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GOVERNMENT OF INDIA  
MINISTRY OF COMMERCE & INDUSTRY  
DEPARTMENT OF COMMERCE  
(DIRECTORATE GENERAL OF ANTI-DUMPING & ALLIED DUTIES)  
**NOTIFICATION**

New Delhi the 20<sup>th</sup> January 2011

**Final Findings**

**Subject: - Anti-Dumping Investigations involving imports of Penicillin-G Potassium originating in or exported from China PR and Mexico and 6-APA originating in or exported from China PR.**

No. 14/19/2009-DGAD: - Having regard to the Customs Tariff Act 1975 as amended in 1995 and the Customs Tariff (Identification, Assessment and Collection of Anti- Dumping Duty on Dumped Articles and for Determination of Injury) Rules, (hereinafter referred as Rules) 1995 thereof;

**A. PROCEDURE**

2. The procedure described below has been followed:

i. The Designated Authority (hereinafter referred to as Authority), under the above Rules, received a written application from M/s Alembic Limited, Vadodara (manufacturer of both Penicillin G and 6-APA) and M/s. Southern Petrochemical Industries Corporation Ltd. (SPIC), Chennai (manufacturer of only Penicillin G) alleging dumping of (a) Penicillin-G Potassium originating in or exported from China PR and Mexico (hereinafter referred to as subject countries for Penicillin-G); and (b) 6- Amino Penicillanic Acid (also referred to as 6-APA in this notification) originating in or exported from China PR (hereinafter referred to as subject country for 6-APA).

ii. The Authority notified the Embassies/Representatives of the subject countries in India about the receipt of dumping application made by the petitioners before proceeding to initiate the investigation in accordance with sub-rule (5) of Rule 5 supra;

iii. The Authority on the basis of sufficient evidence submitted by the applicant on behalf of the domestic industry, issued a public notice dated 22<sup>nd</sup> July, 2009 published in the Gazette of India, Extraordinary, initiating Anti-Dumping investigations concerning imports of Penicillin-G Potassium originating in or exported from China PR and Mexico and 6-APA originating in or exported from China PR, in accordance with the sub-Rule 6(1) of the Rules to determine the existence, degree and effect of alleged dumping and to recommend the amount of anti dumping duty, which, if levied, would be adequate to remove the injury to the domestic industry.

iv. The Designated Authority sent copy of initiation notification dated 22<sup>nd</sup> July, 2009 to the representatives of the subject countries in India, known exporters from the subject countries, importers, consumers and the domestic industry as per the addresses made available by the applicants and requested them to make their views known in writing within 40 days of the initiation notification.

v. The Authority provided a copy of the non-confidential version of the application to the known exporters and to the representatives of the subject countries in India in accordance with Rule 6(3) supra.

vi. The representatives of the subject countries in India was informed about the initiation of the investigation in accordance with Rule 6(2) with a request to advise the exporters/producers from their country(ies)/territory(ies) to respond to the questionnaire within the prescribed time. A copy of the letter and questionnaire sent to the exporters was also sent to them along with the names and addresses of the known exporters.

vii. The Authority sent questionnaires to elicit relevant information to the following known exporters in subject country in accordance with Rules 6(4).

S.N.	Company's Name	Product	Country
1.	North China Pharmaceutical Company	Pen-G & 6-APA	China PR
2.	Aurobindo Tongling (Datong) Pharmaceutical Co. Ltd.	Pen-G	China PR
3.	Zhuhai Jinyou Imp. & Exp. Co. Ltd.	Pen-G	China PR
4.	Hebei Zhongrun	Pen-G	China PR
5.	Zhongnuo Pharmaceutical	Pen-G	China PR
6.	Jiangxi Dongfeng Pharmaceutical Co. Ltd.	Pen-G	China PR
7.	Sichuan Pharmaceutical Co. Ltd.	Pen-G & 6-APA	China PR
8.	Fersinsa, Mexico	Pen-G	Mexico
9.	Harbin Pharmaceutical Group Co., Ltd	6-APA	China PR
10.	Chengdu United Laboratories	6-APA	China PR
11.	Henan Xinxiang Huaxing Pharma. Factory	6-APA	China PR
12.	Hebei Zhongrun Pharmaceutical Co., Ltd. (Shijiazhuang Pharm Group)	6-APA	China PR

13.	NCPC Beta Co., Ltd.	6-APA	China PR
14.	Livzon Syntpharm Co., Ltd. (Zhuhai FTZ)	6-APA	China PR
15.	Shandong Lukang Pharmaceutical Group Co., Ltd	6-APA	China PR
16.	Zhuhai United Laboratories Co., Ltd	6-APA	China PR

viii. In response to the above notification, following exporters/producers have responded.

S.N.	Company's Name
1.	North China Pharmaceutical Company, China PR
2.	Aurobindo (Datong) Bio-Pharma , China PR
3.	Zhang Jia Kou Gist-Brocades Pharmaceutical, China PR
4.	Zhang Jia Kou DHA Pharmaceutical, China PR
5.	DSM Trading(Shanghai) Co. , China PR
6.	NCPC Beta Co., Ltd, China PR
7.	Fersinsa GB, Mexico
8	DSM Anti-Infectives BV, Netherland

ix. Questionnaire was sent to the following known importers and/or consumers of subject goods in India calling for necessary information in accordance with Rule 6(4).

SN	Company' name
1.	DSM Anti Infectives India Ltd.
2.	Elder Pharmaceuticals Ltd.
3.	KDL Biotech Ltd.
4.	Lupin Laboratory Ltd.
5.	Medox Agencies
6.	Nectar Lifesciences Ltd.
7.	Surya Pharmaceutical Ltd.

8.	Dhanuka Labs
9.	Aurobindo Pharma Ltd.
10.	Hindustan Antibiotics Ltd.
11.	Asiatic Drugs & Pharmaceuticals
12.	Unimark Remedies Ltd.
13.	Penam Laboratories Ltd.
14.	Amalgamated Drugs & Pharmaceuticals Pvt. Ltd
15.	Euro Asian Industrial Co.
16.	Apex Drug House
17.	Gypsy Organics India Inc.
18.	Malviya Chemicals & Pharmaceuticals (Pvt.) Ltd.
19.	Bhageria Dye Chem Ltd.
20.	Cebon India Ltd.
21.	Parabolic Drugs Ltd.
22.	Concept Pharmaceuticals Ltd.
23.	Dalas Biotech Ltd.
24.	Ranbaxy Laboratories Ltd.
25.	Surya Pharmaceutical Ltd.
26.	Tini Pharma Limited
27.	Elegant Pharmaceuticals Ltd.

x. Response has been received by the following importers/ embassies: -

S.N.	Company's Name
1.	DSM Anti Infectives India Ltd.
2.	Ranbaxy Laboratories Ltd.
3.	Asiatic Drugs & Pharmaceuticals

4.	Piramal Healthcare Limited
5.	Aurobindo Pharma Ltd., Hyderabad
6.	Embassy of Mexico
7.	Federation of Pharma Enterprises(FOPE)
8.	Doctor Lifeline Remedies (India) Limited
9.	Nectar Lifesciences Ltd, Chandigarh
10.	Otsuka Chemical India Ltd, Gurgaon.
11.	Unimark Remedies Ltd, Mumbai
12.	Bulk Drug Manufacturers Association, Hyderabad.
13.	Janak Laboratories Ltd, Alwar
14.	M/s Lupin Ltd
15.	Ambuja Intermediates Pvt Ltd,
16.	Virchow Petrochemical Pvt Ltd, Hyderabad

xi. The Authority made available non-confidential version of the evidence presented by various interested parties in the form of a public file kept open for inspection by the interested parties;

xii. Petitioners relied on import information published by Directorate General of Commercial Intelligence and Statistics (DGCI&S) for 2005-06, 2006-07, 2007-08 and IBIS (secondary source) for 2008-09 for Penicillin-G and IBIS (secondary source) for 6-APA for the entire investigation period in their application. However, subsequent to initiation, the entire data of imports from IBIS and DGCI&S was analyzed and it was determined that volume of imports from IBIS was higher than that obtained from DGCI&S. Therefore, for the uniformity and also for the fact that import volumes are higher in IBIS during POI for both Pen G as well as 6 APA, it has been decided to take into account import information from IBIS for the volume as well as price effects in the injury analysis and also for the dumping margin determinations.

xiii. The verification of the domestic industry's and exporter's information & data, to the extent deemed necessary, was conducted.

xiv. Optimum cost of production and cost to make & sell the subject goods in India based on the information furnished by the applicants on the basis of Generally Accepted Accounting Principles (GAAP) was worked out so as to ascertain if anti-dumping duty lower than the dumping margin would be sufficient to remove injury to Domestic Industry.

xv. Investigation for both the products was carried out for the period starting from 1<sup>st</sup> October 2008 to 31<sup>st</sup> March, 2009 (POI). In case of Penicillin-G, the examination of trends, in the context of injury analysis, covered the periods April 2005-March 2006, April 2006-March 2007, April 2007-March 2008, April 2008-September 2008 and the POI. In respect of 6-APA, however, since the domestic industry had started production in 2007 only, the injury examination had to be restricted to 2007-08 and 2008-09.

xvi. The Authority recommended imposition of provisional Anti-Dumping duties concerning imports of Penicillin-G Potassium originating in or exported from China PR and Mexico and 6-APA originating in or exported from China PR originating in or exported from the subject countries (falling under Chapter 29, vide its Preliminary findings Notification No 14/19/2009-DGAD dated 11<sup>th</sup> February, 2010).

xvii. In accordance with Rule 6(6) of the AD Rules, the Authority also provided opportunity to all interested parties to present their views orally in a public hearing held on 18<sup>th</sup> March, 2010. The parties, which presented their views in the public hearing, were requested to file written submissions of the views expressed orally. The arguments made in the written submissions/rejoinders received from the interested parties have been considered, wherever found relevant, in the disclosure statement issued by the Authority on 21<sup>st</sup> December, 2010 and in this finding. In addition, comments received on the disclosure statement from the interested parties have been considered, wherever found relevant, in this finding.

xviii. \*\*\* in this notification represents information furnished by the applicants on confidential basis, and so considered by the Authority under the Rules.

## B. Products under consideration

3. The Products under consideration in the present investigation are Penicillin-G Potassium and 6-APA. The Authority has treated Penicillin-G and 6-APA as two different products for the purpose of the present investigation. Penicillin is a  $\beta$ -lactam antibiotic used in the treatment of bacterial infection caused by susceptible, usually Gram-positive, organisms. The name "penicillin" can either refer to several variants of penicillin available, or to the group of antibiotics derived from the penicillin. Penicillin-G is an organic compound and is classified under Chapter 29 of the Customs Tariff Act. Penicillin is the first antibiotic to be isolated and is used in the treatment of various diseases and infections. Infections wherein penicillin is most effective are: strep, pneumonia, spinal meningitis, gas gangrene, diphtheria, syphilis, and gonorrhoea.

4. 6-APA is a derivative of Penicillin-G and is also an organic chemical. 6-APA is a white powder. It is stable in ordinary conditions and the melting point is 198 - 200° C. It is used in manufacture of major antibiotics like Ampicillin Trihydrate, , Amoxicillin Trihydrate. etc.

5. The subject goods are classified in Chapter 29 of the Customs Tariff Act, 1975 under subheading 2941 10 and under subheading 29411010 (Penicillin-G) and 29411050 (6-APA)

under the Indian Trade Classification. Customs classification is, however, indicative only and is not binding on the scope of the product under consideration and present investigations.

### C. Like article

6. The Authority has treated Penicillin-G and 6-APA as dislike article for the purpose of the present determination. With regard to like article, Rule 2(d) 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;*

7. For both the domestic like products separately, it is noted that there is no known difference in subject goods produced by the Indian industry and exported from subject country(ies). The subject goods produced by the Indian industry and that imported from subject country(ies) are comparable in terms of characteristics such as physical & chemical characteristics, manufacturing process & technology, functions & uses, product specifications, pricing, distribution & marketing and tariff classification of the goods. The two are technically and commercially substitutable. The consumers are using the two interchangeably. None of the opposing interested parties has raised any objection in this regard. In view of the above, subject goods produced by the petitioner companies are being treated as domestic like articles to the subject goods imported from subject country(ies) in accordance with the anti-dumping Rules.

### Issues raised by various interested parties concerning initiation of one investigation for two products

8. Subsequent to the issuance of provisional findings and during the public hearing and written submissions thereafter, it has been submitted by many interested parties that the Authority is not justified in combining two products in one application, that too, when both the petitioners are not producing both the products and both the products are not being imported from both the countries. It has also been submitted that Pen-G and 6APA are not like products and they should never have been taken together in one investigation. These interested parties have requested non implementation of interim duties recommended by the Designated Authority.

9. In reply to above and with regards to inclusion of two products in one investigation, petitioners have referred to the following cases – Catalyst, Rubber Chemicals, Theophylline & Caffeine and Certain Phosphorous based compounds. Petitioners have argued that a careful analysis of these various products would reveal an un-spelled rationale in combining different products in one application. They have further added that even when different products may be dislike article under Rule 2(b), these different products are either used for same function, or are produced using similar production process, or to some extent have common production facilities, or have some overlapping raw materials, or are co-produced up to certain extent and thereafter produced separately to obtain the two products, or are seen in the market parlance as one product. It has been further added that in the present case Pen-G is only an intermediate used in the production of 6APA and 7ADCA; which are in turn used for production of various APIs.

The increase and reduction in demand of eventual API will increase or reduce demand of 6APA and in turn Pen-G. Pricing of Pen-G and 6APA are also intrinsically linked. Such being the situation, the petitioner submits that consideration of Pen-G and 6 APA in one application is not only permissible but also was highly desirable.

#### Examination by the Authority

10. The Authority notes that neither the Agreement nor the Antidumping Rules prohibits in any manner investigation of multiple products in one investigation as long as standing, like product, domestic industry status, dumping and injury investigations are carried out in respect of individual products separately. Thus, there is no explicit restriction in the Agreement to limit the investigation to single product as has been argued by the interested parties. Further, the issue of product under consideration, like article and standing requirement of the domestic industry has been examined with respect to individual products and all issues concerning dumping and injury determinations has been carried out separately for both the products. In view of the above, the arguments of the interested parties in this respect do not appear to be valid.

#### D. Domestic Industry

11. The application has been filed by M/s Alembic Ltd., Vadodara and M/s. Southern Petrochemical Industries Corporation Ltd. (SPIC), Chennai. Alembic Ltd. produced both the products, whereas SPIC produced Penicillin-G only. As per evidence available, petitioners' production accounts for 100% of the Indian production of Penicillin- G in the POI. In case of 6-APA, the petitioner is M/s Alembic Ltd., Vadodara. The petition has been supported by M/s. Alka Remedies Pvt. Ltd. The petitioner claimed that there are number of producers in India. But such production was largely for captive consumption and not for sale in the market. The petitioner submitted that production of 6-APA by those producers who consume it captively and do not sell in the market should not be considered for determination of standing and scope of the domestic industry.

#### Views of other interested parties

12. DSM Anti-Infectives, India and other interested parties have alleged that the petitioners lack standing with regard to 6-APA. The company has claimed that its own production and job work got done by DSM India amounts to 85% of Indian production of 6-APA. The share of Alembic is only 12% of Indian 6-APA production. As per Rule 2(b), it is not mandatory to always exclude those domestic producers who are related to exporters, importers or who themselves have imported the product. Exclusion of DSM India on the basis that it is a captive producer relying upon past decisions is erroneous. It has been further claimed that same treatment should be accorded to DSM for both the production and the import, that is, if DSM is not considered domestic industry, then imports by them should not be considered for injury determination and no anti dumping duty should be imposed on imports by them. It has also been submitted that limited information has been provided by M/s Alka Remedies. It has been contended that either Alka should provide detailed information or their information should be discarded for injury

determination. It has also been submitted by some of the importers that SPIC is not domestic industry for 6-APA. There are two sets of domestic industry for two products.

