhou Proserre Chemical Co., Ltd
- iv. Jiangsu Yutian Pharmaceutical Co., Ltd
- v. Jiangsu Alpha Pharmaceutical Co., Ltd
- vi. Jiangsu Pfri Pharmaceutical Co., Ltd

Market Economy Status for Chinese Producers

31. Article 15 of China's Accession Protocol in WTO provides as follows: "Article VI of the GATT 1994, the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ("Anti-Dumping Agreement") and the SCM Agreement shall apply in proceedings involving imports of Chinese origin into a WTO Member consistent with the following:

(a) "In determining price comparability under Article VI of the GATT 1994 and the Anti-Dumping Agreement, the importing WTO Member shall use either Chinese prices or costs for the industry under investigation or a methodology that is not based on a strict comparison with domestic prices or costs in China based on the following Rules:

(i) If the producers under investigation can clearly show that market economy conditions prevail in the industry producing the like product with regard to the manufacture, production and sale of that product, the importing WTO Member shall use Chinese prices or costs for the industry under investigation in determining price comparability;

(ii) The importing WTO Member may use a methodology that is not based on a strict comparison with domestic prices or costs in China if the producers under investigation cannot clearly show that market economy conditions prevail in the industry producing the like product with regard to manufacture, production and sale of that product.

(b) In proceedings under Parts II, III and V of the SCM Agreement, when addressing subsidies described in Articles 14(a), 14(b), 14(c) and 14(d), relevant provisions of the SCM Agreement shall apply; however, if there are special difficulties in that application, the importing WTO Member may then use methodologies for identifying and measuring the subsidy benefit which take into account the possibility that prevailing terms and conditions in China 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 nonmarket economy provisions of subparagraph (a) shall no longer apply to that industry or sector."*

32. It is noted that while the provision contained in Article 15 (a) (ii) have expired on 11.12.2016, the provision under Article 2.2.1.1 of WTO read with obligation under 15 (a) (i) of the Accession protocol require criterion stipulated in para 8 of the Annexure I of the Rules to be satisfied through the information/data to be provided in the supplementary questionnaire on claiming the market economy status. It is noted that since the responding producers/ exporters from China PR have not submitted response to questionnaire in the form and manner prescribed, the normal value computation is required to be done as per provisions of para 7 of Annexure I of the Rules.
33. Accordingly, the normal value for all the producers/exporters from the subject country have been determined as below.
34. With regard to the submission of the interested parties that adjustments from the export price must be based on evidences and also import as per DGCI&S for the complete POI must be considered, the Authority note that the adjustments are allowed after due examination of the evidences presented and also import data as collected from the DGCI&S for the entire period of POI alone have been used.

Normal Value for all producers in China PR

35. As none of the producers from China PR have claimed determination of normal value on the basis of their own data/information as noted above, the normal value has been determined in accordance with para 7 of Annexure I of the Rules which reads as under:

In case of imports from non-market economy countries, normal value shall be determined on the basis of 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. Account shall also 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.

36. Para 7 lays down hierarchy for determination of normal value and provides that normal value shall be determined on the basis of the price or constructed value in a market economy third country, or the price from such a third country to other country, including India, or where it is not possible, on any other reasonable basis, including the price actually paid or payable in India for the like product, duly adjusted, if necessary, to include a reasonable profit margin. Thus, the Authority notes that the normal value is required to be determined having regard to the various sequential alternatives provided under Annexure-I
37. The Authority notes that normal value could not be determined on the basis of prices or constructed value of the product in an appropriate market economy third country or the prices from such third country to other countries, as the relevant information has neither been made available by the applicant or an interested party, nor is available with the Authority from any public source. There are also no imports of the subject goods from other countries into India and it has been submitted that the product is primarily produced in India and China PR only. Thus, the normal value can only be determined on the basis of price paid or payable in India, duly adjusted to include profit, which has been determined considering cost of production in India, after addition for selling, general & administrative expenses and reasonable profits.
38. The Authority has, thus, constructed the normal value based on the optimized cost of production, considering prices of major raw materials and other costs paid in India, as per facts available. Further, reasonable profit has been added to the cost of production for the purpose of determination of normal value. The normal value has been determined for all producers and exporters from China PR, and are mentioned in the dumping margin table.

Determination of Export Price for cooperating producers and exporters

a) M/s Jiangsu Alpha Pharmaceutical Co., Ltd., China PR-and M/s Jiangsu Pfri Pharmaceutical Co., Ltd., China PR

39. Jiangsu Alpha Pharmaceutical Co., Ltd., has reported export of the *** MT subject goods to India during the POI, out of which *** MT of subject goods has been exported to India through a related trader namely, Jiangsu Pfri Pharmaceutical Co., Ltd., China PR, who has filed its exporter questionnaire response with the Authority. It is further noted that Jiangsu Alpha Pharmaceutical Co., Ltd., has also exported *** MT of subject goods to India through two unrelated traders namely, China Sinopharm International Corporation, and Synchem International Co., Ltd. and these two traders have not filed their exporters questionnaire response with the Authority, hence the quantity exported to India by these two traders have not been considered in the final determination.
40. Jiangsu Alpha Pharmaceutical Co., Ltd., has claimed adjustments on account of Air Freight, Air/marine insurance, inland freight, port charge, ocean freight, commission, bank charges and credit cost. Accordingly, the net export price at ex-factory level so determined is as shown in the Dumping Margin Table below.

b. Zhejiang Hongyuan Pharmaceutical Co., Ltd., China PR

41. Zhejiang Hongyuan Pharmaceutical Co., Ltd. has reported export of the subject goods to India during the POI. The goods have been sold directly to the customers in India. The producer/exporter has exported *** MT of subject goods to India of invoice value *** US\$ during the POI. The producer/exporter has claimed adjustments on account of ocean freight, insurance, inland transportation, port and other related expenses, inland transportation insurance and credit cost. Accordingly, the net export price at ex-factory level so determined is as shown in the dumping margin table below.

c) M/s Zhejiang Lepu Pharmaceutical Co., Ltd., China PR and M/s Hangzhou Proserre Chemical Co.,Ltd., China PR

42. Zhejiang Lepu Pharmaceutical Co., Ltd., has reported export of the *** MT subject goods to India during the POI, out of which *** MT of subject goods has been exported to India through an unrelated trader namely, Hangzhou Proserre Chemical Co., Ltd., China PR, who has filed its exporters questionnaire response with the Authority. Zhejiang Lepu Pharmaceutical Co., Ltd., has claimed adjustments on account of ocean Freight, insurance, inland transportation, inland insurance and credit cost. Accordingly, the net export price at ex-factory level so determined is as shown in the dumping margin table below.

d) Jiangsu Yutian Pharmaceutical Co., Ltd., China PR

43. Jiangsu Yutian Pharmaceutical Co., Ltd., has reported export of the subject goods to India during the POI. The goods have been sold directly to customers in India. The producer/exporter has exported *** MT of subject goods to India of invoice value *** US\$ during the POI. The producer/exporter has claimed adjustments on account of ocean freight, insurance, inland transportation, port and other related expenses, bank charges and credit cost. Accordingly, the net export price at ex-factory level so determined is as shown in the dumping margin table below.

Determination of Normal Value and Export Price for all non-cooperating Producers and Exporters in China PR

44. The normal value and export price for other non-cooperating exporters from China PR has been proposed as per facts available taking into account the data examined for the co-operating exporters and the same is mentioned in the dumping margin table.

