

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

NOTIFICATION

NEW DELHI, The 24th January, 2005

MID TERM REVIEW FINAL FINDINGS

Sub: Mid term review of definitive Anti-Dumping duty on imports of Vitamin-A Palmitate originating in or exported from the European Union , Georgia and Singapore.

No. 15/12/2004-DGAD - WHEREAS, the Designated Authority, having regard to the Customs Tariff Act, 1975 as amended in 1995 (herein after also referred to as the ACT) and the Customs Tariff (Identification, Assessment and Collection of Antidumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 (herein after also referred to as Rules), vide Notification Number 65/1/2001-DGAD dated 23rd January 2003, the Designated Authority (herein after referred to as the Authority) notified its final findings recommending definitive antidumping duty on import of Vitamin A Palmitate (hereinafter referred to as subject goods) originating in or exported from the European Union, Georgia and Singapore (hereinafter referred to as subject countries). Definitive antidumping duty was imposed on the subject goods vide Customs Notification No. 40/2003-Customs dated 7th March 2003

2. AND WHEREAS, The Designated Authority, received an application from one of the exporters of the subject goods from the European Union i.e. M/s BASF, AG, Germany, and the European Commission for review of the antidumping duties levied on the subject goods, on the grounds of changed circumstances. On the basis of positive information submitted by the above-mentioned applicants the Designated Authority considered that mid-term review of the Anti Dumping Duty in force would be appropriate in view of the changed circumstances brought to the notice to the authority. Accordingly, the Authority issued a public notice dated 30th August 2004, published in the Gazette of India, Extraordinary, initiating Anti-Dumping mid term review investigation under Section 9A (5) of the Act and Rule 23 of the Antidumping Rules read with Article 11.2 of the Agreement on Antidumping, in respect of the duty in force against the subject countries as above, to determine whether the continued

imposition of the duty is required to offset dumping, and whether injury would be likely to continue or recur if the duty were removed or varied, or both.

A. Background of the Case

3. The original investigation in this proceeding was initiated on 24.1.2002. The Preliminary findings was issued by the Designated Authority vide Notification No. 65/1/2001-DGAD dated 30.4.2002 and provisional duty was imposed on the subject goods vide Customs Notification No. 80/2002-Cus. dated 13.8.2002 and the final findings was issued by the Designated Authority vide Notification No. 65/1/2001-DGAD dated 23.1.2003 and the final duty was imposed on the subject goods vide Customs Notification No. 40/2003-Cus. dated 7.3.2003.

B. PROCEDURE

4. The procedure described below has been followed with regard to this investigation:

- i. After initiation of the review the Authority sent questionnaires, alongwith the initiation notification, to the following known exporters/producers in the subject countries in accordance with the Rule 6(4), to elicit relevant information:

Germany

BASF Aktiengesellschaft
CARL-BOSCH-STRASSE, 38
67056, LUDWIGSCHAFEN,
GERMANY.

France

RHONE POULENCE SA (AVENTIS)
Courbevoie Cedex,
France.

Singapore

BASF South East Asia Pvt. Ltd
7, Temasek Boulevard,
35-01, Suntec Tower One,
Singapore – 038987
Tel. No.(65) 3370330 Fax : (65) 3340330

Aventis Animal Nutrition Asia pacific pte. Ltd.

1, Loyang Way 4, Singapore – 507028
Tel : (65) 5431121 Fax (65) 5453708
Tel : 85228278068
Fax No. 85228276023.

- ii. Notices were also sent to the domestic industry in India seeking relevant information in accordance with the Rules;
- iii. The Embassies/High Commissions/ Representatives of the subject countries in New Delhi were informed about the initiation of the investigation, in accordance with Rule 6(2), with a request to advise the exporters/producers in their respective countries to respond to the questionnaire within the prescribed time.
- iv. Questionnaires were sent to known importers and consumers of subject goods in India calling for necessary information in accordance with Rule 6(4).
- v. Investigation was carried out for the period starting from 1st April 2003 to 31st March 2004. However, injury analysis shall cover the years from 2000-01 to 2003-04.
- vi. Request was made to the Directorate General of Commercial Intelligence and Statistics (DGCI&S) to arrange details of imports of subject goods for the past three years, and the period of investigations;
- vii. No communications were received from any other exporter from the subject countries except the applicant for the review.
- viii. BASF South East Asia, Singapore and the Honorary Consulate of Georgia in India filed their brief submissions
- ix. M/s Nicolas Piramal India Ltd, Mumbai, the domestic producer of the subject goods and the original petitioner in the original investigation submitted its responses opposing the review;
- x. The Authority has considered all views expressed and submissions made by various interested parties to the extent they are relevant for the present investigation.
- 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. The Authority verified the information furnished by the domestic industry to the extent possible examine the injury suffered and to work out optimum cost of production and cost to make and sell the subject goods in India on the basis of Generally Accepted Accounting Principles (GAAP) and the information furnished by the applicants so as to ascertain if Anti-Dumping duty lower than the dumping margin would be sufficient to remove injury to Domestic Industry;
- xiii. The applicant exporter from the European Union did not submit itself for verification of its data.