#### Views of domestic industry

13. The petitioners have rebutted the claim of DSM and argued that by their own admission, DSM does not sell 6-APA in the market. On this account alone, production by DSM should not be included for the purpose of determination of standing. Petitioners also referred to the past decisions of the Designated Authority and CESTAT in this regard.

#### Examination by the Authority

14. The Authority has considered claims of the interested parties on this account. The questionnaire response filed by DSM Anti Infections India, Zhang Jia Kou Gist-Brocades Pharmaceuticals (producer of Pen-G K and also referred to as ZGB), Zhang Jia Kou Dha Pharmaceutical (producer of 6APA and also referred to as DHA) and DSM Trading (Shanghai) Co. have been examined in detail and their questionnaire response was subsequently verified by the Authority. It is noted from the examination that

(a) these companies are related to each other.

(b) 6-APA has been exported to India by Zhang Jia Kou Dha Pharmaceutical (DHA) through DSM Trading (Shanghai) and the same has been imported by DSM Anti Infections, India.

(c) The response states that the producers sell their goods through DSM Trading (Shanghai). Further, the response states that DSM Anti Infections is the importer of the subject goods.

The Authority notes that Rule 2(b) provides, inter-alia, as follows:

*"(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 only"*

15. The Authority notes that in the instant case, DSM Anti Infections is the producer of 6-APA in India. However, the company has itself imported significant 6-APA from the subject country. Further, the company is related to exporter of 6-APA in China. Thus, the producer is related to exporter and the related company is itself an importer of the subject goods in India. The Authority notes that in the instant case, DSM Anti Infections is the producer of 6-APA in India. However, the company has itself imported significant 6-APA from the subject country. Further, the company is related to exporter of 6-APA in China. Thus, the producer is related to exporter and the related company is itself an importer of the subject goods in India. Following the disclosure statement, it has been submitted by M/s DAI that they have imported 12% of the total imports during POI from subject country and therefore they should not be taken out from the

purview of domestic industry even when their total production is for captive purpose only. Their comment has been examined and it is noted that they have imported 12% of total imports from subject country and this amounts to close to 40% of total production of subject goods which is considered very significant. With this significant imports from subject country along with the fact that they are related to exporter from subject country, it is considered appropriate not to consider their claim for being domestic industry in the subject investigations.

16. Having regard to the provisions under Rule 2(b) and the facts on record, the Authority holds that M/s. DSM Anti Infectives cannot be considered as eligible domestic producer and its production is required to be excluded for the purpose of determination of domestic industry. The Authority therefore holds that production of Alembic commands a major proportion in Indian production. Alembic Ltd. therefore constitutes domestic industry in respect of 6-APA within the meaning of the Rules.

17. The Authority, further, notes that M/s. Alka Remedies Pvt. Ltd. has supported the petition for imposition of anti dumping duties on imports of 6-APA. The limited information provided by the company shows that (a) the company has produced 6-APA on job work, (b) the company has significant capacity for production of 6-APA, which are largely unutilized. However, since the company has not fully cooperated with the Authority, the Authority was unable to include the company within the scope of domestic industry and examine injury suffered by the company. Nevertheless, the limited information filed by them has been used in determination of total demand and market share in the paras relating to Injury. With regards to Pen-G, it is noted from examination of record that M/s Alembic Ltd, Vadodara and M/s SPIC, Chennai account for 100% of the Indian production of Penicillin- G in the POI and constitute domestic industry for Pen-G as per rules.

## E NORMAL VALUE

### E1 Normal value for China PR

18. The Authority sent questionnaire to the known exporters from China PR, advising them to provide information in the form and manner prescribed. Following parties responded to the exporter's questionnaire.

S. N.	Name of the company	Status (producer/exporter)
1	Zhangjiakou Gist-Brocades Pharmaceutical Co Ltd	Producer (PEN-G K)
2	North China Pharmaceutical Corporation Ltd.	Producer (Pen-GK and 6APA)
3	Aurobindo (Datong) Bio-Pharma Co. Ltd.	Producer (6APA)
4	NCPC Beta Co. Ltd.	Producer & exporter (Pen-GK and 6APA)

5	DSM Trading (Shanghai) Co. Ltd.	Exporter (Pen-GK and 6APA)
6	Zhangjiakou DHA Pharmaceutical Co Ltd	Producer (6APA)

19. All the responding exporters/producers claimed market economy status. However, subsequent to the provisional findings, a letter/email was sent to M/s NCPC Beta asking their readiness/concurrence for verification of data submitted by them. Their attention was also invited to rule 6(8) of the Anti dumping rules 1995 as amended which states that in a case, where any interested party refuses access to or otherwise does not provide necessary information within a reasonable period, or significantly impedes the investigation, the Designated authority may record its findings on the basis of the facts available to it and make such recommendations to the Central Government as it deems fit under such circumstances. Subsequent to the provisional findings and in response to Authorities' letter for verification of data submitted by them, M/s NCPC Beta did not convey their willingness for on the spot verification of the data submitted by them and did not give their willingness for on the spot verification of the data to be carried out at their premises citing the reason that their company is undergoing major restructuring exercise. Thus, in view of the above response, M/s NCPC Beta has been declared as non cooperative exporter and determination of dumping margin has been carried out on the basis of facts available.

20. Para 7 of Annexure I of the AD Rules provides that

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. Accounts shall be taken within time limits, where appropriate, of the investigation made in any similar matter in respect of any other market economy third country. The parties to the investigation shall be informed without any unreasonable delay the aforesaid selection of the market economy third country and shall be given a reasonable period of time to offer their comments.

All the remaining responding exporters claims have been examined considering the above-mentioned legal provisions and the information and evidence provided by these interested parties in their response and during on spot verification.

#### Examination of Market Economy claims in respect of China PR

21. The Authority notes that in the past three years China PR has been treated as a non-market economy country in anti-dumping investigations by India and other WTO Members. China PR has been treated as a non-market economy country subject to rebuttal of the presumption by the exporting country or individual exporters in terms of the AD Rules.

22. As per Paragraph 8 of Annexure I of the AD Rules, the presumption of a non-market economy can be rebutted, if the exporter(s) from China PR provide information and sufficient evidence on the basis of the criteria specified in sub paragraph (3) of Paragraph 8 and establish the facts to the contrary. The cooperating exporters/producers of the subject goods from People's Republic of China are required to furnish necessary information/sufficient evidence as mentioned in sub-paragraph (3) of paragraph 8 in response to the Market Economy Treatment questionnaire to enable the Authority to consider the following criteria as to whether:-

- a) the decisions of concerned firms in China PR regarding prices, costs and inputs, including raw materials, cost of technology and labour, output, sales and investment are made in response to market signals reflecting supply and demand and without significant State interference in this regard, and whether costs of major inputs substantially reflect market values;
- b) the production costs and financial situation of such firms are subject to significant distortions carried over from the former non-market economy system, in particular in relation to depreciation of assets, other write-offs, barter trade and payment via compensation of debts;
- c) such firms are subject to bankruptcy and property laws which guarantee legal certainty and stability for the operation of the firms and
- d) the exchange rate conversions are carried out at the market rate.

23. The Authority notes that consequent upon the initiation and notices issued by the Authority; some Chinese exporters have submitted their questionnaire responses including the market economy questionnaire responses and sought to rebut the non-market economy presumption. The questionnaire responses and the market economy responses of the responding producers and exporter have been examined for determination of normal value of the responding producers/exporter of the subject goods from the subject country.

#### Views of domestic Industry on Normal value, Export price and Dumping margin

24. The domestic industry has submitted that market economy status cannot be given in a situation where one of the major shareholders is a State owned/controlled entity and unless the responding Chinese exporters establish that the prices of major inputs substantially reflect market values and their books are audited in line with international accounting standards. Further, it has been added that market economy status cannot be granted even if one of the parameters is not satisfied and it is not for the Authority to establish that the responding companies are indeed operating under market economy environment and are entitled for market economy treatment. On the contrary, it is for the responding Chinese exporters to establish that they are operating under market economy conditions. It has also been submitted that in a situation where the current shareholders have not set up their production facilities themselves but have acquired the same from some other party, market economy status cannot be granted unless process of transformation has been completely established through documentary evidence. It has been claimed by the domestic industry that the responding exporters have not established how they are entitled for market economy status in terms of, inter-alia, ownership & control, acquisition of plants, raw material prices and accounting standards.

Views of the other interested parties (Exporters, importers and users/Associations) on Normal value, Export price and Dumping margin

25. (a) The interested parties have claimed disclosure of calculation of normal value, ex factory export price and dumping margin. It has been further claimed by them that non determination of normal value based on data furnished by the producer/exporter is against the express provisions of Section 9A(6A). It has also been submitted that consideration of India as a surrogate for normal value calculation is unfair. It has been claimed by the exporters that MET has been recently granted by DA to some exporters from China. They have further argued that the reasons given by DA for rejection of MET claims are not correct.

(b) M/s Aurobindo has disputed the preliminary findings of the Authority that incomplete costing data has been submitted and their domestic sales are below cost of production (COP). It has been submitted that since domestic sales are not substantial, normal value needs to be determined based on COP. They have questioned the determination of export price by the Authority and also the fact that MET was not granted to them even as it is 100% subsidiary of Aurobindo, India.

(c) The Embassy of Mexico has argued that determination of reconstructed Normal Value on the basis of information supplied by the Domestic Industry instead of the “cost of production in Mexico” is contrary to Art. 2.2 of AD Agreement. Further, it has been submitted that the Indian and Mexican markets are not comparable because of different costs of labour and technology used in PUC. It has also been argued that the source of data for determining export price is not known, nor that whether this data pertains to POI and the determination does not clarify which documental sources are taken in consideration to obtain the amounts of the adjustments. With regard to comparison of Normal value with the export Price, it has been submitted, that it is not known that what were the basis of comparison and whether it was with respect to similar goods.

d) After the disclosure statement, it has been submitted by some interested parties that exports sales from M/s ZGB and M/s DHA to the Indian arm M/s DAI should not be accepted as they were between the related parties. It has also been mentioned that for the determination of normal value, the same was not accepted by the authority. It has also been submitted that normal value determined for market economy companies in China PR should be extended to other producers in China.

Submissions of responses and examination by Authority of responses of cooperating exporters

26. M/s Zhang Jia Kou GB Pharmaceutical Co. Ltd. (ZGB) (producer of Pen-GK), Zhangjiakou DHA Pharmaceutical Co Ltd (producer of 6APA), DSM Trading (Shanghai) Co. Ltd. (exporter of both Pen-GK and 6APA), M/s Aurobindo (Datong) Bio-Pharma Co. Ltd. (producer and exporter of 6APA) have submitted their response and conveyed their willingness for on spot verification of data submitted by them. Accordingly, on the spot verification was carried out at the premises of the above exporters and a verification report was issued to each of the cooperating exporters mentioned above asking for their comments if any. The verification

report (confidential) contained the verification process including the list of documents verified by the verification team. The comments submitted by verified exporters have been taken into account while determining the dumping margins for the producers and exporters from China PR. The comments submitted by verified exporters have been taken into account while determining the dumping margins for the producers and exporters from China PR. It is recalled that the details of proposed normal value and export price were communicated to all the cooperating producers and exporters on confidential basis for their comments. After the disclosure statement, it has been submitted by some of the interested parties with regards to normal value determination of M/s ZGB, a producer and exporter of Pen-G from China PR that same yardstick should be applied on the issue of relationship in the determination of normal value and export price as both in domestic as well as in exports, sales of Pen-G have been made to related parties. The issue has been reexamined and revisited and all records pertaining to both the producers and exporters have been reexamined. It is noted that though there is a relationship between ZGB ( producer and exporter of Pen-G) and DHA (Consumer of Pen-G ) and both these companies are located in the same building, the price at which DHA buys Pen-G from ZGB is in line with price at which it procures Pen-G from other company. Therefore, though there is a relationship between these two companies, the relationship has not been found to vitiate the prevalent market price of Pen-G. Therefore in view of the above, the Authority has determined the normal value on the basis of selling price of Pen-G in the domestic market.

#### M/s Zhangjiakou Gist Brocades Pharmaceutical Co Ltd (ZGB)

#### Examination of market economy response(MET) response from M/s Zhangjiakou Gist Brocades Pharmaceutical Co Ltd (ZGB)

27. The authority examined the MET claims made by ZGB. The Authority conducted onsite verification of the exporters plant and office after preliminary findings. As mentioned in the verification report and disclosure statement, the Authority found that ZGB was a Sino Foreign Joint venture with 80% of the capital contributed by Gist Brocades International BV which was a 100% subsidiary of Royal DSM BV – a company listed in Netherlands. The technology was provided by DSM. ZGB was being managed by a Board of Directors consisting of 4 persons having equal votes. Three of them were representing the foreign investor.

28. With regards to purchase of raw materials, it was noted that M/s ZGB was procuring their raw materials from both related and unrelated companies. It was noted that raw materials like glucose and Corn Steep Liquid had been procured from several companies. Further, purchase orders of raw materials were verified to ascertain that the raw materials were purchased at prevailing market price in China as supplied to others. Further, glucose was also procured from a related company \*\*\*\*. The business licenses and sample purchase invoices indicated the legal status of the suppliers and the comparative prices charged by them. During the verification, procurement of utilities like coal, tap water and electricity were also examined. It was noted that while coal was procured from unrelated privately held companies, water and electricity was

procured from state owned entities. It was also claimed that ZGB had imported Liquid NAPA (Sodium Phenyl Acetate Solution) from India for which, supporting evidence were verified and it was noted during verification that waste arising out of 6-APA production was purchased back by ZGB from \*\*\*\*.

29. From the records verified by the Authority, It is noted that the selling prices were fixed by the company on its own in response to market forces of demand and supply. There was no apparent governmental intervention in the fixation of prices of Pen-G either for sale in the domestic market or for export to India. A perusal of the transfer price mechanism indicated that for PEN-G, the primary basis for pricing PEN-G was the market prices prevalent during the preceding quarter.

30. It was also noted during the ZGB had also obtained a credit limit of USD \*\*\*\* from ABN AMRO Bank in 2004. Details of the same were made available to the Authority during verification and the same was verified. The accounting records were examined. During the verification, it was noted that from the first year of operations, the accounts had been audited by independent CPAs. In terms of the audit report, the accounts generally comply with the GAAP and the Chinese accounting standards. It was also noted that M/s ZGB had been determining profits in accordance with GAAP and when they had earned surplus profits, dividends were also declared. It was also noted that exchange rate conversions have been carried out at the market rates which are fixed by the banks.

31. On the basis of the examination, it has been shown by sufficient evidence on the basis of criteria specified in para 8(3) of the Annexure -1 of the Anti dumping rules and examined above that market conditions substantially prevail for the subject firm. Thus, on the basis of the examination, the Authority grants market economy treatment to the subject company and in accordance with proviso of para 8(3) of the Annexure 1 of the Anti dumping rules, the normal value and export price has been determined in terms of para 1-6 of the said annexure.