Dumping Margin

45. Considering the normal value and export price for the subject goods, the dumping margins for the subject goods from the subject country have been proposed as follows:

Dumping Margin Table

S.No	Producer	Normal Value US\$/ MT	Net Export Price US\$/ MT	Dumping Margin US\$/ MT	Dumping Margin %	Dumping Margin (Range %)
1	Jiangsu Alpha Pharmaceutical Co., Ltd.	***	***	***	***	10-20
2	Zhejiang Hongyuan Pharmaceutical Co., Ltd.	***	***	***	***	10-20
3	Zhejiang Lepu Pharmaceutical Co., Ltd.	***	***	***	***	0-10
4	Jiangsu Yutian Pharmaceutical Co., Ltd.	***	***	***	***	20-30
5	Any other producer	***	***	***	***	20-30

H. INJURY ASSESSMENT AND CAUSAL LINK

H.1. Submissions made by the domestic industry

46. The following submissions have been made by the domestic industry:

- i. Information on injury parameters shows the fact that the domestic industry has suffered material injury as envisaged in the AD Rules read with Annexure II.
- ii. Dumped imports have increased in absolute terms and have been the cause of volume injury suffered by the domestic industry.
- iii. Increase in import volume was the result of a sharp reduction in the landed price of imports from China PR.
- iv. As a result of dumped imports, the domestic industry could never utilize its capacity to any reasonable level and as a result, more than 50% of its capacity remained idle and unutilized during the POI and the injury period. This is when the product registered consistent increase in demand.
- v. The sharp increase in imports between the POI and immediate previous year has resulted in significant loss of market share to the domestic industry. While the market share of the domestic industry declined to 765 indexed points in the POI from a 996 level in the immediate previous year, market share of the dumped imports increased from 75 indexed points to 82 points in the POI.
- vi. The exporters gained higher market share in the POI by reducing the price of the product further and the loss of market share on account of such targeted actions have crippled the volume growth of the domestic industry demonstrating volume injury.

- vii. Though the volume parameters such as capacity utilization, production, sales etc. improved over the base year, what is notable is that the actual volume growth would have been even higher and prudent had there been no dumping.
- viii. The volume injury on account of dumped imports is reflected in the idle and underutilized capacity situation, loss of market share and underperformance in the volume parameters. The domestic industry had the potential to produce and sell more.
- ix. The price related injury parameters show that the triggering point of such price injury have been the landed price of the dumped imports which was lower than the cost of production and also fair selling price (NIP) of the domestic industry. The domestic industry was forced to sell at a price lower than the landed price of imports which was lower than its cost and have been incurring losses during the POI.
- x. It is a settled law as per the order of the Hon'ble CESTAT in the Nippon Zeon Vs Designated Authority that injury cannot be decided by assuming ideal conditions. But has to be on prevailing conditions. Though giving reasonable adjustments. Notwithstanding the said position of law, the petitioner presented its cost by making reasonable adjustments for certain interest items and it is seen that the landed price of dumped imports has still been lower than such adjusted cost of production.
- xi. The domestic industry could not realize any reasonable ROCE in the POI. The losses and unremunerative price of the domestic industry is the direct fall out of the dumped imports.
- xii. There is no requirement under the Rule or as per the practice of the Authority that price undercutting has to be positive to show price injury. Annexure II to the rule says that the Designated Authority shall consider whether there has been a significant price under cutting by the dumped imports as compared with the price of like product in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increase which otherwise would have occurred, to a significant degree.
- xiii. The domestic industry could not increase its prices on account of lower landed price of dumped imports and such landed price prevented price increase which otherwise would have occurred, to a significant degree. Price suppression and also depression effect as the domestic industry was selling at unremunerative prices is very evident in this matter.
- xiv. The cost of production declined during the POI over the immediate previous year though increased slightly over the base year. However, the selling price remained almost same during the POI in comparison to the immediate previous year.
- xv. The growth of the domestic industry have been negative in all core parameters and the negative growth during the POI was the result of increase in dumped imports during the POI coupled with a sharp decline in landed price.
- xvi. The cause of injury as claimed in the petition by the domestic industry is dumped imports alone. The petition fully meets the causality requirements as per the rule and also as interpreted by the WTO Appellate Body in the US-Hot rolled steel from Japan ADD matter.

- xvii. As demonstrated, the volume and landed price of the dumped imports has created consequential adverse effects on the volume and price performance of the domestic industry and such direct consequences of the dumped imports demonstrates causal link in the present matter.
- xviii. As a consequence of increase in the dumped imports, the domestic industry lost market share during the POI to dumped imports and also have been forced to underutilize its capacity in the entire injury period. Since there are no third country imports or competition from other producers in the country, it can be fairly noted that the volume underperformance and injury suffered by the domestic industry is clearly on account of dumped imports.
- xix. The petitioner did not attribute injury on account of any other factors but to imports. The claim that cause of injury is high interest and depreciation has no meaning.
- xx. Profit before interest, depreciation and tax also has been negative during the POI. Such negative situation shows that the claims of interest and depreciation as the cause of injury has no meaning. It is not shown by the other parties that dumped imports is not the cause of injury to the domestic industry.
- xxi. The available data from the response of the responding exporters shows that major exporters reduced the price significantly in the POI over the immediate previous year to increase their exports to India which would not have been possible without reducing the prices.
- xxii. Apart from a situation of current injury, the petitioner faces severe threat of aggravated level of dumping and consequent injury in the future as well and ADD at the earliest may be recommended keeping in view such further threat of injury.
- xxiii. The parties here have ignored the fact that there was a fall in the market share of the domestic industry in the POI viz. the immediate previous year and the capacity utilization of the domestic industry was not even 50% even by the POI in a growing demand situation which clearly show volume effects on account of dumped imports. There were no other factors which created challenges to the volume growth.
- xxiv. The domestic industry suffered injury on both volume and price fronts. The market share of the domestic industry declined significantly in the POI and capacity utilization was below par. The domestic industry suffered financial losses and the ROCE was negative in the POI and the injury period.
- xxv. The contention that losses are on account of interest and depreciation also has no meaning as the domestic industry suffered PBTID (Profit before tax, interest and depreciation) losses during the POI. The plans to increase capacity is a futuristic decision taken based on the growing and robust demand for the product and the execution will depend upon on the conducive environment for the product and such conducive situation can be put in place only by levy of ADD.
- xxvi. Job work in terms of purification of ATS-8, which had unwanted isomers, was done by the petitioner for a few unrelated parties wherein the said ATS-8 is understood to have been imported by the said parties. Details of how such job work transactions were carried out are a part of the financial statement of the petitioner.

H.2. Submissions made by other interested parties

47. The submissions made by the other interested parties have been as follows:
- i. Information provided in the petition does not support the claim that the domestic industry is suffering material injury. The increase in the volume of the subject imports must not be examined in isolation but in the context of the demand for the PUC.
 - ii. The total demand of the PUC increased by 37 indexed points from the base year to the POI, whereas increase in imports in the POI as compared to base year is only 12 indexed points.
 - iii. The domestic industry is able to sell whatever it has produced (based on the sales quantity and production quantity) and it is only in the period of investigation that the domestic industry has shown inventory for the first time, which indicates that the domestic industry is not doing enough production to meet the market demand.
 - iv. There is an increase in the market share of domestic industry and a consequent reduction in the market share of imports from the subject country, thereby indicating that there is a significant increase in the sales by the domestic industry. Further, there is an increase in sale of domestic industry by 923 indexed points in the POI compared to the base period.
 - v. Even though demand of the PUC declined in 2019-20 to 101 indexed points in comparison 113 indexed points in 2018-19, the domestic industry's production increased significantly from 275 indexed points in 2018-19 to 996 indexed points in 2019-20. Market share of the domestic industry increased from 243 indexed points to 986 indexed points in the same period. Thus, even in declining demand, the domestic industry aggressively captured market share.
 - vi. When demand increased in the POI to 137 indexed points, the domestic industry's domestic sales further increased to 1023 indexed points. Although the subject imports also increased during the POI but the imports only followed the trend of increase in demand in India and the petitioner's capability to cater to the same.
 - vii. With regard to the increase in the volume of subject imports in relation to the production, the domestic industry has been able to scale up its capacity and production during the POI. Therefore, there can be no volume effect in relation to production.
 - viii. With regard to the increase in the volume of subject imports in relation to consumption, in spite of an increase in absolute terms and increase in demand in India, the volume of subject imports in relation to consumption has declined after the base year.
 - ix. Price under cutting has been negative during the entire injury period. This is despite the fact that the domestic industry has increased the price by 30 indexed points in the POI compared to the base period. Therefore, there is no price effect.