- xiv. The Authority held a public hearing on 18th November 2004 to hear the interested parties orally, which was attended by representatives of the domestic industry, the applicant exporters of the subject goods from the European Union. The parties attending the public hearing were requested to file written submissions of views expressed orally. The written submissions received from interested parties have been considered by Designated Authority in this finding;
- xv. In accordance with Rule 16 of the Rules supra, the essential facts considered for these findings and basis of determination were disclosed to known interested parties as general disclosures and confidential disclosures to parties involved vide letters dated 5th January 2005. While the domestic industry has filed its comments to the disclosure statements, the Authority notes that the neither the European Commission nor the applicant exporter has filed any response to the disclosure statement. However, Comments to the disclosures received from the domestic industry has been duly considered in these findings.
- xvi. **** In the Notification represents information furnished by interested parties on confidential basis and so considered by the Authority under the Rules.

C. PRODUCT UNDER CONSIDERATION AND ‘LIKE ARTICLE’

5. The product involved in the original investigation and the current review is Vitamin A Palmitate falling under heading No. 293621.00 in Chapter 29 of the First Schedule to the said Customs Tariff Act and ITC HS Classification. This classification however, is indicative only and in no way binding on the scope of the present investigation. This being a changed circumstances midterm review investigation, the investigation covers the product covered in the original investigation only. No argument has been extended, by any interested party, on the issue of product under consideration or like article and therefore, the Authority holds that the product being manufactured by the domestic industry and the product being manufactured and exported from the subject countries are alike in all respect.

D. Initiation of the Review and arguments raised

D.1 Views of the applicant for the review i.e., M/s BASF AG, Germany

6. The application for the review has been filed by M/s BASF AG, Germany, through the European Commission. The applicant exporter in its original application dated 21st June 2004, and subsequent supplementary dated 27th August seeking the review cited the following grounds for initiating a changed circumstances review-

i. Dumping:

- Since the imposition of definitive duty vide Customs Notification No. 40/2003- Customs dated 7 March 2003 BASF AG has shipped only *** consignment of ***** kg of Vitamin A Palmitate 1.7 MIU/g to M/s *****. The above transaction is representative for determining the export price to India. On the basis of the above transactions the EC export price to India has been determined as US\$***** per Kg
- Based on the sales price for the EU the EC Domestic price of Vitamin A Palmitate is US\$***** per Kg
- On the basis of the above export price and normal value the dumping margin of the subject goods exported from the EU is negative.

ii. Price Undercutting

- On the basis of the export price from the EU and the domestic selling price of the domestic industry in India there is no price undercutting.

iii. Price under selling

- Vitamin A Palmitate is covered under the DPCO, 1995. Since the imposition of the definitive antidumping duty in this case in January 2003, the DPCO prices for Vitamin A have been revised twice. As a result of which the DPCO price of Vitamin A Palmitate fixed by the Government of India has decreased by 23.34 % compared with the original period of investigation i.e. 01.01.2001 to 30.09.2001.
- During the original POI (01.01.2001 to 30.09.2001): Rs.3178/kg on 1 MIU/g basis, which works out at Rs.5402.60/kg on 1.7 MIU/g basis. With the prevailing exchange rate, this price comes to US\$ 115.00/kg
- Effective 07.12.2003: Rs.2452/kg on 1 MIU/g basis, which works out to Rs.4168.40/kg on 1.7 MIU/g basis.
- Effective 03.03.2004: Rs.2436/kg on 1 MIU/g basis, which works out to Rs.4141.20/kg on 1.7 MIU/g basis. With the prevailing exchange rate, this price comes to US\$ 86.38/kg
- However, the minimum import price or the reference price fixed by the Authority has remained unchanged. As a result the minimum import price is currently substantially higher than the price fixed by DPCO, which is at the non-injurious level. Therefore, there is no underselling by imports from the EU and thus no injury to the domestic industry.

iv. Causal Links

- The fact that the cost of production for the German exporter is US\$**** and the maximum selling price fixed by the DPCO is US\$86.36 (RS4141.20) clearly shows that the break even point for the Indian domestic industry lies at a much higher level than the German exporters. This indicates that factors other than alleged dumped imports are causing injury, if any, to the domestic industry.