#### Normal value and Export Price of Zhangjiakou Gist-Brocades Pharmaceutical Co Ltd (ZGB)

##### Normal value for ZGB

32. As per section 9A(c) of the customs tariff act as amended,

"normal value", in relation to an article, means -

- (i) the comparable price, in the ordinary course of trade, for the like article when meant for consumption in the exporting country or territory as determined in accordance with the rules made under sub-section (6); or
- (ii) when there are no sales of the like article in the ordinary course of trade in the domestic market of the exporting country or territory, or when because of the particular market situation or low volume of the sales in the domestic market of the exporting country or territory, such sales do not permit a proper comparison, the normal value shall be either -
  - (a) comparable representative price of the like article when exported from the exporting country or territory or an appropriate third country as determined in accordance with the rules made under sub-section (6); or
  - (b) the cost of production of the said article in the country of origin along with reasonable addition for administrative, selling and general costs, and for profits, as determined in accordance with the rules made under sub-section (6):

33. As noted in the earlier paragraph, the normal value has been determined on the basis of domestic selling prices of subject goods in China PR. It has been noted from their response that their domestic sales are sufficient by the way of volume and thus this was considered sufficient in the context of determination of normal value. Thereafter, ordinary course of trade test (OCT) was conducted and it was noted that sales of subject goods of M/s ZGB were profitable in the domestic market during the POI. It was also noted from the OCT test examination of appendix 1 transaction wise sales that less than 80% of the domestic sales were profitable. Hence, the Authority has taken all profitable sales into account in working out normal value of Pen-G for the cooperating exporter.

Export Price of Zhang Jia Kou Gist-Brocades Pharmaceuticals (ZGB) and DSM Trading (Shanghai) Co.

34. It is noted that M/s ZGB exports PEN-G K to their related company DSM Anti - Infectives India (DAI). ZGB raises an invoice on DTC who in turn raises an invoice on DAI. The company had \*\*\*\* transactions of exports to India during POI aggregating to \*\*\*\*BOU or \*\*\*\*MT for a total value of USD\*\*\*\*. During the verification, all the \*\*\*\* export sale invoices were verified with Appendix 2 and found to be correct. The invoices were in USD. Further, it was found that ZGB had sold the goods to DTC on FOB basis. Accordingly, inland freight from the factory to the port and port handling charges had been claimed as deduction. The deduction was based on actual invoices raised by the freight forwarding company. In addition, deductions towards Non-refundable portion of VAT, credit cost, packing cost, bank charges and SGA expenses/profit of DTC had been made. Non-refundable portion VAT had been calculated at the rate of 4% on the FOB value of exports from DTC to DAI. Credit cost was based on the interest rate of \*\*\*\*% per annum. This rate is based on the actual borrowing rate for the loan availed from ABN AMRO. Packing cost and labour costs were also verified with their records. It was further noted that bank charges were based on actual charges levied by the bank on realization of export proceeds from DAI by DTC. When DTC transferred the money to ZGB, there were no bank charges as it was a domestic transfer. All documents relating to exports to India were taken.

The net export price is thus determined after above calculations and is mentioned in the dumping margin table below.

Zhang Jia Kou DHA Pharmaceutical (DHA)

MARKET ECONOMY

Examination of MET response of Zhangjiakou DHA Pharmaceutical Co Ltd (DHA)

35. The authority examined the MET claims made by DHA and the detailed examination has been mentioned in the verification report and also in the disclosure statement. It has been noted that M/s DHA was a Sino-foreign Joint Venture (JV) in which 74% was held by Gist-Brocades International BV, Netherlands (“GBI”), a 100% subsidiary of Royal DSM BV – a company listed in Netherlands. The technology was provided by DSM. The directors of ZGB were also the Directors of DHA. Thus, majority of the directors of DHA represented a foreign investor.

36. It is noted that M/s DHA was procuring raw material PEN-G from ZGB. DHA has also procured PEN-G from unrelated supplier namely \*\*\*\*. Further, purchase orders of raw materials were verified to ascertain that the raw materials were purchased at prevailing market price in China as supplied to others. All the utilities had been supplied by ZGB to DHA. During the verification visit, the invoices raised by ZGB on DHA towards utilities were also examined. It was noted that prices of raw material procured from different sources were broadly similar.

37. It is further noted that the selling prices were fixed by the company on its own in response to market forces of demand and supply. There was no apparent governmental intervention in the fixation of prices of Pen-G either for sale in the domestic market or for export to India. A perusal of the transfer price mechanism indicated that for 6-APA, the primary basis for pricing PEN-G was the market prices prevalent during the preceding quarter.

38. It is further noted that the directors of ZGB are the directors of DHA also. There is no change in the constitution of the Board of Directors of the two companies. Thus, majority of the directors of DHA represented Royal DSM, BV a widely held public company listed at Amsterdam stock exchange. Thereafter, the accounting records were examined and it was noted that the accounts had been audited by independent CPAs. In terms of the audit report, the accounts appear to comply with the GAAP and the Chinese accounting standards. It was also noted that exchange rate conversions have been carried out at the market rates which are fixed by the banks.

39. On the basis of the examination, it has been shown by sufficient evidence on the basis of criteria specified in para 8(3) of the Annexure -1 of the Anti dumping rules and examined above

that market conditions substantially prevail for the subject firm. Thus, on the basis of the examination, the Authority grants market economy treatment to the subject company and in accordance with proviso of para 8(3) of the Annexure 1 of the Anti dumping rules, the normal value and export price has been determined in terms of para 1-6 of the said annexure.

#### Normal value for M/s DHA

40. It is noted that there are no domestic sales of 6APA by M/s DHA. As per section 9A(c) of the customs tariff act as amended,

"normal value", in relation to an article, means -

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

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

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

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

41. In view of the above, normal value for the subject producer for 6APA has been determined in accordance with section 9(A)(c)(ii)(b) of the customs tariff act. Thus, the normal value has been determined by taking into account actual cost of production along with SGA expenses and profit which was verified by the Authority on the basis of principles mentioned in Annexure 1 of the Anti dumping rules.

#### Determination of Export Price of Zhang Jia Kou DHA Pharmaceutical (DHA) and DSM Trading (Shanghai) Co.

42. M/s Zhang Jia Kou DHA Pharamceuticals is the producer of 6-APA only and has submitted responses to the exporters questionnaire. During verification visit, the appendices provided in the questionnaire were verified with ERP and the relevant supporting documents maintained by the company. The transactions were found to be in order and deductions claimed were justified and subsequently they were allowed. After allowing the deductions, the ex-factory export price was arrived at. There were \*\*\*\* transactions. It is noted that M/s DHA had claimed deductions on account of inland freight including port handling, ocean freight, packing, credit cost and bank charges. Inland freight including port handling charges were based on actual amount paid to the freight forwarding company. Similarly ocean freight was based on actual freight paid to the shipping company. Credit cost was based on \*\*\*\*% p.a. for the period of credit. The rate was the same as the one used by ZGB. Bank charges were based on the credit

advice issued by the bank representing actual charges levied by the bank for every transaction. The ex-factory export price to India after deductions on account of SGA expenses and profit of DTC is mentioned in the table below.

#### DSM Trading (Shanghai) Co Ltd

43. It is noted that M/s ZGB and M/s DHA had exported Pen-G K and 6 APA respectively through their subsidiary M/s DTC during POI and earlier periods. It is also noted that M/s DTC is a wholly owned subsidiary of DSM Sales Office BV Netherlands, which in turn is a subsidiary of Royal DSM BV Netherlands – a widely held public limited company listed at Amsterdam Stock Exchange. It was noted during verification that DTC being a trading company, the capital was only USD \*\*\*\* and the same was contributed in cash by the sole shareholder. There were \*\*\*\* directors on the board of DTC and all of them were \*\*\*\*. All of them represented DSMS sales office BV Netherlands. During verification, it was noted that M/s DTC was fixing the prices on its own without any apparent interference from any governmental authority.

During exporter's verification, the monthly Income Statements for every month from September 2008 to March 2009 were taken. From the monthly income statements, Appendix 3 totals were verified. For the products concerned, i.e. 6-APA and PEN-G, a listing of all the individual transactions were taken from the ERP system to verify the total exports of both the products concerned. Further, the said information was also used to verify the information supplied by both ZGB and DHA. During verification, information presented in the respective Appendices of ZGB and DHA were found to be in order.

#### Aurobindo (Datong) Bio-Pharma

##### Determination of Market Economy

44. M/s Aurbindo (Datong) Bio-Pharma Co. Ltd., China PR is a producer and exporter of 6 APA. and has filed a exporter's questionnaire including response to market economy questionnaire reponse with relevant supporting documents. The company has claimed market economy status in the subject investigations. The information filed by the company shows that the company is 100% owned subsidiary of Aurobindo India. During the provisional findings, the Authority has not granted market economy status as the information submitted by the producer and exporter in this regard was deficient. It was also stated that the Authority is not in a position to grant market economy treatment to these companies at this stage pending further investigations including on the spot verifications.

45. Subsequent to the provisional findings, the Authority conducted verification of the data submitted by the producer and exporter after it had submitted response to the deficiency letter. During verification, the documents relating to copy of the business license, Chinese as well as English, copy of the Balance Sheet for the year 2001 (year of inception), initial Articles of Association of the company, details of acquisition of assets and source of funding of assets

acquisition, purchase orders relating to source and rate of major raw material, evidence related to source and rate of utilities - Electricity, Water & Coal, terms and conditions for the loans obtained and the evidence for repayment of principal amount and payment of interest, changes in the structure of the company since inception along with details of share capital and details of ownership, purchase orders of major raw material issued to other producers of 6 APA for price comparison were examined.

46. In addition to above, it was explained to the verification team that the company was not transformed or acquired but was constructed from scratch. It was a green field project. It was also submitted with evidence that the land was purchased from the Government of China on payment of proper consideration and the civil work was executed by allocating the work to various contractors. Plant and machinery was imported or procured within China. It was further explained with evidence that all the raw materials were locally procured except enzyme, which is imported and none of the raw material was purchased from any related party or from state owned enterprises. Further, purchase orders of raw materials were provided to substantiate that the raw material were purchased at prevailing market price in China as supplied to others. Purchase orders of major raw material issued to other producers of 6 APA was also provided to the verification team. It was also explained with evidence that the utilities such as Electricity and Water is purchased from State owned enterprises on payment of appropriate consideration and coal is purchased from private entities on prevailing market rate. The evidence for utilities were provided at the time of verification.

47. It was submitted by the exporter that price of electricity and water is fixed by local authority (government body) and the uniform rate is charged from all the industrial users existing in the Province. It was further submitted that the coal was purchased at prevailing market price in China as supplied to others. Purchase orders of coal issued to other consumers was also provided to the verification team.

48. It was further explained that the exporter is the wholly owned subsidiary of Indian company, M/s Aurobindo Pharma Limited and 100% shares of the exporter are possessed by M/s Aurobindo Pharma Limited. It was also explained that there are \*\*\* directors in the board of directors of exporter. One of them is the \*\*\*\*. None of the director is a state official or holds government position & minimum quorum of \*\*\*\* of the total directors is required for taking any decision in board of meeting. It was further submitted by the exporter that there was no change in the ownership pattern of the company since inception.

49. In terms of the audit report, the accounts appear to comply with the GAAP and the Chinese accounting standards. It was also noted that exchange rate conversions have been carried out at the market rates which are fixed by the banks.

50. On the basis of the examination, it has been shown by sufficient evidence on the basis of criteria specified in para 8(3) of the Annexure -1 of the Anti dumping rules and examined above that market conditions substantially prevail for the subject firm. Thus, on the basis of the examination by the Authority, it is proposed to grant market economy treatment to the subject company and in accordance with proviso of para 8(3) of the Annexure 1 of the Anti dumping

rules, the normal value and export price has been determined in terms of para 1-6 of the said annexure.

Normal value for Aurobindo (Datong) Bio-Pharma

51. Aurbindo (Datong) Bio-Pharma Co. Ltd., China PR is a producer and exporter of 6 APA. and has filed a proper exporter's questionnaire reponse with relevant supporting documents. It is noted that Pen G produced by M/s Aurbindo (Datong) Bio-Pharma Co. Ltd. company is 100% consumed captively.

52. From the questionnaire response, it is noted that there are insufficient domestic sales of 6APA by subject producer in the domestic market as domestic sales constituted less than \*\*\*\*% of the total sales of the exporter.

As per section 9A(c) of the customs tariff act as amended,

"normal value", in relation to an article, means -

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

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

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

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

53. In view of the above, normal value for the subject producer for 6APA has been determined in accordance with section 9(A)(c)(ii)(b) of the customs tariff act. During the verification visit, the team also verified the total domestic sales, export to India and export to third country from the accounting software 'LANG CHAO' used by the exporter. It was submitted to the verification team that the exporter is producing and selling only one product i.e. 6 APA, hence, there is no question of allocation of cost. All the direct and indirect cost incurred during POI is on the one and only product i.e. 6 APA. The figures of appendix 7 were verified from the broken period profit and loss account from 01.10.2008 to 31.03.2009. The same were also verified directly from the accounting software 'LANG CHAO' of the company. The verification team was supplied monthly cost sheet of 6 APA from October 08 to March 09 along with the consolidated cost sheet for POI. It was submitted by the exporter that the Oct & Nov, 09 was abnormal period for production as production was reduced as per the directions of Govt of China due to Olympics. In view of this development, they have submitted in their response and also during the verification visit that the costing should be determined based on Normated Costing instead of Actual Costing. In order to substantiate their claim, the exporter furnished the

letter issued by Datong City Environment Protection Bureau which called for reducing the production of 6 APA. Therefore, fixed cost have been normated by taking the average production of remaining 4 months of POI i.e. from Dec-08 to Mar-09 and variable cost remaining the same.

54. Further, it was explained that during the winter season, the exporter was directed to supply steam to the local village 'Yuzhoutuan' for heating system by the local authority 'Datong City Economic and Technological Development Zone Management Committee'. In this regard it was submitted by the exporter that the cost of steam incurred on heating system of village was not part of expenditure on production of subject goods as expenditure by exporter as the same was not utilized in production of 6APA during POI. The letter by 'Datong City Economic and Technological Development Zone Management Committee' to the company was provided to the verification team. Therefore, cost incurred on supply of steam to villagers has been reduced from the total cost of sales.

55. It was further submitted by the exporter that interest payable on loan from their parent company has been written off during the POI, therefore, that should not be part of total cost of production. However, the claim of the company has not been accepted and amount of interest for the period of investigation has been included on total cost of production. Thus, the normal value has been determined by taking into account actual cost of production, after considering the adjustments stated above, along with SGA expenses and adding profit in the total cost so determined.

#### Export Price for Aurobindo (Datong) Bio-Pharma

56. It is noted that there were \*\*\*\* transactions of export sale to India executed by the exporter during POI. During the verification visit, documents relating to export sales i.e export Sales contract, commercial Invoice, packing list, shipping bill, bill of exchange, domestic freight invoice, overseas freight invoice, other charges such as Custom clearance charges, uploading charges, terminal handling charges, vigilance fees, bank remittance certificate were verified by the Authority.

57. It was noted during the verification visit that the adjustments on average price instead of on actual basis was taken by the exporter at the time of filing their response. During the verification, the actual price of these adjustments were taken and since, the per unit cost of inland freight, overseas freight, other charges etc. remained same during POI, there is no impact on per unit ex factory export price of 6 APA. The verification team verified the claim of the exporter for all the 31 export transaction.

58. After adjusting all other costs including refundable VAT component, the net export price of subject goods for subject producer and exporter is as mentioned below in the table.

M/s. Fersinsa GB, Mexico (Fersinsa)

Normal value in case of M/s. Fersinsa GB, Mexico (Fersinsa)

59. M/s. Fersinsa GB, Mexico has filed response to questionnaire. It is recalled that during the provisional findings, the response of the company was not accepted as it was deficient. Subsequent to the provisional findings, the company filed the replies to the deficiencies and also conveyed its willingness for on the spot verification. Accordingly, company's data submitted by them were verified during on the spot verification under taken by the verification team at the premises of the producer and a verification report was issued to the company for their comments. Thus, the normal value determination has been carried out with the verified data.