- x. The landed prices of imports had continuously and significantly increased throughout the injury period, except for the reduction in the POI.
- xi. There is neither any price suppression nor any price depression in the facts of the present case. The domestic prices have moved independent of the landed prices.
- xii. The installed capacity has increased by more than 100% in 2019-20. As stated, the said increase is not due to any new capital expenditure, but due to transfer of existing assets to the PUC. Further, the capacity is expected to increase by 2022. If the domestic industry was indeed being injured due to the subject imports, it would not have been able to transfer existing assets or commission new capacity in the future.
- xiii. The petitioner have themselves admitted that sales volumes and values have increased continuously and significantly throughout the injury period. Therefore, there is no injury in this regard.
- xiv. The petitioner have themselves submitted that the number of employees and their productivity have increased. Also, it is admitted that there is no inventory build-up till the POI.
- xv. Prior to the injury period, the domestic industry was suffering major financial setbacks which affected their performance. Therefore, during the injury period, though the petitioner was reviving, they were suffering heavy losses. A closer look on the reasons for such losses would make it clear that the losses were due to the finance costs and depreciation which increased exponentially during the injury period.
- xvi. From the base year, the finance costs and depreciation increased by 40 times and 20 times respectively. This has led to the decrease in overall profitability of the petitioner.
- xvii. The ROCE has reduced exponentially during the POI only because of the reduction in Average Capital Employed and not due to the increase in losses.
- xviii. Out of the mandatory parameters prescribed in para (iv) of Annexure II, almost all the parameters have shown improvement in the POI as compared to the base year. Decision of WTO panel in Thailand – H-Beams (WT/DS/122/R) is relevant here.
- xix. There is absence of causal link between subject imports and petitioner's economic performance. Injury, if any, is attributable to factors other than subject imports.
- xx. Factors such as no correlation between volume of subject imports and petitioner's economic performance, there is a negative price undercutting and absence of price suppression and depression, the petitioner has earned positive operating profits during 2018-19 and 2019-20 as per the annual reports, and the overall losses are only due to the high finance costs and depreciation of the domestic industry shows absence of causal link.
- xxi. In the final findings of the safeguard investigation on Cold Rolled Flat Products of Stainless Steel of 400 Series, it was explicitly held that abnormally high depreciation and finance charges broke the causal link.

- xxii. The analysis of the balance sheets of the petitioner for the year 2018-19 and 2019-20 shows that there seems to be no increase in equity share capital and long-term borrowings. However, in the petition, heavy increase in equity and borrowings could be seen. The Authority is requested to verify as to how the funds are allocated to the PUC as per the petition when there is no significant change in the same as per the financial statements of the petitioner.
- xxiii. Imports from China PR do not cause any injury to the domestic industry during the injury period and the period of investigation. Demand of the subject goods has increased from 100 (2016-17) to 137 during the POI. Whereas, imports from the subject country have increased only by 12%, from 100 (2016-17) to 112 during the POI, even less than the increase in demand.
- xxiv. Imports in relation to production and demand have shown sharp decline during the POI as compared to the base year 2016-17. Thus, there is no volume injury to the domestic industry from the imports from China PR.
- xxv. Negative price undercutting shows the fact that the domestic industry is selling their goods at a price lower than the import price. In case the domestic industry is facing losses due to less cost, it may increase the prices of the subject goods. Thus, injury to the domestic industry cannot be attributed to the imports from the subject country.
- xxvi. In the recently concluded case of Sunset Review of Anti-Dumping Duty imposed on imports of Digital Offset Printing Plates originating in or exported from China PR, price undercutting was considered as an important parameter and the Authority recommended dis-continuance of the ADD levied on the PUC.
- xxvii. It seems that the petitioner has manipulated the data to deliberately invent injury. There is no correlation between the data provided by the petitioner as with the manifold increase in sales volume and selling price; the profitability of the company shall improve accordingly. However, it has shown sharp decline which is suspicious. The Authority shall critically examine the same.
- xxviii. The interest and finance cost has increased abnormally from 100 during the base year 2016-17 to 4145 during the POI. Such irregular trend may be seen in the increase in depreciation also. The Authority is requested to critically examine the same.
- xxix. Abnormal trend of ROCE is seen. The Authority is requested to critically examine the same.
- xxx. The company was shut down in the past as a sick unit and reason for the same played a very important role in the deterioration of the performance of the domestic industry which is attributed to alleged dumping of subject goods.

H.3. Examination by the Authority

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

49. Rule 11 of Antidumping Rules read with Annexure II provides that an injury determination shall involve examination of factors that may indicate injury to the domestic industry, “.... taking into account all relevant facts, including the volume of dumped imports, their effect on prices in the domestic market for like articles and the consequent effect of such imports on domestic producers of such articles....”. In considering the effect of the dumped imports on prices, it is considered necessary to examine whether there has been a significant price undercutting by the dumped imports as compared with the price of the like article in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree. For the examination of the impact of the dumped imports on the domestic industry in India, indices having a bearing on the state of the industry such as production, capacity utilization, sales volume, inventory, profitability, net sales realization, the magnitude and margin of dumping, etc. have been considered in accordance with Annexure II of the Anti-Dumping Rules.

50. It is also noted that the contentions of the opposing parties as captured herein above are on the claims of injury by the domestic industry and such contentions are addressed ipso facto here under while examining the injury parameters and in view of the same contention on injury is not being addressed separately for the sake of brevity.

i. Volume Effect of Dumped Imports on the domestic industry

a. Assessment of Demand/Apparent Consumption

51. The Authority has taken into consideration, for the purpose of the present investigation, demand or apparent consumption of the product in India as the sum of domestic sales of the Indian producers and the imports from all sources. The demand so assessed has increased during the injury period.