7. However, after initiation of the review investigation the applicant failed to file complete questionnaire response required for determination of degree and extent of dumping if any. Subsequently, the European Commission, through whom the application for review was filed, withdrew the first ground on which review was requested i.e. no dumping from the European Union. They have argued that the request for review could stand on the injury claim alone and the dumping aspect could very well be withdrawn without prejudicing in any way the legal compliance of the EU's review request. They have further argued that in the absence of the dumping part in the review request, a finding on injury would still have to be made and a negative finding have to result in the termination of the measures since this is mandatory under WTO rules.

8. In summary the EC's arguments are based on the basic premise that dumping and injury determinations are not interdependent and even in the presence of dumping the duty needs to be revoked if it is found that the domestic industry suffers no material injury. Therefore, they have argued that the obligation of the applicant to provide the information on dumping is immaterial to the injury investigation which has to primarily focus on the material injury which, in their view does not exist due to change in the market dynamics, irrespective of the price charged by the EC exporters.

D.2 Views of the domestic industry:

9. The domestic industry, in its various submissions, has opposed the initiation of the review and has *inter alia* submitted as per Indian law any review shall apply both to dumping and injury; thus, the Indian Law does not have any provision for a partial review of either dumping or injury.

10. The domestic industry has further argued that certain Information are required to be furnished by the applicant for the review prior to initiation, which the applicants did not provide and based on the above, the Hon'ble Designated Authority ought not to have initiated the mid-term review on the basis of the information provided.

11. The domestic industry has further argued that the applicants for the review have failed to provide the information, even after initiation of the review, in the form and manner prescribed. They argue that since the information on Normal value and export

prices are available with the applicants it is their primary responsibility to provide the same in the form and manner prescribed and they being the applicants for the review the onus of proof in support of their claim lies with the applicant. In this connection they have cited the jurisprudence on the issue decided in the Tribunal as well as courts of law.

12. In the view of the domestic industry the information concerning cost of production and normal value are solely within the purview of the exporter. By withholding this fact, the exporter is interfering with the process of review and not acting to the best of its ability. Therefore, the exporter first be required to carry the onus placed on them by law and natural justice.

13. In summary the arguments of the domestic industry are that the review should not have been initiated in the absence of complete evidence substantiating the claims of no dumping by the applicant exporter and no injury to the domestic industry and the burden of proof to substantiate the claim of no dumping solely lies with the applicant at the first instance before it shifts to the defending domestic industry to provide evidence of injury. They have further argued that as per the law, dumping and injury examinations are inseparable in a review and both have to be examined simultaneously to determine whether there is a likelihood of dumping and injury recurring in the event of removal or variation of the duty.

14. In their post disclosure submissions the domestic industry has reiterated its stand on the onus of proof by the applicant and standard of positive information required for initiation of the review. The domestic industry has argued that the applicant has misled the Authority into initiating a review on the basis of unsubstantiated evidences and by selective participation in the investigation initiated by them they have caused serious anomaly in the whole process of this investigation.

15. As far as initiation of the review is concerned it has already been noted above that the obligation on the Authority is to look at the positive information placed before it, which can reasonably indicate the need for a review. The 'satisfaction' factor is to be examined based on the information placed before the Authority during the course of the investigation. The Authority has already taken note of the non-cooperation of the exporter after requesting for a review and as far as dumping is concerned the Authority is free to draw adverse inference based on best facts available.

D.3 Views of the other interested parties:

16. No other interested party has made any submission or argument before the Authority on the initiation of the review. However, Singapore and Georgia have made the following submissions:

BASF Singapore

17. BASF Singapore has conveyed that BASF South East Asia Pte. Ltd is not involved in any type of manufacturing activity. It was also clarified by them that they only carry out coordination and invoicing services for BASF, Germany and the product under consideration is directly shipped to India from BASF Germany.

Georgia

18. Honorary Consulate of Georgia in India requested the Authority to provide the name and address of the exporters of the subject goods from Georgia. However, since details of the same were not available with the Authority the same could not be provided. The representative of the Consulate also reiterated its position in the public hearing.