60. It is noted that the company did not have representative domestic sales i.e. quantity sold in the domestic market was less than 5% of the quantity exported to India. Further, the transaction by transaction details of export price to third countries had not been made available by the company. Therefore, normal value had to be constructed. It was noted that the company had claimed an allowance for startup costs from their cost to make and sell. However, the claim was found to be inappropriate as they had not established any new production facility but had only introduced a new strain of the product concerned in the existing facilities. Accordingly, the claim for adjustment towards startup costs was rejected. The normal value was determined based on their actual cost to make and sell with an addition towards profit on the basis of the information verified by the authority. Normal value determined as above is mentioned below in the table.

E2 Export Price of M/s. Fersinsa GB, Mexico (Fersinsa) exported through DSM Anti-Infectives BV, Netherlands (DSM, BV)

61. M/s Fresinsa, Mexico had exported the goods to India through DSM Anti-Infectives BV, Netherlands. Verification was conducted at the trader in Netherlands as well as at the producer in Mexico. Deductions towards ocean freight, credit cost, bank charges and SGA expenses and profit of DSM, BV were made from the export price to India. The net ex-factory export price so determined is mentioned below in the table.

Determination of Normal value and Export Price in respect of Non-Co-operative Exporters/Producers

62. The Authority notes that a number of exporters had responded to the notice of initiation issued earlier, which was terminated later. In the present investigations, however, a number of these exporters have not responded. Further, the information on record shows that whereas the known volume of imports in the POI was \*\*\*\* MMU of Penicillin-G and \*\*\*\* MT of 6-APA, the responding exporters have claimed to have exported much less to India. Since no other response has been received from other producer/exporter of the subject goods and further since these producers/exporters command a significant proportion in total imports, the Authority has determined normal value and export price for non cooperating exporters as per facts available in terms of Rule 6(8) of the AD Rules. The import shipment wise data has been collated and the export price in respect of non-cooperating exporters has been considered as per facts available.

### E3 Dumping Margin

63. The Authority has determined dumping margin cumulatively for all sales of the product under consideration made by an exporter during the investigation period by considering weighted average of the volumes sold. Comparison has been made at ex factory level. The comparison showed existence of dumping of the subject goods during the POI for exporters mentioned below. The weighted average dumping margin, expressed as a percentage to the export price has been determined as below. For, M/s Zhang Jia Kou Gist-Brocades Pharmaceuticals (ZGB) and DSM Trading(Shanghai) Co, the dumping margin is determined as negative.

64. Besides, information filed by the domestic industry and responding foreign producers show that there were significant differences in the prices of the product within the period of Investigation. The domestic industry has submitted that there were significant changes in the prices depending on time periods and they have therefore requested that the Authority should ignore the transactions booked before the start of the investigation period and consider date of order as the date of sale. However, the Authority has not accepted the contention of domestic industry and has taken the invoice date as date of sale as has been done by the Authority in past cases.

65. Considering the normal value and export price as determined above, the dumping margins have been determined as follows:

#### Penicillin-G

Exporter	Country	Normal value	Net Export Price	Dumping Margin	Dumping Margin%
Zhang Jia Kou Gist-Brocades Pharmaceuticals and DSM Trading(Shanghai) Co.	China PR	****	****	****	11.52
Non-Co-operative producers/exporters	China PR	****	****	****	39.51
M/s. Fersinsa GB and DSM Netherlands	Mexico	****	****	****	24.60
Non Co-operative producers/exporters	Mexico	****	****	****	34.25

6-APA

Exporter	Country	Normal value	Export Price	Dumping margin	Dumping Margin %
Zhang Jia Kou Dha Pharmaceutical DHA and DSM Trading(Shanghai) Co.	China PR	****	****	****	13.58
Aurobindo (Datong) Bio-Pharma	China PR	**** ****	**** ****	**** ****	10.34
Non-Co-operative producers/exporters	China PR	****	****	****	36.01

#### F. Injury

66. Article 3.1 of the WTO Agreement and Annexure-II of the Rules provide for an objective examination of both, (a) the volume of dumped imports and the effect of the dumped imports on prices, in the domestic market, for the like products; and (b) the consequent impact of these imports on domestic producers of such products. With regard to the volume effect of the dumped imports, the Authority is required to examine whether there has been a significant increase in dumped imports, either in absolute term or relative to production or consumption in India. With regard to the price effect of the dumped imports, the Authority is required to examine whether there has been significant price undercutting by the dumped imports as compared to the price of the like product in India, or whether the effect of such imports is otherwise to depress the prices to a significant degree, or prevent price increases, which would have otherwise occurred to a significant degree.

67. As regards the impact of the dumped imports on the domestic industry para (iv) of Annexure-II of the Anti Dumping Rules states as follows:

*“The examination of the impact of the dumped imports on the domestic industry concerned, shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the Industry, including natural and potential decline in sales, profits, output, market share, productivity, return on investments or utilization of capacity; factors affecting domestic prices, the magnitude of margin of dumping, actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital investments.”*

#### Views of Other Interested Parties (Exporters, Importers and Users/Associations)

68. The interested parties opposing imposition of anti dumping duties have advanced following arguments on POI and injury.

(i) Arguments on behalf of M/s DSM and others

- (a) The POI of six months is inappropriate. It has been submitted by them that there is no adverse price effect as price undercutting ranges between 2-7%. Further, it has been claimed that there is no adverse effect on capacity utilization, sales or market share and there is nothing in support of claims of “threat of material injury”. It has also been submitted that Petitioners have understated the Landed Value and the Authority should consider exporter’s data.
- (b) It has been submitted by them that press release dated 8th May 2009 from Alembic provides different picture from what petition says, and different reasons (like major restructuring exercise, foreign exchange loss) for alleged loss.
- (c) The adverse impact of anti dumping duty on end consumers would be very high.

(ii) Arguments on behalf of Asiatic Drugs & Pharmaceuticals Pvt. Ltd and others.

- (a) Pen-G is life saving drug covered under Price Control.
- (b) There are only two domestic producers and they do not have enough capacity to meet Country’s Demand. Further, SPIC plant is shut down and just to protect 15% of the capacity, 85% of the industry would be penalized. It has also been submitted that impact of anti dumping duty on downstream products is 30%.
- (c) No anti dumping duty on imports from DSM China would result in huge profits for the company and monopolistic conditions in India.
- (d) Recommended anti dumping duty works out at 43% of landed value which is major disadvantage to all other bulk drug producers except DSM India.

(iii) Arguments on behalf of Ranbaxy Ltd and others.

- (a) There is capacity constraint – Inability to cater to domestic demand. Further, captive consumption by domestic industry has an adverse impact on supply of subject goods.
- (b) The petitioner has given combined injury analysis, which is wrong.
- (c) Selection of POI is flawed; it should have been of 12 months.
- (d) Price fluctuations have been witnessed across the globe.
- (e) Import prices have actually gone up.
- (f) In earlier two petitions the petitioner has failed to show any case of injury.
- (g) The injury analysis is flawed as it has cumulated the effect of imports from China & Mexico, without proving that the cumulation is warranted.
- (h) Imports from China have declined.
- (i) Petition claims that dumping forced Alembic to suspend production in 2005 however Annual Reports say it was because of Global meltdown in prices.
- (j) Alembic has been undertaking restructuring exercises.

- (k) Petition contains no injury-analysis for M/s Alka Industries, whose share in Indian production for 6APA is 58%.
- (l) CIF value of 6APA imports has increased by 206%.
- (m) Increase in Domestic industry's selling prices has been more than the proportionate increase in cost.
- (n) The production, capacity utilization and sales have actually increased.
- (o) Market share of Chinese Pen-G imports has been decreasing, and that of Mexican imports have increased only by 3%, whereas that of Domestic industry has been increasing.
- (p) Wages and productivity have also witnessed huge increase.
- (q) This is a case of contraction in demand.
- (r) DPCO prices of formulations remaining same, profit would be impacted.
- (s) The petitioner's prayer for inclusion of imports under Advance License Scheme to total imports is erroneous.
- (t) DGAD has wrongly examined price effect of imports on domestic prices – when price undercutting is negative, price underselling cannot be as high as 45-55% for 6-APA.
- (u) No justification for inflated cost of production.
- (v) NIP is not a correct reflection of the actual cost of production.
- (w) The profitability figures cited for the user industry are incorrect – not true for manufacturers of bulk drugs / branded drugs.

(iv) Arguments by Janak Laboratories Ltd. and others

- (a) Closure of SPIC plant is attributed to shortage of sugar (main raw material for Pen-G) and increase in prices of sugar.
- (b) Impact of imposition of anti dumping duty on bulk drug prices at least 30%. This would result in import of bulk drugs by formulators and kill bulk drug manufacturing industry.
- (c) DSM and affiliates have been spared from levy of anti dumping duty – bias against other Indian manufacturers, who have to incur 43% higher costs; whereas DSM would enjoy 43% more profits.
- (d) The imposition of anti dumping duty on Pen-G and 6-APA would increase unemployment and waste of investment in the bulk drug industry.

(v) Arguments on behalf of Aurobindo and others

- (a) There is no injury and causal link from exports of Aurobindo, China to Aurobindo, India as it is captively consumed.
- (b) All transactions between the two companies are at arm's length basis.
- (c) Higher productivity and lower cost of production of Chinese company are a result of economies of scale and advanced technology.
- (d) Change in global scenario – from Europe to China attributed to better cost of production and improved productivity.

(vi) Arguments on behalf of Unimark Remedies and others

- (a) M/s Unimark remedies has objected on POI and injury period selected by the Authority which they say was a period of global meltdown, and prices in this period are unrealistic. They have also objected to same POI but different injury periods for the two products.
- (b) Performance of Alembic does not call for imposition of anti dumping duty – share of Pen-G and 6-APA business is very small in overall business.
- (c) Alembic's technology is cost inefficient. Chinese are using CORN technology, more cost effective.
- (d) Local availability of Pen-G is less than demand.
- (e) Impact of anti dumping duty would be adverse on downstream industry and their investment.
- (f) Auxiliary manufacturing units supplying other raw material to downstream industry would also be affected.
- (g) Closure of units on account of dumping has not been substantiated.
- (h) Domestic industry presents wrong statistics to support their contention. It has been submitted that through the European Report, China has been projected as a villain. Prevalent trend is that developed countries are rising on the services and manufacturing has shifted to third world countries on account of cost factor.
- (i) Applicant's contention of poor environment laws in China is incorrect.
- (j) Consumer interest would be badly hit, increasing cost of medicines.
- (k) Applicant has approached DGAD without seeking recourse to DPCO, therefore, request to the DGAD to invite comments from NPPA.
- (l) Imposition of anti dumping duty based on narrow criteria will jeopardize the entire pharmaceutical sector in India.
- (m) Alembic is not dependent on 600MMU of Pen-G for its survival. (Alembic, being a multi product company, would hardly be affected.)
- (n) They have objected to back to back investigation.
- (o) Injury analysis is erroneous – price effect table contradictory to assertion in para 63.
- (p) Alembic is suffering from self inflicted injury – injury is caused by manufacture of 6-APA.

(vii) Arguments on behalf of NCPC and NCPC Beta

- (a) NCPC is a Chinese limited liability company and claims MET status.
- (b) Domestic industry lacks capacity to produce amidst high demand.
- (c) Superior technology and quality of Chinese product needs to be considered by the Authority in its analysis.
- (d) Domestic industry has increased profitability and injury caused is due to factors other than imports.
- (e) Imposition of anti dumping duty not in public interest – impact on drug prices estimated at 50%.
- (f) POI is very short and consolidation of data of Pen-G and 6-APA is incorrect.

(viii) Arguments on behalf of Otsuka Chemical (India) Ltd and Virchow Petrochemical Pvt. Ltd and others

- (a) Initiation is bad and unlawful.
- (b) DSM the largest producer of 6-APA is excluded.
- (c) Anti dumping duty should be levied on DSM also.

- (d) POI is short.
- (e) Mexico is wrongly included in subject countries, share is di-minimus.
- (f) Pen-G and 6-APA are unlike articles.
- (g) There should be a gap of one year in back to back investigations as proposed by India.
- (h) Inadequate and inaccurate information has been used by petitioner and excessive confidentiality has been claimed by them.
- (i) Captive consumption and transfer pricing issue of Pen-G by Alembic needs to be analysed.
- (j) There is contradiction with initiation notification with NCV petition as Annexure 2.1 Application Letter by SPIC – seeks imposition of anti dumping duty on imports of not only Pen-G but also 6-APA, Amoxicillin, Ampicillin and Cloxacillin as well.
- (k) One period of investigation but two injury periods has been considered.
- (l) Injury caused in case of both the products not segregated.
- (m) There is self inflicted injury in case of Alembic.
- (n) There is contradiction in the PF with regards to price effect.
- (o) Causal link determination is erroneous.
- (p) CNV determination is erroneous.
- (q) Petitioners should have approached NPPA as products are under DPCO price control.
- (r) There would be adverse impact on market on account of downstream products leading to flooding of Chinese products in the Indian market.
- (s) HAL cannot revive due to the provisions of its non-compete Agreement with the MNC for which it produced till recently as a “job worker”.
- (t) Advanced technology in China is a reason for their cost effectiveness.
- (u) Frequent revision of data by the domestic industry has been done to confuse the Designated Authority.
- (v) They have requested exclusion of Otsuka and GCLE producers as imports for GCLE production in total imports of Pen-G are less than 3%. It has also been submitted that impact of anti dumping duty on Pen-G would be 26% on sales price of GCLE. In this regard, they have pointed out huge investment by Ostuka. In this regard, they have drawn the attention of the Authority to the saving of foreign currency if GCLE is produced indigenously and no anti dumping duty is imposed on imports of Pen-G for production of GCLE.

(ix) Arguments on behalf of Lupin Laboratories Ltd. and others

- (a) Domestic industry is unable to cater to user industry’s demand for Pen-G and 6-APA.
- (b) Closure of HAL is due to technical deficiencies in their facility and not dumping.
- (c) Domestic industry has failed to adduce evidence to show total unutilized capacity.
- (d) Anti dumping duty would lead to foreign exchange loss and loss of employment as formulation unit would close and imports will start.
- (e) Pen-G and 6-APA are regulated by DPCO. Additional cost on account of anti dumping duty would result in closure of formulations units as there would be no corresponding increase in the price of DPCO controlled formulations thus leading to short supply of life saving drugs.
- (f) Domestic industry has failed to show injury on various injury parameters as enumerated in the Anti-Dumping Rules.

(x) Arguments on behalf of Piramal Healthcare Ltd. and others

- (a) If captive consumption is included, the applicants have a share of 15% or less and do not have the standing to file the petition.
- (b) Captive consumption included in demand of Pen-G and not 6-APA is contradictory and erroneous.
- (c) Short POI has been objected and it has been submitted that reasons put forward (market fluctuations or other vagaries that may distort a proper evaluation) are more valid for a longer POI.
- (d) Reasons for poor performance of Alembic as cited in Annual Report are forex losses.
- (e) If injury analysis is done for 2008-09 as a whole instead of breaking up in six month period, there is no injury in terms of capacity utilization.
- (f) Any losses suffered by the applicants are not representative of the domestic industry as their share is only 15% of the Indian industry.
- (g) Imports have declined in 2008-09, domestic sales will show an increase if captive consumption of domestic industry is factored.
- (h) Capacity of applicants is insufficient to meet the demand.
- (i) Export sales of petitioners has been kept confidential, rise in stock may be due to fall in export sales caused by global meltdown.
- (j) Perennial losses have been made by the applicants and causal link is missing.
- (k) Closure of SPIC plant cannot be linked to dumping.
- (l) There is an issue of transfer pricing of Pen-G to 6-APA.
- (m) Domestic industry prices are lower than landed, no price suppression.
- (n) With regard to public interest, it has been submitted that input cost of Pen-G in Pentids is 33-50%.