Particulars	Unit	2017-18	2018-19	2019-20	2020-21 (POI)
Imports from China PR	MT	397	431	303	446
Trend	Indexed	100	109	76	112
Total imports from other countries	MT	Nil	Nil	Nil	Nil
Total imports into the country	MT	397	431	303	446
Domestic sales of the petitioner	MT	***	***	***	***
Trend	Indexed	100	273	1000	1027
Domestic sales of other producers	MT	Nil	Nil	Nil	Nil
Total demand	MT	***	***	***	***
Trend	Indexed	100	113	101	137

52. As can be seen from the above table, demand for the subject goods in India during the POI has increased over the base year and also over the immediate previous year.

b. Import volume from the subject country

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

Particulars	Unit	2017-18	2018-19	2019-20	2020-21 (POI)
Imports from China PR (subject country)	MT	397	431	303	446
Share of subject country in total imports	%	100	100	100	100
Share of other countries in total imports	%	Nil	Nil	Nil	Nil
Total	%	100	100	100	100

54. It is seen that dumped imports of the subject goods from the subject country has increased in absolute terms from 397 MT in the base year to 446 MT in the POI.

c. Subject country imports in relative terms

Particulars	Unit	2017-18	2018-19	2019-20	2020-21 (POI)
Imports from the subject country	MT	397	431	303	446
Total demand	MT	***	***	***	***
Trend	Indexed	100	113	101	137
Production of the domestic industry	MT	***	***	***	***
Trend	Indexed	100	273	1000	1045
Import from subject country relative to Indian consumption	%	***	***	***	***
Trend	Indexed	100	96	75	82
Production of the domestic industry	%	***	***	***	***
Trend	Indexed	100	40	8	11

55. It is noted that the imports from the subject country relative to Indian consumption and production of the domestic industry declined between the base year and the POI. The same, however, increased in the POI when compared to the previous year.

ii. Price effect of the imports on the domestic industry

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

a) **Price Undercutting**

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

Particulars	Unit	2017-18	2018-19	2019-20	2020-21 (POI)
Net sales realization	Rs./kg	***	***	***	***
Trend	Indexed	100	123	130	130
Landed price	Rs./kg	6,116	7,841	9,520	8,801
Trend	Indexed	100	128	156	144
Price Undercutting	Rs./kg	***	***	***	***
Price Undercutting	%	***	***	***	***
Price Undercutting	Range	Negative	Negative	Negative	Negative

59. It is noted from the aforesaid table that the imports from the subject country have been entering Indian market at a price above the net sales realization of the domestic industry, resulting in negative price undercutting. The Authority also notes that the landed price has been higher than the net sales realization throughout the injury period including the POI.

b) **Price Suppression/Depression**

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

Particulars	Unit	2017-18	2018-19	2019-20	2020-21 (POI)
Cost of Sales	Rs./Kg	***	***	***	***
	<i>Indexed</i>	100	124	114	115
Selling Price	Rs./Kg	***	***	***	***
	<i>Indexed</i>	100	123	130	130
Landed Price	Rs./Kg	6,116	7,841	9,520	8,801
	<i>Indexed</i>	100	128	156	144

61. It is observed that the cost of sales increased from 100 basis points to 115 basis points from 2017-18 to the POI while the selling price increased from 100 basis points to 130 basis points during the same period whereas the landed price increased from 100 to 143 basis points during this period. It is also noted that the landed price has remained below the cost of sales of the domestic industry throughout the injury period.

iii. **Economic Parameters of the domestic industry**

62. Annexure-II to the Anti-Dumping Rules requires that the determination of injury shall involve an objective examination of the consequent impact of dumped imports on domestic producers of such products. With regard to consequent impact of dumped imports on domestic producers of such products, the Anti-Dumping Rules further provide that the examination of the impact of the dumped imports on the domestic industry should include an objective 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.

a) Production, Capacity, Sales and Capacity Utilization

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

Particulars	Unit	2017-18	2018-19	2019-20	2020-21 (POI)
Installed capacity	MT	***	***	***	***
Trend	Indexed	100	100	223	223
Production	MT	***	***	***	***
Trend	Indexed	100	273	1000	1045
Capacity utilization	%	***	***	***	***
Trend	Indexed	100	278	456	478
Domestic sales	MT	***	***	***	***
Trend	Indexed	100	273	1000	1027

64. It is noted that the capacity, production, capacity utilization and domestic sales increased over the injury period.

b) Market Share in Demand

Particulars	Unit	2017-18	2018-19	2019-20	2020-21 (POI)
Imports from China PR	MT	397	431	303	446
Total imports from other countries	MT	Nil	Nil	Nil	Nil
Total imports into the country	MT	397	431	303	446
Domestic sales of the petitioner	MT	***	***	***	***
Trend	Indexed	100	273	1000	1027
Domestic sales of other producers	MT	Nil	Nil	Nil	Nil
Total demand	MT	***	***	***	***
Trend	Indexed	100	113	101	137
Share in Indian demand relative to					
Imports from China PR	%	***	***	***	***
Trend	Indexed	100	96	75	82
Total imports from other countries	%	Nil	Nil	Nil	Nil
Total imports into the country	%	***	***	***	***
Trend	Indexed	100	95.9	75.3	82
Domestic sales of the petitioner	%	***	***	***	***

Particulars	Unit	2017-18	2018-19	2019-20	2020-21 (POI)
Trend	Indexed	100	233	900	700
Domestic sales of other producers	%	Nil	Nil	Nil	Nil

65. The Authority notes that the market share of the subject goods declined between the base year and 2019-20 but increased in the POI when compared with the previous year.

c) Profitability, return on investment and cash profits

66. Profitability, return on investment and cash profits of the domestic industry over the injury period is given in the table below: -

Particulars	Unit	2017-18	2018-19	2019-20	2020-21 (POI)
Cost of Sales	Rs/MT	***	***	***	***
Cost of Sales	Indexed	100	124	114	115
Selling Price	Rs/MT	***	***	***	***
Selling Price	Indexed	100	123	130	130
Profit/Loss	Rs/MT	***	***	***	***
Profit/Loss	Indexed	-100	-126	-91	-94
Profit/Loss	Rs. Lacs	***	***	***	***
Profit/Loss	Indexed	-100	-347	-907	-960
Cash Profit	Rs. Lacs	***	***	***	***
Cash Profit	Indexed	-100	-351	-913	-929
PBIT	Rs. Lacs	***	***	***	***
PBIT	Indexed	-100	-186	-389	-457
Capital employed	Rs. Lacs	***	***	***	***
Capital employed	Indexed	100	112	248	253
ROCE	%	***	***	***	***
ROCE	Indexed	-100	-165	-157	-186

67. It is noted that the profitability per MT of the domestic industry and return on capital employed, cash profit was negative in the POI.

d) Employment, productivity and wages

68. Employment, productivity and wages of domestic industry over the injury period are given in the table below:

Particulars	Unit	2017-18	2018-19	2019-20	2020-21 (POI)
Employment	Nos	***	***	***	***
Trend	Indexed	100	115	148	151
Wages	Rs. Kg	***	***	***	***
Trend	Indexed	100	156	226	730
Productivity per employee	MT/Person	***	***	***	***

Particulars	Unit	2017-18	2018-19	2019-20	2020-21 (POI)
Trend	Indexed	100	240	672	692

69. It is seen that employment levels, wages, and productivity of the domestic industry increased during the injury period. The Authority notes that there has been more than 300% increase in the wages of POI as compared to the previous year without any major change in the number of employees. The petitioner has provided no adequate justification of the same.

e) **Magnitude of Dumping Margin**

70. Magnitude of dumping is an indicator of the extent to which the imports are being dumped in India. The investigation has shown that dumping margin is positive and significant in the investigation period.

f) **Inventories**

71. Inventory position with the domestic industry over the injury period is given in the table below:

Particulars	Unit	2017-18	2018-19	2019-20	2020-21 (POI)
Inventory	MT	-	-	-	***
Trend	<i>Indexed</i>	-	-	-	100

72. It is noted that there was no inventory buildup with the domestic industry between base year and 2019-20. However, some inventory buildup took place in the POI.

g) **Growth**

73. The Authority notes that growth of the domestic industry with regard to the volume parameters like production, capacity utilization and sales volume have been positive but market share and price parameters such as profits and return on capital employed have been negative during the POI as can be seen from the table below;