19. The domestic industry or any other interested parties have not contested the submissions of Singapore and Georgia.

D.4 Examination by the Authority

20. The Authority has taken note of the arguments of the European Commission that the dumping and injury determinations, in a changed circumstances review are two separate and distinct examinations and can be determined in isolation. The domestic industry has argued that having made a request on the grounds of no dumping and injury it was incumbent upon the European Exporters and the EC to substantiate their claims on both the counts. The EC has also claimed that continuation of dumping or no dumping during the period of investigation has no bearing on the injury examination, which is a stand alone investigation to be examined on the basis of the current status of the industry.

21. Section 9A (5) read with Rule 23 of the Anti Dumping Rules provides that the Designated Authority shall from time to time review the need for continued imposition of anti dumping duty and shall, if it is satisfied on the basis of information received by it that there is no justification for the continued imposition of such duty, shall recommend to the Central Govt. for its withdrawal.

22. Article 11.2 of the Agreement provides that the Authorities shall review the need for the continued imposition of the duty, where warranted, on their own initiative or, provided that a reasonable period of time has elapsed since the imposition of the definitive anti dumping duty, upon request by any interested party which submits positive information substantiating the need for a review. Interested parties shall have the right to request the authorities to examine whether the continued imposition of the

duty is necessary to offset dumping, whether the injury would be likely to continue or recur if the duty were removed or varied, or both. If, as a result of the review under this paragraph, the authorities determine that the anti dumping duty is no longer warranted, it shall be terminated immediately.

23. The domestic industry has argued that the review should not have been initiated in the absence of complete evidence substantiating the claims of no dumping by the applicant exporter and no injury to the domestic industry and the burden of proof to substantiate the claim of no dumping solely lies with the applicant at the first instance before it shifts to the defending domestic industry to provide evidence of injury. They have further argued that as per the law, dumping and injury examinations are inseparable in a review and both have to be examined simultaneously to determine whether there is a likelihood of dumping and injury recurring in the event of removal or variation of the duty.

24. The applicants for the review have argued that dumping and injury determinations are not interdependent and even in the presence of dumping the duty needs to be revoked if the Authority determines that the domestic industry suffers no material injury. Therefore, the obligation of the applicant to provide the information on dumping is immaterial to the injury investigation, which has to primarily focus on the material injury.

25. The Authority has examined these arguments and is of the view that the condition 'satisfaction' in Rule 23 refers to the satisfaction of the Authority of the need of continued imposition of duty after conducting a proper investigation and not for initiation of the review. What is required for initiating a review is positive information with the Authority on which the Authority can rely upon to decide whether a review is required to examine the need for continued imposition of the duty. In the instant case the applicant had filed positive information before the Authority in its review application and the review was initiated based on these positive information filed. Production of evidence to substantiate the claims and counter claims by various parties are the matter of investigation and are to be submitted by the parties including the party making a request for review during the course of investigation. The outcome of the review will however, depend upon the quality of evidence submitted by various parties to the review. Therefore, the Authority is of the view that the review has been correctly initiated on the basis of positive information available with the Authority, which suggested that a review of the duty in force was warranted.

26. However, on the issue of separation of the dumping and injury investigation and the onus of proof to substantiate the claim of no dumping is concerned, the arguments of the applicant have been examined with reference to the Article 11.2, Article 11.3 and Article 3.4 of the Agreement. Article 11.3 provides that as a result of a review the

definitive duty can be extended for a period of another 5 years term if such review covers both dumping and injury. This by implication provides for partial review covering either dumping or injury, or a comprehensive review covering both. However, the question arises whether a review covering only injury can completely overlook the degree and extent of dumping.

27. Turning to Article 3 of the Agreement it appears that the parameters of injury to the domestic industry are to be examined with reference to the **dumped imports**. Article 3.1 provides that

*“A determination of injury for purposes of Article VI of GATT 1994 shall be based on positive evidence and involve an objective examination of both (a) the **volume of the dumped imports** and the effect of the **dumped imports** on prices in the domestic market for like products, and (b) the consequent impact of these imports on domestic producers of such products”.*

Further Article 3.4 provides that *“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 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**; ……….”*

28. Therefore, it appears from the above express provisions of the Agreement that any examination of the condition of the domestic industry in the context of an antidumping investigation has to take into account the underlying effects of the dumping and the magnitude of dumping both in terms of volume and margins.