(xi) Arguments on behalf of Embassy of Mexico

- (a). The Injury analysis is based upon the heterogeneous segments of periods under the injury period. Reference is made to:
  - i. WTO Panel report-Mexico-import of Beef & Rice.
  - ii. WTO Appellate Body Report- Mexico- import of Beef & Rice.
  - iii. WTO Panel Report – Steel Pipe & Tubes from Guatemala.
- (b) If 12 months periods are compared then we will find a reduction of 7% in Domestic sales, which could be due to fall in consumption, and not related to Mexican Imports.
- (c) We request not to accumulate Mexico to China as there are wide disparities with regard to Import Volumes, Market Shares, Prices, Market conditions, and the number of consumers catered by the two countries.
- (d) There are no enough evidences for significantly low Mexican prices, except for mere arguments. Further, non-attribution analysis has also not been done.
- (e) The closure of the plants of the domestic producers did not occur during the Injury Period.
- (f) The Injury analysis has ignored the productivity, and investments. With regard to ability to raise capital, nothing has been provided.
- (g) During April 2008 to March 2009 the Indian Sales has the highest share.

(xii) Arguments on behalf of Federation of Pharma Entrepreneurs

- a) Any imposition of AD would directly impact prices of life saving end products, and thereby the public interest.
- b) Cloxacillin, an end-product of Pen-G, is controlled by DPCO. Any increase in price of its raw-material due to imposition of AD is likely to affect the formulators of Pharma Industry.
- c) An imposition of duty would likely to trigger the Chinese Pharma Industry to intensify competition with the Indian Pharma Industry.

### Views of the domestic industry

69. The domestic industry has submitted the following submissions:

- a) Demand-Supply Gap - Petitioners have argued that Bulk Drug Manufacturers Association has claimed that the demand of Penicillin-G is in the region of 7,000 MMU. Petitioners have estimated demand of Penicillin-G on this basis.

S.N.	Name of intermediate/bulk drug	Annual demand in domestic market in MT	Consumption factor of Pen-G	Pen-G required in MMU
1	Amoxicillin Trihydrate	1,680	1.77	2,974
2	Ampicillin Trihydrate	480	1.83	878
3	Cloxacillin Sodium	300	1.53	459
4	Dicloxacillin Sodium	240	1.44	346
5	Ampicillin Sodium Sterile	180	3.54	637
6	Cloxacillin Sodium Sterile	120	1.59	191
7	Cefadroxil Monohydrate	480	2.35	1,128
8	Cefalexin Monohydrate	360	2.33	839
9	GCLE	900	1.07	965
A	Total requirement of Pen-G for domestic market			8,471
B	Total requirement of Pen-G for export market			12,000
C	Total requirement of Pen-G in the country			20,471

It would thus be seen that the total demand for Pen-G in the Country is in the region of 20,000 MMU, wherein demand for domestic consumption is 8,500 MMU. All arguments with regard to the demand-supply gap must be seen in the light of this demand for the product. Since imports for exports are in any case permitted to be made without payment of anti-dumping duties, this requirement of Pen-G in any case is required to be taken out while assessing the demand-supply gap in the Country. It is thus evident that about 12,000 MMU Pen-G is being imported into the Country against export requirements under Duty Exemption Scheme of the Govt. of India and therefore can continue to be made without payment of anti dumping duties.

- b) Captive Consumption – With regard to WTO decision referred by DSM, petitioners have claimed that WTO has not held that captive consumption cannot be excluded while determining standing of the petitioner companies and scope of the domestic industry. WTO decision is in the context of a case where the defined domestic industry had captive consumption of the product under consideration and the issue for consideration was whether such captive consumption could be excluded for injury assessment. Thus, a decision of the WTO in the context of injury assessment cannot be read for standing and scope of domestic industry.
- c) Issue relating to technology and production process – Petitioners claim that technology in India is comparable to what is being used in China. In fact, the technology being followed by the domestic industry may be better than the technology being followed by the Chinese in general.
- d) Issues relating to selection of injury period – Petitioners have referred to WTO guidelines on fixation of injury period and argued that the period of investigation being fixed should be such which has least market fluctuations. The domestic industry has provided information for the period up to Dec., 2009 in its written submissions. It would be seen that in fact the injury to the domestic industry was far higher in the post period of investigation of the present case.
- e) Impact of anti dumping duty on downstream products - Petitioners have argued that bulk drug manufacturers in any case can pass-on such price increases to the formulators who are earning super abnormally high profits. Further, when the price of Pen-G had reached US\$ 18, formulation prices did not proportionately increase. Merely because APIs are being dumped in the Country does not mean that the Pen-G industry should be forced to suffer and eventually close down. On the contrary, non-imposition of anti dumping duty on Pen-G would result in flooding of Chinese imports of APIs in the market leading to wiping off API industry in India. This would cause serious harm in terms of investment, employment and resources employed in the API industry in India.
- f) Issues relating to calculation of Landed Value - Petitioners have argued that there are a number of other issues as well involved in this regard, which includes inclusion of excise duty. The interested parties cannot selectively demand inclusion of cess. In that case, the Designated Authority must consider all relevant factors.
- g) Issues relating to back to back investigation – The petitioners have argued that there should have been a negative finding by the Designated Authority in order to constitute the present investigation as a back to back investigation. There was no finding recorded by the Designated Authority in the previous investigations and the petition was withdrawn for a number of reasons.
- h) Issues relating to DPCO - The petitioners claim that the product is covered under DPCO. Domestic industry is obliged to sell at DPCO prices. In fact, it is not even established that the current formulation prices are based on the low price of Pen-G. When Pen-G was being sold at US\$ 18, the same did not lead to closure of these units; nor led to any difficulties in supply of life saving drugs. While the domestic industry will not cross DPCO prices, even if the

current duty is added to import price, the import price would still be lower than prices that had prevailed in 13 months over the past 3 years. The Price of API's are derived from Pen-G price. However, formulations produced by all branded companies follow the ORG data and public domain data of CIMS, IDR published prices of Existing brands and most of them fix their MRP's in a band of 5-20% lower or higher of the MRP's of existing leading brands.

- i) No injury and causal link claimed by Aurobindo – The petitioners argue that Aurobindo, China must be invoicing the goods onto Aurobindo, India at arm's length prices. The price at which the goods are being invoiced is a benchmark for other consumers. If all transactions between the two companies are at arm's length basis, this clearly establishes the price at which other consumers would demand the material.
- j) The following comments have been made by various other interested parties after the disclosure statement

Views of the Other interested parties ( exporters, importers, users) after disclosure statement

70. The following interested parties ( exporters, importers, users) have submitted their comments after the disclosure statement:

- 1) M/s BDMA
- 2) M/s Asiatic drugs & pharmaceuticals Pvt Ltd
- 3) M/s Abbott Healthcare Pvt Ltd (earlier M/s Piramal healthcare Ltd)
- 4) M/s L&S representing DSM group of companies
- 5) M/s Ranbaxy laboratories Ltd.
- 6) M/s KDL Bio-Tech Limited,
- 7) M/s Lupin Ltd
- 8) M/s Unimark remedies.
- 9) M/s Otsuka Chemicals India Pvt. Ltd
- 10) M/s Virchow Petro Chemical Pvt. Ltd.
- 11) M/s Aurobindo (Datong) Bio pharma Co ltd.

71. The following are the comments submitted by various interested parties

- i. Some of the interested parties have again raised the issue relating to the standing of domestic industry for the 6APA. They have also highlighted the limited information filed

by the Alka remedies. They have commented on the error in determination of landed value and inappropriate selection of POI in the subject investigations. They have again highlighted citing various elements of injury factors that there is no injury to the domestic industry. Most of the submissions have pointed out the absence of causal link between dumping of subject goods and injury to domestic industry. They have again drawn the attention of the Authority towards mismatch between demand and supply of subject goods keeping in view of the fact that most of 6APA produced by the domestic industry is used for captive consumption. They have further stated that levy of anti dumping duty will only add to the problems faced by the consumers due to shortage of essential commodity. They have again raised the issue of public interest as subject goods constitute life saving drugs and no duty was imposed by Central government even on the recommendations of Designated Authority in the preliminary findings. They have requested the Authority to terminate the investigations.

- ii. Some of the interested parties have again raised the issues of two investigations under one notification and have asked the Authority to clarify the methodology as well as examine the standings, domestic industry status, injury and causal link separately for both the products. On the issue of determining demand or apparent consumption, they have disputed the Authority's findings in the disclosure statement in calculating demand for 6APA as it does not take into account the production of other captive producers who are outside the purview of the domestic industry. Some of the interested parties representing DSM group of companies have highlighted that other factors may be re-examined by the Authority for reaching definitive conclusions with regard to causal link. It has been again submitted that imports made by them constitute around 12% of the total imports of 6APA into India from the subject country during the POI and going by past decisions of the Authority in other cases, DSM anti infective India Ltd should not have been excluded from the purview of domestic industry.
- iii. Some interested parties have requested the authority to reveal the non-injurious price, the methodology used to arrive at the same and clarify if the terms "cost of sales" and "non-injurious price" have been used interchangeably. They have also asked the authority to explain the basis of examination of the fact that landed price of imports and net sales realization of domestic industry are lower than the cost of sales of the domestic industry. They have also asked the authority to examine the price depression affecting the domestic industry. It has also been stated that DGAD finding on price under selling margin ranging from 45% to 55% for 6 APA and 25% to 35% for Pen G is irreconcilable with the finding of negative price under cutting margin. They have also requested the authority to look at the discrepancy and data for dumping and injury analysis for Pen-G and 6 APA in relation to injury factor. They have also asked the authority to take into account the data from DGCIS rather than from IBIS.
- iv. It has been submitted by some interested parties that exports sales from M/s ZGB and M/s DHA to the Indian arm M/s DAI should not be accepted as they were between the related parties. It has also been mentioned that for the determination of normal value, the same was not accepted by the authority. It has also been submitted that normal value determined for market economy companies in China PR should be extended to other producers in China. They have questioned the fact that how SPIC is the domestic

industry for 6APA and how one application has been submitted for two products. It has also been submitted that proposed levy of anti dumping duty on pen-G and 6APA would lead to influx of imports of value added products i.e API and formulations. They have also added that in the event of imposition of duty, the manufacturers can not pass on the burden of anti dumping duty recommended onto consumers, as the prices of formulations, requiring use of subject goods can not be increased beyond maximum sale price imposed by DPCO. It has also been submitted that 6 APA equivalents of Pen\_G can not be added to total imports of pen-G.

- v. Some interested parties representing manufacturers of GCLE have submitted comments to the disclosure statement and have requested the authority to consider their interest as the drug manufacture for GCLE. They have submitted that PEN-G is used as intermediate product for manufacture of lot of other antibiotics, which are in turn used in manufacture of other life saving drugs. It has been submitted that PEN-G is used as input for manufacturing of GCLE which is a major raw material to produce other life savings drugs such as Cefixime, Cefdinir, Cefprozil and Cefpodoxime. Further, it has been stated that all Indian bulk drug manufacturers using GCLE as raw material imported their 100% requirement from Japan and China around 4 years back. Currently there are only two manufacturers of GCLE in India having capacity of 75 MT per month and the total requirement of Indian manufacturers is 125 MT per month. Since there is huge demand & supply gap, manufacturer of GCLE is gradually increasing its capacity to cater the needs of Indian bulk drug manufacturers and imposition of anti-dumping duty will impact the prices of GCLE in India as there would be substantial increase in the cost of production of GCLE on account of extra duty burden. This will not only affect the prices of GCLE but will have cascading effect on the prices of other pharmaceutical products mentioned above as GCLE is used as intermediate product in manufacture of these products. It has been submitted by them that in the event of increased cost of production of GCLE, the consumers would be forced to import GCLE from China and other countries as these imports would be cheaper for consumers and ultimately would lead to distortion of domestic industry of GCLE in India. Thus, levy of anti-dumping duty would be detrimental for Pen-G direct consumers. It has been further submitted that DGAD in its previous investigations had exempted certain categories of importers from levy of anti dumping duty due to shortage of product concerned. In particular, they have referred to anti dumping investigations concerning import of met coke from China PR and have stated that in that case, the DGAD had exempted certain categories of importers from purview of anti dumping duty and they have requested the Authority to provide exemption for them in that line on actual user condition. In the end, they have highlighted the fact that in the event of imposition of anti dumping duty, they would have no option but to shut down the unit and it would give unfair advantage to the Chinese GCLE manufacturers as 100% of GCLE would be imported from China PR. They have requested the Authority not to impose the anti dumping duty on pen-G or grant equivalent protection in form of safeguard duty on equivalent to the increase in cost of GCLE due to imposition of anti dumping duty or provide exemption notification for them.
- vi. M/s GTC consultants on behalf of M/s Aurobindo has submitted that their net export price has been wrongly reduced by 4% on account of difference in rate of VAT on goods

i.e 17% and refund of 13% in case of exports of 6APA out of china PR. They have stated that normal value in their case has been determined by taking into account cost of production of the company and this 4% is eventually the part of cost of production of 6APA. Therefore for comparing the net export price to China PR with the normal value calculated on the basis of COP of the company, the differential 4% is not required to be deducted from export price to India. They have further requested the Authority to reconsider the normation of fixed costs as the effect of normation has not been provided on all fixed expenses. They have also asked the Authority to look into disallowance of claim of loan waiver in computing cost of production and normal value. Further, they have asked the Authority to reexamine 5% normal profit margin on them for computing the cost of production.

72. The following comments have been received from the domestic industry after the disclosure statement

The domestic industry has again raised the issues relating to grant of market economy treatment to DSM group of companies, normal value methodology and export price determination for DSM group of companies . In particular, they have raised the issues of ownership and have cited the minority state holding in the DSM group of companies. They have also requested the Authority to reexamine the issues relating to pricing of raw material and utilities in the context of grant of MET. They have requested the Authority to reexamine the issue relating to acceptance of export price of DSM group of companies especially as subject goods have been sold to related parties. Similarly, they have also requested the Authority to reexamine the negative injury margin to DSM group of companies. Further, they have requested the Authority to impose the anti dumping duty on fixed basis. In the end, they have asked the Authority to confirm the dumping, injury and causal link in the subject investigations.

Examination by Authority

73. The Authority has taken note of the arguments of the interested parties on product under consideration, like article, domestic industry, dumping, injury and public interest and addressed the issues raised at appropriate places in this finding, subject to being relevant in the subject investigations. The Authority has examined the injury parameters objectively taking into account the facts and the arguments of the interested parties and observes as follows –

- (a) On the issue of likely increase in prices of subject goods and downstream goods following the imposition of duty, it is noted that imposition of anti dumping duty might have some impact on the prices of the product. However, fair competition will not be reduced as a result of imposition of anti dumping duty. The Authority has further noted the claim of the domestic industry that selling prices of Penicillin-G cannot exceed the limits laid down by the Government of India.