Particulars	Unit	2017-18	2018-19	2019-20	2020-21 (POI)
Production	%	-	172.73	266.67	4.55
Sales Volume Domestic	%	-	172.73	266.67	2.73
Capacity Utilization	%	-	177.78	64.00	4.88
Market Share	%	-	142.98	305.94	-22.44
Selling Price Per KG	%	-	22.95	5.76	-0.14
Cost of Sales Per KG	%	-	241.29	233.98	3.64
Return on Capital Employed	%	-	-65.46	5.33	-18.84
Profit per Unit	%	-	-26.28	27.91	-3.10
PBIT Per Unit	%	-	-85.82	-109.09	-17.72
Productivity per Employee	%	-	166.67	168.75	4.65

h) Ability to raise capital investments

74. The Authority notes that the domestic industry has made capital investments to set up the plant to produce the subject goods and the domestic industry faced shut down prior to the injury period. The domestic industry has recommenced production with fresh capital infusion as a part of restructuring during the injury period.

i) Magnitude of Injury Margin/Price Underselling

75. The Authority has determined Non-Injurious Price (NIP) for the domestic industry on the basis of principles laid down in the Rules read with Annexure III, as amended. The non-injurious price of the product under consideration has been determined by adopting the information/data relating to the cost of production provided by the domestic industry and duly certified by the practicing cost accountant for the period of investigation. The non-injurious price has been considered for comparing the landed price from the subject country for calculating injury margin. For determining the non-injurious price, the best utilisation of the raw materials by the domestic industry over the injury period has been considered. The same treatment has been carried out with the utilities. The best utilization of production capacity over the injury period has been considered. It is ensured that no extraordinary or non-recurring expenses were charged to the cost of production. The Authority has excluded the job wok related expenses in computation of cost of production for the PUC. A reasonable return (pre-tax @ 22%) on average capital employed (i.e. average net fixed assets plus average working capital) for the product under consideration was allowed for recovery of interest, corporate tax and profit as prescribed in Annexure III of the Rules and being followed.

76. For all the non-cooperative producers/exporters from the subject country, the Authority has determined the landed price based on facts available.

77. Based on the landed price and non-injurious price determined as above, the injury margin for producers/exporters has been determined by the Authority.

Injury Margin

Country	Producer/Exporter	NIP (US\$/MT)	Landed Value (US\$/MT)	Injury Margin (US\$/MT)	Injury Margin (%)	Injury Margin (Range)
China PR	Jiangsu Alpha Pharmaceutical Co., Ltd.	***	***	***	***	0-10
China PR	Zhejiang Hongyuan Pharmaceutical Co., Ltd.	***	***	***	***	0-10
China PR	Zhejiang Lepu Pharmaceutical Co., Ltd.	***	***	***	***	Negative
China PR	Jiangsu Yutian Pharmaceutical Co., Ltd.	***	***	***	***	10-20
China PR	Any other	***	***	***	***	10-20

I. NON-ATTRIBUTION ANALYSIS

78. As per the AD 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. Factors which may be relevant in this respect include, inter alia, the volume and prices of 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 to the domestic industry.
- (i) **Volume and price of imports from third countries**
79. There were no imports of subject goods taking place from any country other than the subject country.
- (ii) **Export Performance**
80. The Authority has considered the data for domestic operations only for its injury analysis.
- (iii) **Contraction in demand/Changes in pattern of consumption**
81. It is noted that the demand of the subject goods has increased over the injury period.
- (iv) **Trade restrictive practices of and competition between the foreign and domestic producers**
82. The import of the subject goods is not restricted in any manner and the same are freely importable in the country. No evidence has been submitted by any interested party to suggest that the conditions of competition between the foreign and the domestic producers have undergone any change.
- (v) **Developments in technology**
83. None of the interested parties have furnished any evidence to demonstrate significant changes in the technology.
- (vi) **Changes in pattern of consumption**
84. The subject goods produced by the domestic industry and that imported into India are comparable and the end users find these goods interchangeable. No evidence has been provided by any of the interested parties to demonstrate change in pattern of consumption.
- (vii) **Performance of the domestic industry with respect to other products**
85. The Authority notes that the performance of other products being produced and sold by the domestic industry has not affected the assessment made by the Authority of the

domestic industry's performances concerning the subject goods. The information considered by the Authority is with respect to the product under consideration only.

(viii) **Productivity of the domestic industry**

86. Productivity per employee increased by the POI.

J. POST DISCLOSURE COMMENTS

87. The Authority issued disclosure statement containing the essential facts in this investigation to the interested parties on 18.07.2022 and the interested parties were allowed time up to 22.07.2022 to comment on the same. The comments on the disclosure statement received from the interested parties have been considered and examined, to the extent found relevant, as below:

J.1 Submissions by the other interested parties

88. The submissions made by the other interested parties are as under:

- i. The subject goods assume critical importance for India and imposing anti-dumping duty on the same would be detrimental to public interest.
- ii. The increase in the imports of the subject goods relative to the Indian consumption is minor and does not justify imposition of the anti-dumping duty.
- iii. The price undercutting has been negative throughout the injury period, because the landed value of the subject goods remained above the net sales realization of the domestic industry throughout this period. The Authority is requested to examine why the domestic industry was not able to increase its prices because it seems to be a case of self-inflicted injury.
- iv. A look at the financial statements of the domestic industry shows that they have been in operating profits since 2018-19 but incurred losses after adjustment of very high interest cost, and depreciation and amortization cost.
- v. Further, from the statement of cash flows of the petitioner during the injury period, it is clear that the petitioner has been earning positive operating cash flows.
- vi. It is only due to the high interest costs that the petitioner is suffering injury. Further, the petitioner have themselves not considered the finance costs as part of the operating costs in the financial statements filed with the MCA. Therefore, the Authority should adopt the same approach and disregard interest while analysing the profitability of the PUC.
- vii. The profits have drastically increased due to some inclusion of exceptional income. Further, there are some exceptional expenses included in the other expenses. The petitioner is earning profits even after removing such exceptional items. This is explained from the table below:
- viii. From the above, it is clear that the petitioner has actually earned profits during the POI, and it is not merely due to inclusion of the exceptional income. Therefore, there is no causal link between the subject imports and the petitioner's performance.
- ix. The constructed normal value and non-injurious price of the domestic industry should be determined after adjusting for abnormal interest cost, depreciation and

amortisation cost, and wage cost. Without making these adjustments, the dumping margin and injury margin would be very high and unjust.

- x. The cost of PUC constitutes about 30-35% of the total cost of manufacturing Atorvastatin API bulk drug. Further, the cost of PUC constitutes 18-23% of the selling price of Atorvastatin API bulk drug. Dr. Reddy's has provided evidence on record to support the above figures. Further, in our estimate, cost of PUC constitutes about 15-20% of the cost of Atorvastatin formulation/tablet. Thus, an anti-dumping duty of 20-30% will have a significant impact on the profitability of Dr. Reddy's and Amoli, Further, any change in the vendor of the raw material involves significant changes required to be made at all levels considering the heavily regulated pharmaceutical industry.
- xi. The price of the subject goods is fairly stable. To balance the interest of the domestic industry and users, in case the Authority decides to recommend imposition of anti-dumping duty, the Authority may kindly recommend reference price form of duty.
- xii. The Authority should not use "surrogate country" methodology in calculating the normal value for this case. The Authority should calculate the dumping margin based on Hongyuan Pharmaceutical's own data of domestic sales or cost.
- xiii. The data used to calculate normal value and NIP is over-protected, due to which Hongyuan Pharmaceutical could not provide meaningful and effective comments.
- xiv. The economic parameters depict that there is no injury to the domestic industry and if any, that cannot be attributed to the imports of subject goods from China PR. It seems that data is manipulated by the petitioner to purposely create the injury. In the recently concluded case of Sunset Review of Anti-Dumping Duty imposed on imports of Digital Offset Printing Plates originating in or exported from China PR, economic parameters were considered as an important parameter and the authority recommended dis-continuance of the ADD levied on the PUC
- xv. The 22% ROCE used in calculating the NIP is not appropriate and should be modified.