29. Again turning to Article 11.2 it appears that even if the express provisions of Article 11.2 are broken into two separate parts as has been interpreted by the EC, the second sentence of the proviso provides that the party can ask for a review and Authorities would examine “whether the injury would be likely to continue or recur if the duty were removed or varied”. This proviso requires the Authority to examine current injury if any and whether injury can recur if duties are removed. While considering the second part of the proviso the extent of dumping would be a very vital element to determine whether the domestic industry will be injured if the duties are removed even if it does not suffer any injury due the duty protection available.

30. All the above provisions of the Agreement imply that even if a partial review is required to be carried out to examine the condition of the domestic industry in order to decide whether the duty is required to be continued, by implication dumping examination becomes an integral part of the examination and in addition to the current

status of dumping and current health of the domestic industry the review has to look to the future to see whether a likelihood of recurrence exists. Therefore, the contention of the EC that injury investigation under a changed circumstances review is a stand alone investigation and can be conducted irrespective of whether dumping continues or not, does not appear to be correct and tenable.

31. The EC has also made another contention that the dumping aspect could very well be withdrawn from their review request and this would not prejudice in any way the legal compliance of the EC's review request. In this connection it may be noted that once a review is initiated based on the positive information submitted by the interested parties, it is the responsibility of the contesting parties to put forward their respective claims and counter claims on various aspects, including dumping and injury. Since the applicants for the review have decided to withdraw the claim of no-dumping and the domestic industry produces evidence of dumping by the EU producers, which is not contested by the EC, the Authority has no option but to draw adverse inference under the best facts clause in terms of article 6.8 of ADA and accept the claim of the defendant as far as dumping is concerned. Assuming that dumping is continuing, based on the adverse facts available, the Authority proceeds to examine the injury to the domestic industry if any, on account of this dumped imports.

32. The Authority notes that neither the exporter nor the European Commission has filed any comments or opposed the above views of the Authority as disclosed in the general disclosure statements.

E. DUMPING DETERMINATION

E.1 The European Union

Normal Value

33. M/s BASF AG, Germany filed a brief response after initiation of the review with summarized data in respect of their domestic selling prices and export price to India and claimed that against their domestic selling price of ***** EUR/kg at ex-factory level the export price to India is ***** EUR/kg at ex-factory level. However, they have not provided the transaction-wise data of their domestic as well as export sales and data on various elements of adjustments claimed. The applicant has also produced only the summary of their cost structures without any backup data and allocation methodologies. On the basis of these summary data the applicant for the review has claimed that their cost of production is ***** EUR/kg. Though the applicant submitted the summary data and requested the Authority to conduct verification if so required, they failed to submit detailed data on any aspect of cost of production, domestic as

well as export sales prices in spite of the request to do so and to submit themselves for verification of the data by the Authority. The applicant exporter did not respond to the communication seeking detailed information and consent for verification.

34. In its submission the European Commission has argued that its claim of no dumping should be treated as withdrawn and the Authority need to examine the injury aspect only irrespective of whether dumping is continuing or not. In the preceding section it has been demonstrated that even in a partial review of continuation and likelihood of injury to the domestic industry in the event of withdrawal of duty, assessment of extent of dumping is a vital component of the determination.

35. The domestic industry has argued that M/s BASF is not cooperating in these proceedings as required by law. They have only provided limited submissions on injury and causal link and conveniently chosen not to provide any information pertaining to their normal value. This is contrary to the law and settled jurisprudence. Therefore, in the absence of any other information, the information sourced by the Domestic Industry should be served as the basis of normal value for the purpose of assessment of extent of current dumping. The Domestic Industry has submitted that it made best efforts to procure evidence of the domestic prices prevailing in the E.U. While it has not been able to procure prices for the period of investigation, it has procured an invoice. They have worked out the ex-works price in the EU based on this invoice price for the purpose of estimation of ex-works normal value for the EU exporters.

36. Article 6.8 of the Agreement provide that In cases in which any interested party refuses access to, or otherwise does not provide, necessary information within a reasonable period or significantly impedes the investigation, preliminary and final determinations, affirmative or negative, may be made on the basis of the facts available. Annex II to the Agreement further provides that such determination can even be made on the basis of information provided by the domestic industry.

37. Therefore, the Authority has adopted the Normal Value for the EU exporters as per the information provided by the domestic industry, in terms of Article 6.8 of the Agreement, which works out to Rs***** per Kg.

Export Price:

38. Export price has been determined on the basis of the DGCI&S data. DGCI&S has reported the following imports of the subject goods during the POI.