- (b) As regards the argument that imposition of anti-dumping duties would lead to intensified competition between the Indian and Chinese Pharma industry, the Authority notes that the argument is fully unsubstantiated and irrelevant to the present investigation.
- (c) As regards adoption of constructed normal value at the stage of initiation in case of Mexico, the Authority notes that the petition contained evidence of dumping to the extent information could be reasonably provided by the applicant. As far as current determination is concerned, the same is based on data/information provided by the Mexican producer to the extent considered relevant by the Authority. The current determination is therefore, fully consistent with Article 2.2 of the Anti-dumping Agreement and anti dumping rules as amended.
- (d) As regards sufficiency of evidence on export price in the petition, the Authority notes that the petition contained sufficient information with regard to the volume, value and the price at which goods have been exported from Mexico. In fact, the questionnaire response filed by the Mexican producer establishes the dumping that was alleged by the petitioners in their application. In any case, the Authority has now adopted information provided by the exporter in determining dumping margin for the responding exporter.
- (e) With regard to evidence of price adjustment and level of trade in determining dumping margin, it is noted that the petition contained information best available to petitioners. The Authority has, however, now adopted information after due verification of information submitted by the exporters and other interested parties in determining dumping margins. It is noted that the petition filed by the domestic industry contained information about causal link analysis. Further, the petitioner claimed that none of the other factors have caused injury to the domestic industry. The Authority has analyzed the causal link and other factors in the relevant heading in injury and causal link after due verification of the data of interested parties.
- (f) As regards the argument of investigation period, the Authority notes that POI has been chosen at the time of initiation based on pricing behavior of the subject goods from subject countries and also based on reasons given by the applicants in their petition. Subsequent to the provisional findings and during oral hearing and in the written submissions of the interested parties, it has been suggested that POI should be extended by 6 months. While many interested parties opposing the anti dumping duty have asked the POI to be extended by 6 months prefixing the POI stating that no injury is caused to the domestic industry by taking full financial year as 2008-09, the domestic industry on the other hand has suggested extending the POI by six months (i.e from 1<sup>st</sup> October 2008 to 30<sup>th</sup> September 2009) stating that their injury would be better reflected by including the later six months. The matter has been examined and it is noted six months POI for anti dumping investigations is within the anti dumping rules and Agreement on anti dumping. The six months POI was accepted by the Authority after examining domestic industry's data, fluctuation in the prices of the subject goods and also keeping in view the earlier anti dumping investigations initiated against the same product. Thus, the Authority after examining the contentions from all the interested parties have decided to keep the same POI as notified in the initiation notification and in the preliminary findings.

- (g) With regard to cumulative assessment, the Authority notes that volume of imports is more than de-minimis in respect of both the countries. The issue of cumulation has been further analysed in the annexure relating to the injury to the domestic industry.
- (h) With regards to some of the arguments made with respect to import price from Mexico, it is noted that evidence with regard to shipment wise import price from Mexico shows low prices in respect of Mexico.
- (i) With regard to the recommendation of Nil duties on some of the interested party, it is stated that dumping margin and injury margin determinations have been carried out after due verification of data from the interested parties and a detailed calculation sheet showing details of normal value, export price and dumping margins has been sent to all the cooperating exporters along with the disclosure statement.
- (j) Many interested parties opposing anti dumping duty have commented with regard to supply demand gap of both Pen-G K and 6APA. The Authority has examined the contention of all interested parties and after examination, it is noted that anti dumping measures do not seek to restrict or ban imports but seek to set up a level playing field for all interested parties including domestic producers and exporters from subject countries.

Examination by the Authority on the issues raised by various interested parties following disclosure statement

74. Issues raised by various interested parties in the comments to disclosure statement have been examined. It is noted that most of the issues raised by various interested parties are reiteration of the earlier submissions and have been suitably analysed under appropriate headings in the final findings. However some of the issues raised and not dealt elsewhere are examined as mentioned below.

(i) With regards to calculating demand for Pen-G and 6APA, the Authority has defined demand or apparent consumption of Penicillin - G in India as the sum of domestic sales of the Indian Producers including captive consumption and imports from all sources in case of Penicillin-G. In case of 6-APA, the Authority has defined demand or apparent consumption of the product as the sum of domestic sales of the Indian producers including job work done and imports from all sources. In the disclosure statement, it was mentioned that demand of subject goods do not include the captive consumption of subject goods of those industries which are outside the purview of the domestic industry. Though no issue has been raised in the case of determination of domestic demand of Pen-G, comments have been received determination of domestic demand for 6APA that it does not take into account the domestic producer's production for captive purposes which have been excluded from the purview of the domestic industry. With regard to not taking into account the information of DSM anti infectives (India) into total demand of 6APA, it is noted that same has been excluded from the purview of demand as DAI has been determined as not within the purview of the domestic industry as mentioned under the heading of domestic industry.

(ii) With regards to methodology of determination of NIP, it is noted that the NIP for Pen-G and 6APA was separately determined by adopting the verified information/ data relating to cost of production for the period of investigation (i.e., 01.10.2008 to 31.03.2009 – 6 months) in respect of applicant domestic producers. A detailed analysis/ examination and reconciliation of the financial and cost records maintained by the company, wherever applicable, were carried out for this purpose.

(iii) With regards to using cost of sales and NIP interchangeably, it is clarified from the above determination that cost of sales and NIP have not been used interchangeably in the findings. With regards to determination of landed price, cost of sales and net price realization of domestic industry, it is noted that landed price has been above the net price realization of the domestic industry during the POI resulting in negative price undercutting both for Pen-G and 6APA. However, the cost of sales has been much higher than either landed price and net sales realization resulting into losses suffered by the domestic industry. Thus, in this case, there is no price undercutting but underselling margins (injury margins) are very significant suggesting that landed price of subject goods are much below the Non injurious price determined for both the subject goods. Further, it is also noted that there is a price depression (decline in the net selling price) in the net selling prices of the domestic industry from 2007-08 in Pen-G and 6 APA. It is also noted that cost of sales have increased more than corresponding rise in the selling prices. With regards to discrepancy of data from Prelim findings and those given in the application filed by the domestic industry and also that given in the disclosure statement, it is noted that the data given by the domestic industry is subsequently verified by the Authority and the verified data is taken into account for the purpose of findings ( and it accounts for small changes in numbers). It is also noted that till the preliminary findings, only M/s Alembic industry data was verified and after preliminary findings, the information submitted by M/s SPIC was verified and hence in the disclosure statement, information filed by the domestic industries for both the products were verified and the verified data was used in the disclosure statement.

(iv) With regards to acceptance of export price of M/s ZGB and DHA to their Indian affiliate by the Authority, it was noted during onsite verification of both the units the selling prices were fixed by the company on its own in response to market forces of demand and supply and the transfer pricing between DSM group companies and their prices were broadly in line with the imports made by them from other unrelated parties A perusal of the transfer price mechanism indicated that for Pen-G, the primary basis for pricing Pen-G was the market prices prevalent during the preceding quarter.

(v) With regards to the representation of manufacturers of GCLE using Pen-G, it is noted that Pen-G is used as input for manufacturing of GCLE which is a major raw material to produce other life savings drugs such as Cefixime, Cefdinir, Cefprozil and Cefpodoxime. They have submitted that in its previous investigations, the Authority has exempted certain categories of importers from levy of anti dumping duty due to shortage of product concerned and in their representation; they have requested the Authority to provide for same on actual user condition in line with met coke case. Their request has been examined and it is noted that the Authority can

not recommend any exemption notification in its findings on the basis of demand and supply and it has not been recommended in earlier cases also.

(vi) With regards to points raised by M/s Aurobindo in their comments to the disclosure statement, it is noted that as per consistent practice followed by the Authority, the export price has been reduced by 4% ( i.e amount of non refundable VAT). It is noted that during the verification visit, the loss on account of non refundable VAT has not been separately identified/demonstrated as a part of cost of production and for determination of normal value of subject goods. With regards to normation of fixed costs the Authority has carried out normation of expenses which has been considered as fixed cost based on verified data. With regards to the waiver of interest cost for the loan from fully owned subsidiary company in the cost of production, it is noted that the same has been considered as of abnormal nature. Hence, interests cost has been taken into account in the determination of cost of production and normal value of subject goods.

(vii) With regards to domestic industry's comments about raw material supplies and their prices, it was noted during the verification and also mentioned in the verification report as well as in the disclosure statement that raw material purchase prices had not been influenced by any apparent governmental interference. It has further been noted that M/s ZGB was procuring their raw materials from both related and unrelated companies. It was noted that raw materials like glucose and Corn Steep Liquid had been procured from several companies. Further, purchase orders of raw materials were verified to ascertain that the raw materials were purchased at prevailing market price in China as supplied to others. The business licenses and sample purchase invoices indicated the legal status of the suppliers and the comparative prices charged by them.

#### Cumulative Assessment in the case of Pen-G

75. Annexure II (iii) to the Anti Dumping Rules provides that in case imports of a product from more than one country are being simultaneously subjected to anti dumping investigations, the designated authority will cumulatively assess the effect of such imports, in case it determines that:

(a) the margin of dumping established in relation to the imports from each country is more than two percent expressed as percentage of export price and the volume of the imports from each country is three percent of the imports of the like article or where the export of the individual countries is less than three percent, the imports cumulatively account for more than seven percent of the imports of like article, and;

(b) cumulative assessment of the effect of imports is appropriate in light of the conditions of competition between the imported article and the like domestic articles.

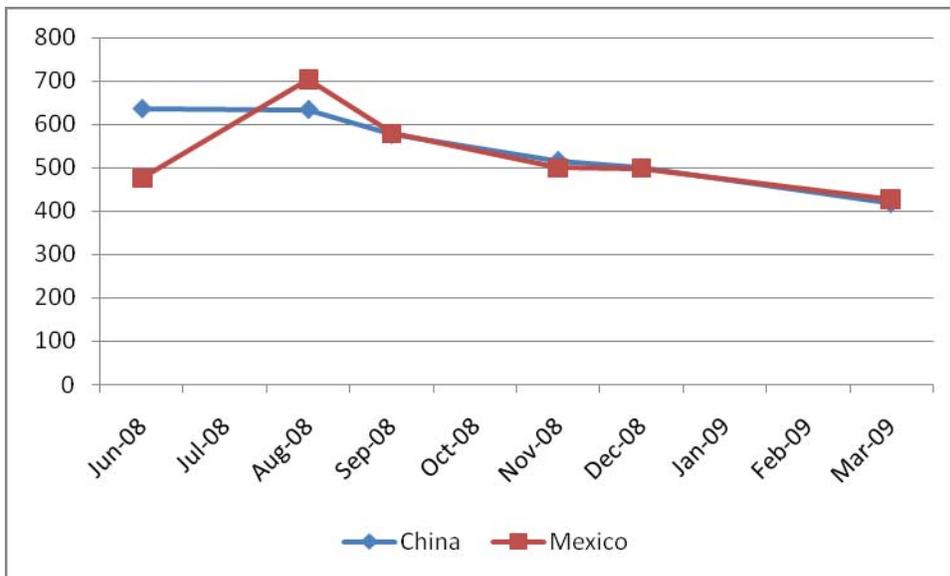
76. The Authority considered whether it would be appropriate to cumulatively assess injury to the domestic industry. As stated below, it would be appropriate to assess injury to the domestic industry cumulatively from China and Mexico:-

- i. The margins of dumping from each of the subject countries are more than the limits prescribed,
- ii. The volume of imports from each of the subject countries is more than the limits prescribed,
- iii. Cumulative assessment is appropriate in view of the following factors:-

- (a) The goods involved are like articles and are competing in the same market;
- (b) Imports from both the countries are increasing.
- (c) The imported products are being sold through the same channel of distribution and to comparable category of customers;

- iv. In view of the argument that cumulation of injury was unwarranted, the Authority compared the import price from China and Mexico. The graph and the table below shows the factual position. It is seen that the two prices have moved in tandem.

Month	China (Rs/Bou)	Mexico (Rs/Bou)
Jun-08	636	475
Aug-08	634	703
Sep-08	577	578
Nov-08	516	499
Dec-08	500	498
Mar-09	417	426



v. In view of the above facts, it is held that a cumulative assessment of the effects of the imports of Pen-G is appropriate in light of conditions of competition between imported products and conditions of competitions between the imported products and domestic like product.

#### Assessment of demand

77. For the purpose of the present investigation, the Authority has defined demand or apparent consumption of Penicillin - G in India as the sum of domestic sales of the Indian Producers including captive consumption and imports from all sources in case of Penicillin-G. In case of 6-APA, the Authority has defined demand or apparent consumption of the product as the sum of domestic sales of the Indian producers including job work done and imports from all sources. It may be pointed out that for 6APA demand of subject goods do not include the captive consumption of subject goods of those industries which are outside the purview of the domestic industry. The demand so assessed is given in the table below.

#### Demand

Pen-G	Unit	2005-06	2006-07	2007-08	Apr-Sep'08 (annualized)	POI (annualized)
Total Imports	000' BOU	14,895	17,866	20,282	11,352	12,862
Sales of Domestic Industry	000' BOU	2,243	1,926	2,636	3,344	2,503
Demand	000' BOU	17,138	19,792	22,918	14,696	15,365
Trend		100	115	134	86	90

6-APA	Unit	2005-06	2006-07	2007-08	Apr-Sep'08	POI (annualized)
Total Imports	MT	1,283	2,080	2,384	3,570	4,528
Sales – Alembic	MT	0	0	60	203	213
Sales – Alka (including job work)	MT	9	424	400	442	190
Demand	MT	1,292	2,504	2,844	4,215	4,931
Trend		100	194	220	326	382

78. It is seen that the demand for Penicillin-G has shown a declining trend during the injury period as a whole, however, demand of 6-APA has shown significant increase during the same period. However, it is noted that demand for Pen-G increased significantly from 2005-06 to

2007-08 before declining in first half of 2008-09 and again increased during the POI. It is noted that significant use of Penicillin-G is in production of 6-APA. About 3 BOU of Penicillin-G is consumed in production of 1 kg. of 6-APA. The domestic industry argued that since 6-APA is a derivative of Penicillin-G, the import volumes must be determined considering imports of both Penicillin-G and 6-APA. It has been submitted that the imports of Pen-G and Pen-G equivalent of 6-APA from China has increased significantly between 2007-08 and POI as can be seen from the table below:

Pen-G and Pen-G equivalent of 6-APA	Unit	2005-06	2006-07	2007-08	Apr-Sep'08 (annualized)	POI (annualized)
Demand	000' BOU	21,013	27,374	31,451	27,342	30,158
Trend		100	130	150	130	144

Volume effect: Volume Effect of dumped imports and Impact on domestic Industry  
Volume and market share of dumped imports

79. It is observed that the volume of dumped imports of products under consideration has significantly increased from 2005-06 to 2007-08 and thereby declined sharply during first half of 2008-09 and thereafter it again increased during POI. It is further noted that market share of imports from subject countries in total imports in the case of Pen-G has been very significant through the injury period. It is also noted that the market share of dumped imports in total production and consumption has also been very significant throughout the injury period.

80. It is noted that dumped imports of 6-APA from China PR remained at low levels earlier, but increased significantly, particularly after initiation of previous anti dumping investigation of Pen-G, in absolute terms and in relation to production and consumption in India. The market share of dumped imports from subject country in total imports as well as in demand has increased significantly during the injury period. Import volumes from subject country(ies) and other countries has been as under: -

Imports of Pen-G	Unit	2005-06	2006-07	2007-08	Apr-Sep'08 (annualized)	POI (annualized)
China PR	000' BOU	14,197	17,801	20,262	11,078	11,983
Mexico	000' BOU	574	65	0	275	879
Subject countries	000' BOU	14,771	17,866	20,262	11,353	12,862

Other Countries	000' BOU	124	0	20	0	0
Total Imports	000' BOU	14,895	17,866	20,282	11,353	12,862
Trend		100	120	136	76	86
Market Share in Imports						
China PR	%	95.31	99.64	99.90	97.58	93.16
Mexico	%	3.85	0.36	-	2.42	6.84
Subject countries	%	99.17	100	99.90	100	100
Other Countries	%	0.83	-	0.10	-	-
Imports of 6-APA				Unit		
China PR	MT	1,051	1,957	2,221	3,387	4,440
Other Countries	MT	232	123	163	183	88
Total Imports	MT	1,283	2,081	2,384	3,570	4,528
Trend		100	162	186	278	353
Market Share in Imports						
China PR	%	81.92	94.04	93.16	94.87	98.06
Other Countries	%	18.08	5.96	6.84	5.13	1.94

81. Thus, the dumped imports of subject goods from subject countries show an adverse volume effect.

#### Market share in demand

82. It is seen that in case of Penicillin-G the share of imports from subject countries had declined till Sept., 2008. The same however increased once again in the POI. Further, the share of imports in any case has remained very high. In case of 6-APA, the share of Chinese imports increased throughout the period with a brief decline during the middle of the period. The share of domestic industry (applicant as well as supporter) declined by half from 2006-07 to the POI. Further, the share of imports from subject country has remained very high throughout injury period.