J.2 Submissions by the domestic industry

89. The submissions made by the domestic industry are as under:
- a) NIP determined for the domestic industry is very low and needs reconsideration by proper appreciation of facts. The low injury margin on account of low NIP will benefit the exporters who are engaged in dumping
 - b) Low NIP may defeat the whole purpose of any ADD to counteract dumping causing injury to the domestic industry. The following concerns on NIP determination must be please addressed in the final finding;
 - i. The Authority has disallowed some of the main expenses claimed by the domestic industry which tabulated in the comments. Clarification sought vide e-mail dated 21st July, 2022 in this regard is yet to be received and we

request such clarification prior to the issuance of finding to avoid miscarriage of justice. Comments are filed on time without such clarification to avoid any delay in investigation.

- ii. Basis of allocation of salary and wages in the determination of NIP in the disclosure needs to be changed to make it reasonable and logical. Instead of production volume, machine hours should be considered as the basis of apportionment in the peculiar facts of the present case.
- iii. The company has undertaken some job work of purifying ATS-8 by activating it with Mother Liquor and the process has taken only 0.19% of total Machine hours. However, if such job work is considered as production activity, then such job work makes for 58.48% of the total production volume leading to job work absorbing major share of salary and wages at the time of apportioning the cost.
- iv. Para VI of Annexure-III to the Rules requires that the basis of apportionment must be reasonable and scientific. Thereafter, an indicative basis is stipulated and a hierarchy is visible in the stipulation commencing from machine hours and it goes on. Thus, machine hours as a basis of apportionment of salary and wages as being requested by the domestic industry has clear backings in the Rule and the facts of the present case shows that the method is fully reasonable and scientific and the details of machine hours is also available.
- v. Annexure III to the rules provides for a reasonable return on capital employed while determining NIP for the domestic industry. But in the facts of present case, calculation shows negative return considered which is not the intended purpose of the rule.
- vi. As per Para VIII of Annexure III read with Para IX, interest is allowed as an item of cost of sales. Hence, interest cost after reasonableness test based on Para-IX has to be allowed as cost of sales. The stipulation in para VIII that the balance amount of return is to be allowed as pre -tax profit to arrive at the non- injurious price clearly talks about balance amount only in positive count/sense since a negative amount cannot take care of pre -tax profit.
- vii. It is understood that the Authority allows minimum 5% return in case the return calculated is actually less than 5% in the computation of NIP and such methods to ensure a reasonable return must be allowed in case of a negative scenario also.
- viii. In fact, domestic industry did not get any opportunity to clarify the basis of allocation earlier, as the inappropriateness of the basis of apportionment has become evident only upon receipt of the subject Disclosure statement. However, it is felt that the comments on Disclosure statement stage is not any belated stage to clarify the basis of allocation. Also, the DI had submitted all information relevant to determine the basis of allocation including details of machine hours etc.

- c) The Authority may confirm its proposals on PUC and like article in the Final Finding.
- d) The Authority may confirm its proposals on the aspect of standing and the domestic industry in the final finding.
- e) The Authority may relook at the normal value determined based on our comments on cost relied upon for determination of NIP. It is felt that the dumping margin in case of Zhejiang Lepu Pharmaceutical Co., Ltd also shall be very significant.
- f) The domestic industry has suffered material injury on account of dumping of subject goods from subject country and a causal link between dumping and injury is also evident.
- g) The domestic industry has suffered severe financial losses as a result of price effects created by the landed price of dumped imports and even the volume parameters have been at below par levels on account of huge presence of dumped imports in the Indian market holding substantial part of the market share.
- h) The case clearly warrants anti-dumping duties to correct the effect of dumping.
- i) It is notable that even though the price undercutting was negative in the injury period, what is really notable is that the landed price has remained below the cost of sales of the domestic industry throughout the injury period. Clearly, the dumped imports prevented price increases which otherwise would have occurred to a significant degree. Such landed price even below the cost of the domestic industry is the cause of injury to the domestic industry.
- j) The domestic industry is really concerned that the injury margin is negative in case of Zhejiang Lepu Pharmaceutical Co., Ltd and the margin is very low for the other two responding exporters. The cause of such low margin is clearly the low NIP determined by the Authority and the imports from all such exporters have been reaching India at very low prices causing severe price pressure on the domestic industry. The Authority may revisit the injury margin calculations based on our comments on the NIP computation.
- k) It is reiterated that as per the estimates of the petitioner, ATS-8 may account for a meagre 1.5% to 2% cost of Atorvastatin Drug and any ADD will have only very minuscule effect on the end drug as the cost of intermediate in such drug as such is very small. The general public will not be impacted on account of ADD in any significant manner. At the same time ADD will ensure continued existence of the domestic industry which shall ultimately in the benefit of users in India.

J.3. Examination by the Authority

90. The Authority notes that the post-disclosure comments/submissions made by the domestic industry and the other interested parties are mostly reiterations of their earlier submissions, which have already been examined adequately addressed in the disclosure

statement or relevant paras of the present finding. The Authority has examined the submissions herein below to the extent relevant and not addressed elsewhere are examined as under:

- i. The Authority has determined the Non-Injurious Price (NIP) for the domestic industry on the basis of information furnished by the domestic industry, principles laid down in Annexure III of Anti-Dumping Rules and the Generally Accepted Accounting Principles (GAAP).
- ii. The Authority notes the contentions of the interested parties regarding impact of imposition of anti-dumping duties on their profitability. In this regard, the Authority re-iterates that though the cost of the PUC in the manufacturing of Atorvastatin API bulk drug has been provided, the further cost increase at the drug stage has not been provided by any interested party. In the absence of such information, impact of imposition of anti-dumping on PUC on the cost of Atorvastatin tablet has not been determined.
- iii. As regards the submission of the domestic industry on opportunity to clarify the basis of allocation, the Authority notes that the changes sought by applicant time and again in their NIP claim were considered by the Authority on merit. The basis of allocation was also explained to the domestic industry during the verification of data.
- iv. Regarding the contention of the domestic industry on salary and wages, the Authority has taken note of the following data;

(Source : format H and Format C submitted by DI)

Parameters given/claimed by Applicant in respect of PUC					
		2017-18	2018-19	2019-20	2020-21(POI)
PUC Production	MT	***	***	***	***
No of Employees	Nos	***	***	***	***
Salaries & wages Cost for PUC Claimed	Rs. Lacs	***	***	***	***
Salaries & Wages Cost for PUC Claimed	Rs./Kg	***	***	***	***
PUC Productivity	Kg/employee	***	***	***	***
Salaries & Wages Cost for Company as a whole	Rs. Lacs	***	***	***	***
PUC Production	Index	100	273	1000	1045
No of Employees	Index	100	115	148	151
Salaries & wages Cost for PUC Claimed (Rs. Lacs)	Index	100	435	2283	7726
Salaries & wages Cost for PUC Claimed (Rs./Kg)	Index	100	157	225	731
PUC Productivity (Kg/employee)	Index	100	238	668	688
Salaries & Wages Cost for Company as a whole (Rs. Lacs)	Index	100	131	127	152

It was noted that:

- a. Para 4(vi) of Annexure III of Anti-Dumping Rules provides that *“The expenses to the extent identified to the product are to be directly allocated and common expenses or overheads classified under factory, administrative and selling overheads may be apportioned on reasonable and scientific basis such as machine hours, vessel occupancy hours, direct labour hours, production quantity, sales value, etc., as applied consistently by domestic producers and the reasonableness and justification of various expenses claimed for the period of investigation may be examined and scrutinised by comparing with the corresponding amounts in the immediate preceding year.”*
 - b. On such comparison with the corresponding amounts during the immediate preceding year as mentioned in the above table, it is seen that the productivity of the PUC has increased by 13 basis points, the salary cost of the company has increased by 25 basis points, while the salary cost claimed for the PUC in Rs. Lacs and in Rs./Kg has increased by 5543 basis points and 506 basis points respectively.
 - c. The domestic industry was not able to provide the reasonable justification with the supporting documents about the increase in salary cost in the POI (2020-21), compared to previous year/ IIP (2019-20), when there was no significant change in number of employees and change in production quantity of PUC.
 - d. Moreover, the allocation methodology adopted by Authority in respect of salary and wages allocation i.e Production Ratio is in consonance with the allocation methodology followed by the applicant during previous years/Injury Investigation periods.
- v. Regarding the contention of the domestic industry on job work, the Authority notes that neither Domestic Industry’s application nor the company’s Annual Financial Statement mentions about any such job work carried out by them during the POI. Secondly, the domestic industry could not produce any MoU or any supporting documents in this regard. Therefore, the Authority has considered the production and sales as per the available the domestic industry’s claim and record.
 - vi. Regarding the contention of the domestic industry on reasonable return on capital employed while calculating the NIP, the Authority notes that Annexure III (viii) of Anti-Dumping Rules, 1995 provides that *“A reasonable return (pre-tax) on average capital employed for the product may be allowed for recovery of interest, corporate tax and profit”*. As per DGTR’s practice 22% return on average capital employed has been provided. The 22% return so provided is inclusive of interest cost, tax and profit.
 - vii. The Authority has taken cognizance of the higher finance cost of the domestic industry. The same has been considered appropriately principles laid down in Annexure III of Anti-Dumping Rules. In this regard, it is further noted that the annual report of domestic industry mentions that deterioration of net worth is due to higher provisioning of interest. Therefore, injury to that extent cannot be attributed to dumped imports.

- viii. The Authority, therefore notes that there is no merit in the claim/contentions made by the domestic industry on the disclosure statement in respect of the NIP calculated by the Authority.
- ix. The constructed normal value is determined on the basis of the price actually paid or payable in India on the basis of estimates of cost of production, duly adjusted to include selling, general & administrative costs of the domestic industry by adding reasonable profits.

K. INDIAN INDUSTRY'S INTEREST AND OTHER ISSUES

91. Various submission of the interested parties and petitioner on the aspect of Indian industry's interests and other issues are considered and examined as follows:

K.1. Submissions made by other interested parties

- i. Imposing anti-dumping duty on imports of the PUC would be against public interest.
- ii. The price of the finished Atorvastatin Formulation is controlled by the Drug (Prices Control) Order, 2013 and the respondents will have to bear the burden of Anti- Dumping Duty, if any, imposed.
- iii. The price of Atorvastatin formulation, being an essential commodity is controlled by the DPCO. The following table shows the prices of Atorvastatin Formulation as per the DPCO:

Particulars	Ceiling price per tablet w.e.f. 01.04.2020 in terms of Order dated 25.03.2020	Ceiling price per tablet w.e.f. 01.04.2021 in terms of Order dated 25.03.2021
Atorvastatin- 10mg	5.47	5.50
Atorvastatin- 20mg	13.25	13.32
Atorvastatin- 40mg	19.24	19.34
Source: Orders dated 25.03.2020 and 25.03.2021 fixing the ceiling prices in terms of the DPCO		

- iv. The price increase as per the DPCO is also very minimal and is based on the Wholesale Price Index of 0.53568% from 2020 to 2021. Therefore, such increase will not cover the increase in costs due to the Anti-Dumping Duty.
- v. When the price of formulation is controlled by DPCO, the respondents will not be in a position to increase the price of the API. At the same time, the respondents are the users of the PUC and therefore, have to bear the increase in price of the PUC through Anti- Dumping Duty, if any imposed.
- vi. Atorvastatin Tablet of 5 mg strength is not an essential commodity and not controlled by the DPCO. However, the market share of the same in the overall market of Atorvastatin formulation is very less. Significant market is for tablets of 10mg, 20mg and 40mg, prices of which are controlled under DPCO.

- vii. The cost of the PUC constitutes about [30% - 40%] of the cost of Atorvastatin API. Further, cost of the PUC constitutes about [5% - 15%] of the cost of Atorvastatin formulation. Dr. Reddy's manufactures and sells Atorvastatin API Amoli Organics manufactures and sells Atorvastatin API. Thus, an Anti-Dumping Duty of 20-30% will have a significant impact on the profitability of the respondents.
- viii. Imposition of the anti-dumping duty will not be in public interest and will adversely affect the respondents' business.
- ix. The PUC is used for manufacture of Atorvastatin tablet which is a life-saving drug used to lower the cholesterol levels. The onset of the Covid-19 pandemic has led to various side effects, one of which is the high cholesterol levels amongst many who have recovered from it. Atorvastatin is one of the drugs prescribed to overcome the high cholesterol levels arising due to the Covid-19 Pandemic.

K.2. Submissions made by the domestic industry

- i. The existence of the domestic industry producing the subject goods shall be in the larger public interest and the oppositions raised against the ADD citing public interest are all only motivated statements to take the benefit of dumping being practiced by the exporters.
- ii. ATS-8 is a pharmaceutical intermediate which goes into the production of Atorvastatin API which further goes into the manufacturing of Atorvastatin formulations/drugs to reduce cholesterol in human beings. Petitioner is the sole producer of the subject goods in India and the existence of the petitioner shall be essential to ensure the domestic supply of this important pharma intermediate. Else, the country as such will be dependent on the imports from China PR for ATS-8 which cannot be a situation in larger public interest in any manner.
- iii. In the absence of production and supplies by the petitioner, the users in India shall be dependent only on the imports from China PR and it will have adverse effects in terms of both price and volumes.
- iv. The users may be able to benefit in the short term based on the dumped imports but the price can increase irrationally when there is no domestic supply of the product in India and in a situation of imports enjoying a monopolistic situation in the Indian market.
- v. The opposing parties have not quantified the effect of any ADD on the end formulation. No actual cost and price details are provided to substantiate the claims. Any ADD on the subject goods will have very negligible price effects on the Atorvastatin formulation and the Atorvastatin API producers and formulation producers shall be well placed to pass on such minimal price increases on account of any ADD to be imposed on ATS-8.
- vi. As per the estimate of the petitioner, ATS-8 may account for a meager 1.5% to 2% cost of Atorvastatin Drug and any ADD will have only very minuscule

effect on the end drug as the cost of intermediate in such drug as such is very small. The general public will not be impacted on account of ADD in any significant manner.

- vii. It has been a contention that imposition of ADD will have a huge impact on the profitability of the Atorvastatin API manufactures as the price in the industry for Atorvastatin formulation in India is regulated by Drug Price Control Order, 2013. The contention is totally unsubstantiated and no real data is submitted to show the impact on formulation as alleged.
- viii. The regulations under DPCO are dynamic pricing mechanism and the prices fixed under the DPCO by NPPA take into consideration the input cost for the product and also reasonable profit and the prices are amenable to changes based on any material changes in the input cost etc. ADD on the product will not have any serious impact on the fair input cost considered for price regulation under DPCO.
- ix. The formulators will not suffer in any manner as alleged and the contention is only an attempt to misguide the Authority. It is also a settled principle that ADD will have some impact on the cost at the end of the users but the ADD is always determined as a measure to remove the injurious effects of dumping and not beyond that. ADD will only stop the price distortion and is not any measure which will create any price increase per se.
- x. Price regulation of an end formulation wherein the subject good is an intermediate is not any barrier under the AD Rule in seeking protection against dumped imports of the intermediate by the producer of the intermediate. The issue had been addressed in the past by the Authority in matters like ADD Investigation concerning Gliclazide originating in or exported from China PR and a similar view is essential in the present matter also.
- xi. ADD to the extent to ensure fair price for the product cannot be construed as any measure against the public interest and ADD in the present matter will only ensure a fair balance between interest of the importers/users and the producer of ATS-8 in India.