#### Penicillin G

Market Share in Demand %	2005-06	2006-07	2007-08	April 08-Sep 08	Oct08-Mar09
Domestic Industry	13.09	9.73	11.50	22.75	16.29
Other Indian producer	-	-	-	-	-
Imports-China	82.84	89.94	88.41	75.38	77.99
Imports-Mexico	3.35	0.33	-	1.87	5.72
Imports – Subject Country (ies)	86.19	90.27	88.41	77.25	83.71

Imports - Other countries	0.72	-	0.09	-	-
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## 6-APA

Market Share in Demand %	2005-06	2006-07	2007-08	April 08-Sep 08	Oct08-Mar09
Alembic	-	-	2.11	4.82	4.32
Alka Remedies (incl. Job work done for others)	0.70	16.93	14.06	10.49	3.85
Applicant + supporter	0.70	16.93	16.17	15.30	8.17
Imports – China	81.35	78.15	78.09	80.36	90.04
Imports - Other countries	17.96	4.95	5.73	4.34	1.78

Price Effect of dumped imports and Impact on domestic Industry

83. With regard to the effect of the dumped imports on prices, the Authority is required to consider whether there has been a significant price undercutting by the dumped imports as compared with the price of the like product in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree.

Evolution of prices

84. In order to examine the trends in the import price over the injury period, the Authority considered import prices over the injury period. The domestic industry claimed that there were too significant changes in the prices in very short period over the injury period. It was further claimed that the trend was required to be examined on a month to month basis.

Unit: Rs per BOU

Period	2004-05	2005-06	2006-07	2007-08	2008-09
Apr	276	269	271	382	377
May	269	284	278	402	513
June	265	279	290	506	591
July	276	278	298	662	599
Aug	272	278	305	727	582
Sep	258	273	312	749	529
Oct	253	256	313	743	465
Nov	249	256	324	690	474
Dec	264	282	351	606	458
Jan	263	276	368	396	423

Feb	284	267	381	327	390
Mar	269	266	386	328	364

85. The Authority notes that the import price of Penicillin-G was quite low between April, 2004 – April, 2007. Prices started rising from April, 2007 and peaked in Aug.-Oct. 2007. The transaction wise import data shows as high price as Rs. 749 per bou in Sep., 2007. Prices thereafter steeply declined to a very low level and bottomed in Feb.-March, 2008. Once again prices increased and peaked in June-Aug., 2008. The levels achieved were however much lower than the levels registered earlier. Prices have thereafter declined significantly.

86. The Authority has examined the information submitted by the domestic industry and considers that these price movements are indeed very erratic and a weighted average CIF price and their landed values and their corresponding Net sales realization and cost of sales may not give a correct picture of the amount of the price effect on account of dumped imports of subject goods from subject countries. However, as a matter of consistency, the Authority has analyzed the price effect as mentioned underneath based on weighted average CIF prices and Net sales realization.

#### Price undercutting Price depression and Price underselling

87. In order to determine whether the imports are undercutting the prices of the domestic industry in the market, the Authority has compared landed price of imports with net sales realization of the domestic industry. Authority has determined net sales realization considering selling price, excluding taxes & duties, rebates, discounts & commissions and freight & transportation. Entire sales volumes of the domestic industry have been included in the calculations. Landed price of imports has been determined considering weighted average CIF import price, with 1% landing charges and applicable basic customs duty. The comparison was done between net sales realization and landed price of imports.

88. The domestic industry claimed, due to such steep variations in the prices, that price reductions have to be offered not only to those customers who threaten (or actually partially shift) to imported material, but also to those customers who are not resorting to import or not using imported material, any potential loss of business being very critical for the domestic industry. Further, petitioners have claimed that determination of price undercutting should be done on the basis of date of order booked by the consumers.

89. However, the Authority as a matter of consistent practice has determined the landed price of subject goods as per IBIS sources. From the examination, it is determined that the landed prices of dumped imports are not undercutting the prices of the domestic industry in the case of both Pen G and 6APA.

90. However, the landed prices of the subject goods are significantly below the cost of sales of the subject goods of domestic industry which suggests significant underselling by the domestic industry for both the subject goods. Further, it is also noted that there is a price depression in the net selling prices of the domestic industry from 2007-08 in Pen-G and 6 APA. It is also noted that cost of sales have increased more than corresponding rise in the selling

prices. Further, net selling prices have increased in tandem with the landed prices and have been slightly below the landed prices after 2007-08 for both the products while it was slightly higher than landed prices in 2005-06 for pen -G.

Penicillin - G	Unit	2005-06	2006-07	2007-08	Apr-Sep'08	POI (Annualised)
Net Sales Realization	Rs./BOU	****	****	****	****	****
Cost of Sales	Rs./BOU	****	****	****	****	****
Landed Price - China PR	Rs./BOU	314	365	604	558	459
Landed Price - Mexico	Rs./BOU	341	426	-	562	480
Landed Price - Subject Countries	Rs./BOU	315	365	604	558	460
Price Undercutting – China	Rs./BOU	****	****	****	****	****
Price Undercutting – Mexico	Rs./BOU	****	****	****	****	****
Price Undercutting - Subject Countries	Rs./BOU	****	****	****	****	****
Price Undercutting – China	%	****	****	****	****	****
Price Undercutting – Mexico	%	****	****	****	****	****
Price Undercutting - Subject Countries	%	3-6	(5-10)	(5-10)	(5-12)	(4-8)

Price Underselling – China	Rs./BOU	****
Price Underselling - Mexico	Rs./BOU	****
Price Underselling - Subject Countries	Rs./BOU	****
Price Underselling – China	%	****

Price Underselling - Mexico	%	****
Price Underselling - Subject Countries	%	****
Price Underselling - Subject Countries	%	25-35

6-APA	Unit	2005-06	2006-07	2007-08	Apr-Sep'08	POI
Net Sale Realization	Rs./ Kg			****	****	****
Cost of Sales	Rs./ Kg			****	****	****
Landed Price - China PR	Rs./ Kg			****	****	****
Price Undercutting	Rs./ Kg			****	****	****
Price Undercutting	%			6-12	(2-6)	(2-6)
Price Underselling	Rs./ Kg					****
Price Underselling	%					****
Price Underselling	%					45-55%

#### ECONOMIC PARAMETERS RELATING TO THE DOMESTIC INDUSTRY

91. Annexure II to the Rules requires that a determination of injury shall involve an objective examination of the consequent impact of these imports on domestic producers of such products. With regard to consequent impact of these imports on domestic producers of such products, the 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.

#### Production, Capacity and Capacity Utilization, Sales

92. The Information on capacity, production, capacity utilization and sales volumes of the domestic industry is mentioned in the table below. It is noted that sales volume increased from the base year (2005-06) and it increased by 49% during April- sept 2009 and thereafter declined steeply by 38% during the next half year i.e POI. Further, it is noted that the production of the domestic industry had an erratic trend over the injury period, it shows a marginal increase though during the POI, it shows the decline over previous period. It is also noted that capacity utilization increased during injury period till first half of 2008-09 and thereafter it declined during the POI in tandem with the production and other volume parameters. It is also noted that one of the

petitioner companies, M/s. Alembic Limited had to suspend its production in 2005-06 and it again restarted in 2007. It is also noted that though the production was restarted in May 2007, the capacity was significantly under-utilized. The capacity utilization however, improved in Apr-Sep. 2008 and then declined once again in the POI, both in the case of Pen-G and 6-APA. It is noted from above that though the capacity utilization improved for both Pen-G and 6 APA during the POI from earlier period, the same is still below the desired level for Pen-G while the capacity utilization is poor in the case of 6 APA.

#### Penicillin-G

Volume in Bou in'000	2005-06	2006-07	2007-08	Apr-Sep'08 (annualized)	POI (annualized)
Domestic Sales	2,243	1,926	2,636	3,343	2,503
<i>Trend</i>	<i>100</i>	<i>86</i>	<i>118</i>	<i>149</i>	<i>112</i>
Capacity	4772	4772	4772	4772	4772
<i>Trend</i>	<i>100</i>	<i>100</i>	<i>100</i>	<i>100</i>	<i>100</i>
Production	2,180	2,010	3,114	3,972	3,481
<i>Trend</i>	<i>100</i>	<i>92</i>	<i>143</i>	<i>182</i>	<i>160</i>
Capacity Utilization %	45.68	42.12	65.26	83.23	72.96
<i>Trend</i>	<i>100</i>	<i>92</i>	<i>143</i>	<i>182</i>	<i>160</i>

#### 6-APA

Volume in MT	2007-08	Apr-Sep'08 (annualized)	POI (annualized)
Domestic Sales	50	203	213
<i>Trend</i>	<i>100</i>	<i>406</i>	<i>426</i>
Capacity	600	600	600
<i>Trend</i>	<i>100</i>	<i>100</i>	<i>100</i>
Production	84	246	212
<i>Trend</i>	<i>100</i>	<i>293</i>	<i>252</i>
Capacity Utilization %	14.03	41.14	35.48
<i>Trend</i>	<i>100</i>	<i>293</i>	<i>252</i>

Profits, return on investment and cash flow

93. The petitioners have claimed that the product has a history of continued dumping. It is also noted that one of the petitioner companies, M/s. Alembic Limited had to suspend its production in 2005-06 and it again restarted in 2007; though various interested parties have disputed the fact that suspension was on account of dumping. The petitioners have also claimed that there were other Indian Producers of Penicillin-G in the country, who were also forced to suspend the production. However, this fact has also been refuted by various other interested parties in their submissions.

94. It has been submitted by the domestic industry that the import prices once again started rising from 2007-08 and encouraged by the changed market conditions, M/s Alembic recommenced commercial production of Penicillin-G and also started production of 6-APA. However, with the commencement of production, the import prices once again have gone down. It is noted from the examination of the information submitted by domestic industry that profits, return on investments and cash profit are showing significant deterioration. The situation is similar in case of 6-APA. The operations resulted in losses from the start and the losses have mounted during the injury period. It is thus noted that Profits, return on investment and cash flow has been adversely affected during the injury period and losses on account of both the subject goods was much higher than the earlier periods as it could be seen in the table placed below.

Penicillin - G	Unit	2005-06	2006-07	2007-08	Apr-Sep'08 (annualized)	POI (annualized)
Profit/loss per unit	Rs./bou	****	****	****	****	****
Index		(100)	(129)	(32)	(61)	(184)
Profit before tax	Rs. lacs	****	****	****	****	****
Index		(100)	(116)	(35)	(74)	(160)
PBIT	Rs. lacs	****	****	****	****	****
Index		(100)	(104)	6	(44)	(167)
Cash Profit	Rs./bou	****	****	****	****	****
Index		(100)	(180)	84	(37)	(397)
Cash Profit	Rs. lacs	****	****	****	****	****
Index		(100)	(162)	93	(44)	(345)
Return on Investments	%	****	****	****	****	****

- NFA %						
Index		(100)	(211)	9	(124)	(504)

6-APA	Unit	2007-08	April'08-Sep'08	April'08-Sep'08 (annualized)	Oct'08-March'09	POI (annualized)
Profit/loss per unit	Rs./Kg	****	****	****	****	****
Index		(100)	(54)	(54)	(103)	(103)
Profit before tax	Rs. Lacs	****	****	****	****	****
Index		(100)	(182)	(182)	(366)	(366)
PBIT	Rs. Lacs	****	****	****	****	****
Index		(100)	(193)	(193)	(393)	(393)
Cash Profit	Rs./Kg	****	****	****	****	****
Index		(100)	(129)	(129)	(255)	(255)
Cash Profit	Rs. Lacs	****	****	****	****	****
Index		(100)	(180)	(180)	(374)	(374)
Return on Investments – NFA %	%	****	****	****	****	****
Index		(100)	(116)	(116)	(238)	(238)

#### Market share of domestic industry

95. It is observed that market share of the domestic industry for Pen-G has increased during the injury period though it has declined significantly during the POI from the preceding year and remains very low. Though, the share of imports from subject country(ies) has declined during the injury period, it has remained significant during the injury period.

96. It is also noted that dumped imports from China PR capture a significant portion of 6-APA market and their share has increased in the POI. It is also noted that market share of domestic industry along with the supporter has significantly gone down during the injury period for the 6APA.

Penicillin - G	Unit	2005-06	2006-07	2007-08	Apr-Sep'08 (annualized)	POI (annualized)
Total Imports	000Bou	14,895	17,866	20,282	11,353	12,863
Sales of Domestic industry	000Bou	2,243	1,926	2,636	3,344	2,503
Demand	000Bou	17,138	19,792	22,918	14,696	15,365
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6-APA	Unit	2005-06	2006-07	2007-08	Apr-Sep'08 (annualized)	POI (annualized)
Total Imports	MT	1,283	2,080	2,384	3,570	4,528
Sales- Alembic	MT	0	0	60	203	213
Sales – Alka (including job work)	MT	9	424	400	442	190
Demand	MT	1,291	2,504	2,844	4,215	4,931
Trend		100	194	220	326	382

### Employment, productivity and wages

97. It is also noted that petitioners are multi product companies. There is no apparent adverse effect on account of these factors as has been mentioned below in numbers.

	2005-06	2006-07	2007-08	Apr-Sep'08 (annualized)	POI (annualized)
Employment (Nos)					
➤ Penicillin-G	****	****	****	****	****
Index	100	100	97	101	100
➤ 6-APA	****	****	****	****	****

➤ Index			100	85	85
Wages (Rs. Lacs)					
➤ Penicillin-G	****	****	****	****	****
➤ Index	100	77	123	162	144
➤ 6-APA	****	****	****	****	****
➤ Index			100	275	237
Productivity per employee					
➤ Penicillin-G (in '000 BOU)	****	****	****	****	****
➤ Index	100	92	147	180	159
➤ 6-APA (in MT)	****	****	****	****	****
➤ Index			100	344	297

Factors affecting domestic prices: -

98. Consideration of the import prices from China PR and other countries, change in the cost structure, competition in the domestic market, factors other than dumped imports that might be affecting the prices of the domestic industry in the domestic market show that the landed value of imported material from subject country(ies) is the most important factor affecting the prices of the domestic industry. Further, the petitioners have claimed that the import prices of Chinese material have shown an erratic trend and this has also led to closure of plants by Indian producers at several instances during the injury period. The benchmark for the Indian producers' prices is the import prices from China PR in the case of 6 APA and China PR and Mexico in the case of Pen-G. Imports from other countries are in any case insignificant and are not benchmark for the domestic industry prices. There is no viable substitute to this product. Demand for the product was showing an increase for 6APA (as has been worked out separately in the para relating to market share in demand) and could not have been a factor responsible for price suppression faced by the domestic industry. The shrinkage in demand of Pen-G during the POI could be attributed to the fact that imports of Pen-G dried up after petitions were filed by the domestic industry earlier and imports of 6APA increased significantly thereafter. It is thus noted

that the only factors responsible for the domestic industry prices are the import prices of the product and the cost of production of the domestic industry. It is further noted from the table below that whereas the cost of production increased, the dumped import prices from subject country(ies) at much lower than the domestic cost of production and aligning slightly higher than domestic selling prices, prevented the domestic industry from increasing their prices in line with the increase in the costs.