K.3. Examination by the Authority

- 92. The Authority notes that the purpose of anti-dumping duty, in general, is to eliminate injury caused to the domestic industry by the unfair trade practices of dumping so as to establish a situation of open and fair competition in the Indian market, which is in the general interest of the country. Imposition of anti-dumping measures does not aim to restrict imports from the subject country in any way. The Authority recognizes that the imposition of anti-dumping duties might affect the price levels of the product in India. However, fair competition in the Indian market will not be reduced by the imposition of anti-dumping measures. On the contrary, imposition of anti-dumping measures would ensure that no unfair advantages are gained by the dumping practice, prevent decline of the domestic industry and help maintain availability of wider choice to the consumers of the subject goods.

93. The Authority considers whether imposition of anti-dumping shall have any adverse impact on the interest of the public. In order to examine the same, the Authority has weighed the impact of the imposition of duties on the availability of the goods in the Indian market, the impact on the users of the product as well as the domestic industry and the impact on the general public at large. This determination is proposed to be based on the submissions and evidence submitted over the course of the present investigation.
94. The Authority issued initiation notification inviting views from all interested parties, including importers, consumers and others. Authority also prescribed a questionnaire for the users/ consumers to provide relevant information with regard to present investigation, including any possible effects of anti-dumping duty on their operations. The submissions adduced by the two users/importers participating in the present investigation have been considered to the extent supported by evidences.
95. With regard to the contention that price of Atorvastatin Formulation, being an essential commodity, is controlled by the DPCO and any ADD will have major impacts on downstream users and end users due to such price control, the Authority notes that the subject product is a pharmaceutical intermediate which goes into the production of Atorvastatin API which further goes into the manufacturing of Atorvastatin Formulation/drug. The price as fixed by DPCO is applicable on the final drug.
96. Further, the Authority notes that while the price of the final drug is fixed by DPCO, there could be an increase in the cost of production in the two downstream stages of API production and later the drug production. While one of the main API producers has given inputs on quantification of cost incurred for the API, the further cost increase at the drug stage has not been provided by any interested party. The Authority has considered all the submissions on the aforesaid issues made in response to this final finding.

L. CONCLUSIONS AND RECOMMENDATIONS

97. Having regard to the contentions raised, information received, submissions made and facts available before the Authority as recorded in these findings and on the basis of the determination of dumping, and consequent injury to the domestic industry made hereinabove, the Authority concludes that:
- a. The product under consideration has been exported from the subject country at a price below the normal value, thus resulting in dumping.
 - b. The examination of the imports of the subject goods and the performance of the domestic industry shows that the volume of imports from the subject countries have increased in absolute terms and also in relation to consumption in India.
 - c. While the demand has increased from 100 basis points to 137 basis points, the sale of the domestic industry increased from 100 basis points in the base year to 1027 basis points in the POI. However, the domestic sales account for only 20% of total demand of the subject goods in India. Further, it is noted that the domestic industry has been able to increase its domestic sales by keeping the net sales realization much below the landed price.
 - d. The capacity utilization, production and sales of the domestic industry increased during the injury investigation period including the POI. However, the capacity utilization of the domestic industry has been very low in the entire injury period.


- e. The employment, wages and productivity increased during the injury investigation period including the POI.
- f. The fall in the profitability of the domestic industry between base year and the POI has been very substantial.
- g. The domestic industry is stuck below the landed price throughout the injury investigation period including the POI and has not been able to increase the prices. In this regard, the domestic industry has stated that the dumped imports prevented price increases which otherwise would have occurred to a significant degree.
- h. There is causal link between dumping of the product under consideration from the subject country and injury to the domestic industry
- i. Further, the Authority notes that while the price of the final drug is fixed by DPCO, there could be an increase in the cost of production in the two downstream stages of API production and later the drug production. While one of the main API producers has given inputs on quantification of cost incurred for the API, the further cost increase at the drug stage has not been provided by any interested party. The Authority has considered all submissions on the aforesaid issues made in response to this final finding. Since the duty recommended is based on injury margin as per the lesser duty rule, the duty recommended is fairly reasonable and it is not likely to cause any adverse impact on the downstream industry.
- j. The Authority notes that the investigation was initiated and notified to all the interested parties and adequate opportunity was given to the domestic industry, exporters, importers and other interested parties to provide information on the aspects of dumping, injury and the causal link. Having initiated and conducted the investigation into dumping, injury and causal link in terms of the provisions laid down under the Rules, the Authority is of the view that imposition of anti-dumping duty is required to offset dumping and injury. Therefore, the Authority recommends imposition of anti-dumping duty on imports of subject goods from the subject country.
- k. In terms of provisions contained in Rule 4(d) & Rule 17(1) (b) of the Rules, the Authority recommends imposition of anti-dumping duty equal to the lesser of margin of dumping and the margin of injury, so as to remove the injury to the domestic industry. Taking into account factual matrix of the case, and having regard to information provided, and submissions made by interested parties, it is considered appropriate to recommend benchmark/reference form of anti-dumping duties. The Authority recommends imposition of antidumping duty on the imports of the goods described in col.3 of the duty table below originating in or exported from the subject country for a period of two years from the date of the notification to be issued in this regard by the Central Government. The anti-dumping duty is recommended as the difference between the landed value of the goods as described in Col.3 of the duty table below and the amount indicated in Col.7 of the duty table appended below, provided the landed value is less than the value indicated in Col.7. If the landed value is more than the value indicated in Col 7, the anti-dumping duty will not be applicable. The landed value of imports for this purpose shall be the assessable value as determined by the customs under the Customs Act, 1962 and applicable level of custom duties except duties levied under Section 3, 3A, 8B, 9 and 9A of the Customs Tariff Act, 1975.

Duty Table

SN	Sub Heading or Tariff Item	Description of Goods	Country of Origin	Country of Export	Producer	Reference Price	Unit of Measurement	Currency
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1	2520	(4R-Cis)-1,1-Dimethylethyl-6-cyanomethyl-2,2-dimethyl-1,3-dioxane-4-acetate also known as ATS-8	China PR	Any country including China PR	Jiangsu Alpha Pharmaceutical Co., Ltd.	119.21	KG	USD
2	-do-	-do-	China PR	Any country including China PR	Zhejiang Hongyuan Pharmaceutical Co., Ltd.	119.21	KG	USD
3	-do-	-do-	China PR	Any country including China PR	Zhejiang Lepu Pharmaceutical Co., Ltd.	Nil	-	-
4	-do-	-do-	China PR	Any country including China PR	Jiangsu Yutian Pharmaceutical Co., Ltd.	119.21	KG	USD
5	-do-	-do-	China PR	Any country including China PR	Any other than producer at S.no. 1 to 4	119.21	KG	USD
6	-do-	-do-	Any country other than China PR	Any	Any	119.21	KG	USD

N. Further Procedure

98. An appeal against the order of the Central Government arising out of these findings shall lie before the Customs, Excise and Service Tax Appellate Tribunal in accordance with the Customs Tariff Act.



(Anant Swarup)
Designated Authority