Penicillin-G	2005-06	2006-07	2007-08	Apr-Sep'08	Oct08-Mar09
Cost of Sales per BOU	****	****	****	****	****
Trend	100	109	140	135	144
Selling Price per BOU	****	****	****	****	****
Trend	100	104	169	155	133

6-APA	2007-08	Apr-Sep'08	Oct08-Mar09
Cost of Sales per Kg	****	****	****
Trend	100	84	87
Selling Price per Kg	****	****	****
Trend	100	94	81

The magnitude of the margin of dumping: -

99. Authority notes that dumping margin for large volume of exports for Penicillin G from China and Mexico and for 6-APA from China is not only more than de-minimus but also very significant. The margin of dumping for the large volume of exports of both the subject goods from subject country(ies) is considered significant.

Inventories: -

100. There is no adverse effect on the inventories during the POI if compared with the base year. However, as noted below, the inventories started building from 2006-07 onwards and were at very high level for the Pen-G. However, these have declined significantly for 6APA during the same period.

Average Inventories	2005-06	2006-07	2007-08	Apr-Sep'08	Oct08-Mar09
➤ Penicillin-G ('000 BOU)	116	33	41	82	116

Trend	100	28	35	71	100
➤ 6-APA (Kg)			309	324	30
Trend			100	105	10

Growth: -

101. Growth of the domestic industry in terms of a number of parameters, both volume and price, is negative. It has also been claimed that dumping in the past has led to a situation of plant closures.

	2005-06	2006-07	2007-08	April 08- Sep 08	Oct08- Mar09
<b>Penicillin-G</b>					
Production	% -	(5-10)	40-60	20-30	(10-15)
Domestic Sales Volume	% -	(8-12)	20-30	6-12	(20-30)
Domestic Sales Value	% -	(5-10)	80-120	(1-2)	(30-50)
Sales Price Per KG	% -	3-5	50-70	(5-10)	(12-16)
Cost of Sales - Per BU	% -	12-16	20-25	(2-5)	5-10
<b>6-APA</b>			<b>2007-08</b>	<b>April 08- Sep 08</b>	<b>Oct08- Mar09</b>
Production	%		-	150-250	(10-20)
Domestic Sales Volume	%		-	200-250	3-5
Domestic Sales Value	%		-	200-250	(8-12)
Sales Price Per KG	%		-	(4-8)	(12-16)
Cost of Sales - Per KG	%		-	(12-20)	2-5

Ability to raise capital investments: -

102. Both the petitioner companies are multi product companies. However, given the state of affairs of the constituents of the Indian industry where one of the petitioners has shut down operations even after initiation of the present investigations and the other company is in acute losses, dumping of the product would certainly have adverse impact on the ability of the domestic industry to raise capital investment.

Lost sales

103. During the investigations, the Domestic industry provided evidence showing that the customers demanded lower prices, citing current market prices, based on offers for sale by the Chinese producers. Evidence has also been provided to show that the Chinese producers have reduced the prices substantially during the course of negotiations with the customers. The Domestic industry has argued that they are forced to reduce the prices based on such offer, or lose the orders from the customers.

Magnitude of Injury and injury margin

104. The non-injurious prices for the subject good has been compared with the landed value of the exports from the subject country for the same description for determination of injury margin. The weighted average landed price of the exporters from the subject country and their injury margins have been worked out as follows:

Pen-G

Exporter	Country	Dumping Margin in US\$ per BOU	Dumping Margin %	Injury Margin in US\$ per BOU	Injury margin %
Zhang Jia Kou Gist-Brocades Pharmaceuticals and DSM Trading(Shanghai) Co.	China	(****)	(****)	(****)	(****)
Non-Co-operative producers/exporters	China	****	40.05	****	20-30
M/s. Fersinsa GB and DSM Netherlands	Mexico	****	24.60	****	20-30
Non Co-operative producers/exporters	Mexico	****	34.25	****	30-40

6APA

Exporter	Country	Dumping margin	Dumping Margin %	Injury margin	Injury margin %
Zhang Jia Kou DHA Pharmaceutical (DHA) and DSM Trading(Shanghai) Co.	China PR	****	13.58	****	25-35
Aurobindo (Datong)	China PR	****	10.34	****	50-60

Bio-Pharma					
Non-Co-operative producers/exporters	China PR	****	36.01	****	50-60

### **Conclusions:**

#### **Conclusions on injury of Pen- G**

105. (i) It is noted from the above that volume of dumped imports of subject good from subject countr(ies) increased significantly in absolute terms till 2007-08 before it declined during first half of 2008-09 and after that it has again increased during POI. It is further noted that dumped imports of Penicillin-G from subject countries have increased significantly in relation to consumption in India and has been very significant in terms of production of domestic industry throughout the injury period. It is further noted that market share of dumped imports in total imports have been 100% throughout injury period and it has been consistently significant (over 80%) in the total demand during the same time. In terms of price effect, it is noted that import prices have shown too significant fluctuations, disproportionate to the changes in the cost structures. It is further noted that even though the average price undercutting during the investigation period was negative, the prices in the domestic market were directly impacted by the dumped imports of subject goods from subject countries. It has been determined that dumped imports are leading to price suppression and significant price underselling. It has been claimed by the domestic industry that selling prices of the domestic industry were materially below the prices notified by the Govt. of India through DPCO.

106. On the impact of volume and price effect on the domestic industry, it is noted that the market share of the domestic industry has seen a marginal increase of 2 percentage points during the injury period which is considered very paltry even when its production and capacity utilisation has shown an increase during the injury period. It is further noted that performance of the domestic industry over the injury period improved with the increase in the import prices and deteriorated with the decline in the import prices. Further, performance of the domestic industry after improvement upto Sept., 2008, declined steeply thereafter with the significant reduction in the import prices thereby impacting adversely in terms of, collectively and cumulatively, production, sales, capacity utilization, market share, profits, return on investments, cash profit during the POI. It is also noted that one of the constituents of the domestic industry has claimed to have suspended production after the investigation period in view of significant financial losses. Examination of the various parameters confirms that the domestic industry has suffered material injury.

#### **Conclusions on injury of 6APA**

107. It is noted that dumped imports of 6-APA from China PR remained at low levels earlier, but increased significantly, particularly after initiation of previous anti dumping investigation of pen-G, in absolute terms and in relation to production and consumption in India. The market

share of dumped imports from subject country in total imports as well as in demand has increased significantly during the injury period. For assessing the price effects, it is noted that import prices from subject country have shown too significant fluctuations, in line with the fluctuations in the prices of Penicillin-G, thus suggesting a correlation that dumping of Penicillin-G might be leading to dumping of 6-APA as well, particularly after initiation of previous anti dumping investigations of Pen-G by the Authority. It is further noted that even though the average price undercutting during the investigation period was negative, the prices in the domestic market are directly impacted by the dumped imports of subject goods from subject country. It has been further noted that dumped imports are leading to price suppression and significant price underselling.

108. Performance of the domestic industry over the injury period shows that the same improved with the increase in the import prices and deteriorated with the decline in the import prices. Further, performance of the domestic industry after improvement upto Sept., 2008, declined steeply thereafter with the significant reduction in the import prices in terms of, collectively and cumulatively, production, sales, capacity utilization, market share, profits, return on investments, cash profit. Examination of the various parameters confirms that the domestic industry has suffered material injury.

#### G. Causal Link and Other Factors

109. The Authority has examined existence of causal link between the dumped imports and injury suffered by the domestic industry in the light of the arguments of the interested parties and having regard to the Rules in this regard.

#### Effect of other known listed parameters

110. The Authority examined the issue of causal link and other non-attributive factors as laid down in the Rules to segregate injury, if any, caused by other factors. In this regard, the following indicative factors as laid down in the Rules have been examined.

#### Volume and Prices of imports not sold at the dumped prices

(a) The Authority notes that there are negligible imports of the products under consideration from other countries during the POI. In fact, share of subject imports has significantly increased over the injury period and reached nearly 100% during the POI. Imports from third countries could not have therefore caused injury to the domestic industry.

#### Performance of Other Domestic producers

(b) The petitioners have claimed that there were other producers of Pen-G in India, who have long back shut down operations as a result of severe dumping. It has been claimed that the petitioners are also finding hard to sustain production activities in view of intensified dumping.

(c) Trade restrictive practice and competition between the foreign and domestic producers

The Authority has not found any trade restrictive practice followed by the domestic industry. The Authority notes that the subject goods are freely importable and there are no trade restrictive practices in the domestic market.

(d) Contraction of demand or Changes in the pattern of consumption

There is a contraction in the overall demand during the period under consideration for Pen-G. However, it has been claimed that the demand has increased over the injury period after considering Penicillin-G and Penicillin-G equivalent of 6-APA. Therefore, any possible decline in demand may not be a factor, which could have caused injury to the domestic industry. Further, there is no contraction in demand for 6 APA and in fact demand has grown significantly. There is no argument by interested parties regarding the change in the pattern of consumption, nor does it appear that changes in the pattern of consumption could have inflicted the injury to the domestic industry.

(e) Developments in Technology, Export performance and productivity of the Domestic Industry

Technology for production of the product has not undergone any change. Developments in technology are, therefore, not a factor of injury.

(f) Export performance - The petitioners have provided information with regard to exports separately. The Authority notes that injury claimed by the domestic industry is on account of domestic operations.

(g) Productivity – Productivity of the domestic industry has improved.

From the foregoing, it is evident that the domestic industry has not suffered material injury due to other factors.

**Factors establishing causal link and conclusion on causal link for Pen-G and 6APA**

111. The Authority conducted an analysis of the performance of the domestic industry vis a vis subject goods over the injury period. It is noted that the performance of the domestic industry has materially deteriorated during the injury period. The causal link between dumped imports and the injury to the domestic industry is established on the following grounds:

- (i) There is significant correlation between the prices offered by the domestic industry and Foreign Producers from subject countr(ies). It is further noted that even when the domestic industry has been offering sub-optimal prices and lowering its prices, it is also loosing sales. Thus, decline in sales volumes is a direct consequence of dumped imports from the subject country (ies);
- (ii) It is further noted that decline in sales volumes has resulted in reduction in the selling prices. Further, to keep its plant running, it is selling the both the subject goods at prices significantly below its cost of production. As a direct consequence, the profits of the domestic industry

declined so rapidly that the domestic industry went into a situation of financial losses from a situation of profits;

- (iii) It is noted that reduction in profits directly resulted in deterioration in return on capital employed and cash flow. Thus, deterioration in profits, return on capital employed and cash flow is provisionally attributed due to dumped imports of subject goods from subject countr(ies).;
- (iv) It is also noted that consistent decline in sales volumes has adversely affected the production and capacity utilization. It is noted that decline in production and capacity utilization is due to dumped imports.

Therefore, the Authority concludes that the domestic industry has suffered material injury and such injury has been caused significantly by price and volume effects of dumped imports from the subject country (ies).

## **H Conclusions:**

112. After examining the issues raised and submissions made by the interested parties and facts made available before the Authority as recorded in this finding, the Authority concludes that:

- (a) The products under consideration (both Pen-G and 6 APA) have been exported to India from the subject country (ies) (China PR and Mexico for Pen-G and China PR for 6 APA respectively) below their normal values.
- (b) The domestic industry for both the products under consideration has suffered material injury.
- (c) The injury has been caused by the dumped imports of subject goods ( Pen-G and 6 APA) from the subject country (ies).

## **I Indian industry's interest & other issues**

113. The Authority notes that the purpose of anti-dumping duties, in general, is to eliminate injury caused to the Domestic Industry by the unfair trade practices of dumping so as to re-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 would not restrict imports from the subject country (ies) in any way, and, therefore, would not affect the availability of the products to the consumers.

114. It is recognized that the imposition of anti-dumping duties might affect the price levels of the products manufactured using the subject goods and consequently might have some influence on relative competitiveness of these products. However, fair competition in the Indian market will not be reduced by the antidumping measures, 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 measures would remove the unfair advantages gained by dumping practices, would prevent the decline of the domestic industry and help maintain availability of wider choice to the consumers of the subject goods.

### **J Recommendations**

115 The Authority notes that the investigation was initiated and notified to all interested parties and adequate opportunity was given to the exporters, importers and other interested parties to provide positive information on the aspect of dumping, injury and causal link. Having initiated and conducted a investigation into dumping, injury and causal links between dumping and injury to the domestic industry in terms of the Rules laid down and having established positive dumping margin as well as material injury to the domestic industry caused by such dumped imports, the Authority is of the view that imposition of duty is required to offset dumping and injury. Therefore, Authority considers it necessary and recommends imposition of definitive anti-dumping duty on imports of subject goods from the subject countries in the form and manner described hereunder.

116. Having regard to the lesser duty rule followed by the Authority, the Authority recommends imposition of definitive anti-dumping duty equal to the lesser of margin of dumping and margin of injury, so as to remove the injury to the domestic industry. Accordingly, antidumping duty equal to the amount indicated in Col 7 of the table below is recommended to be imposed on all imports of subject goods originating in or exported from the subject countries.

Duty Table

Col. No.	1	2	3	4	5	6	7	8	9
SN	Heading/ subheading	Description of goods	Country of origin	Country of export	Producer	Exporter	Amount of duty	Unit	Currency
1	29411010	Penicillin-G Potassium	China PR	China PR	Zhang Jia Kou Gist-Brocades Pharmaceutical Co. Ltd.	DSM Trading (Shanghai) Co. Ltd.	Nil	BOU	US\$
2	29411010	-do-	China PR	China PR	Any combination other than mentioned in Sr. nos. 1 above		2.17	BOU	US\$
3	29411010	-do-	China PR	Any country other than subject countries	Any	Any	2.17	BOU	US\$
4	29411010	-do-	Any country other than subject countries	China PR	Any	Any	2.17	BOU	US\$

5	29411010	-do-	Mexico	Netherlands	Fersinsa Gb	DSM Anti- Infectives B.V.	1.93	BOU	US\$
6	29411010	-do-	Mexico	Mexico	Any combination other than mentioned in Sr. no. 5 above		2.50	BOU	US\$
7	29411010	-do-	Mexico	Any country other than subject countries	Any	Any	2.50	BOU	US\$
8	29411010	-do-	Any country other than subject countries	Mexico	Any	Any	2.50	BOU	US\$
9.	29411050	6-APA (6- Amino Penicillanic Acid)	China PR	China PR	Zhang Jia Kou DHA Pharmaceutical Co. Ltd.	DSM Trading (Shanghai) Co. Ltd.	4.13	Kg	US\$
10.	29411050	-do-	China PR	China PR	Aurobindo (Datong) Bio- Pharma Co. Ltd.	Aurobindo (Datong) Bio-Pharma Co. Ltd.	2.66	Kg	US\$
11	29411050	-do-	China PR	China PR	Any combination other than mentioned in Sr. nos. 9 and 10 above		9.28	Kg	US\$
12	29411050	-do-	China PR	Any country other than China PR	Any	Any	9.28	Kg	US\$
13	29411050	-do-	Any country other than China PR	China PR	Any	Any	9.28	Kg	US\$

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

117. Subject to the above, the Authority confirms the preliminary findings dated 11<sup>th</sup> February, 2010.

118. An appeal against the findings after its acceptance by the Central Government shall lie before the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) in accordance with the Customs Tariff Act, 1975 as amended in 1995 and Customs Tariff Rules, 1995.

P.K Chaudhery  
Designated Authority