	Qty in Kg Vitamin A Palmitate 1.7 MIU/g EQ		
Countries	2003-04		

	Quantity	Value CIF	Rate Rs/Kg
Total EU	300.59	1071549	3564.84
Singapore	88.24	299033	3389.04
Others	2746.29	9124310	3322.41
Total	3046.88	10195859	3346.33

On the basis of this data the net ex-works export price for the EU exporters has been worked out after allowing various adjustments to the CIF price as per the information provided by the domestic industry. Ex-works export price has been determined as Rs***** per Kg.

Dumping Margin:

39. The normal value determined at the ex-factory level has been compared with the net export price determined at the ex-factory level to determine the dumping margin. The dumping margin for the exports made by the EU exporters has been worked out as:

Dumping Margin Calculations				
	Normal	Export	Dumping	Dumping
	Value Rs/Kg	Price Rs Per Kg	Margin Rs/Kg	Margin %
EU exporters	*****	*****	*****	16.52%

40. The Authority notes that neither the exporter nor the European Commission has commented upon or opposed the methodology or determination of the dumping margin as above and communicated through the general disclosure statements.

E.2 Singapore and Georgia

41. It is noted that there is no export of the subject goods from Georgia and no information about any manufacturer or exporter of the subject goods in this country has been brought before the Authority by any interested party. Therefore, there is no evidence of either dumping or likelihood of dumping from this country.

42. As far as Singapore is concerned, BASF South East Asia Pte. Ltd has submitted that it is not involved in any type of manufacturing activity. It has also been clarified by them that they only carry out coordination and invoicing services for BASF, Germany and the product under consideration is directly shipped to India from BASF Germany. Therefore, it appears that the exports from Singapore can at best be re-exports or mere transshipments of goods originating in Germany. Accordingly, the Normal Value for Singapore has been determined in terms of Article 2.5 of the Agreement. Thus the Normal value in Singapore has been determined as Rs*****per

Kg. The net ex-factory export price based on DGCI&S data works out to Rs*****Per Kg.

Dumping Margin (Singapore)

Dumping Margin Calculations				
	Normal	Export	Dumping	Dumping
	Value Rs/Kg	Price Rs Per Kg	Margin Rs/Kg	Margin %
Singapore exporters	*****	*****	*****	23.69%

43. The Dumping Margin determined for the subject countries have been found to be significant. The Authority notes that none of the interested parties have opposed this determination communicated through the disclosure statements.

F. INJURY DETERMINATION

F.1 Cumulative Assessment of Injury

44. The Authority notes that there is no dumped import from Georgia during the period for which injury is being examined. Though there are imports from Singapore, the same appears to be originating in Germany. Imports from the EU and Singapore have been treated as dumped imports because of the positive dumping margin determined. In view of the condition of competition prevailing and keeping in view of the fact that the imports from EU and Singapore have the same origin, all imports from these countries/ territories have been cumulated for the purpose of injury analysis.

F.2 Continuation of Injury

F.2.1 Views of the Applicants

45. The applicants for the review have submitted that the domestic industry has improved its performance and does not suffer any material injury. They have inter alia submitted that the domestic industry which is represented by sole producer M/s Nicholas Piramal India Ltd. has improved its performance in terms of increase in production and capacity utilization, inventory level and export performance and their export of ***/kg during April to August 2004 at an average price of Rs***/kg (US\$***/kg) indicates that no injury exists to the domestic industry. They have further argued that since the imposition of the definitive Anti-dumping duty on Vitamin A Palmitate in January 2003 the DPCO price of Vitamin A Palmitate has been revised downward twice by National Pharmaceutical Pricing Authority (NPPA). Effective 03.03.04 the DPCO price has been reduced from Rs.5402.6/kg (US\$115/kg)

to Rs.4141.20/kg (US\$86.38/kg) for Vitamin A Palmitate 1.7. During the same period the prices from EU have increased during current POI (01.04.03 to 31.03.04) as compared to the original POI (01.01.01 to 20.09.01). As a result the minimum import price is currently substantially higher than the price fixed under DPCO (already at non-injurious level). Therefore there is no likelihood of re-occurrence of injury to the domestic industry on export from BASF AG.. They further argue that the profitability of Nicholas Piramal India Ltd. has improved during 2002-2003 and 2003-2004. Therefore, there is no basis to allege that injury has been caused due to the imports from BASF and therefore there is absence of causal link

F.2.2 Views of the Domestic Industry

46. The domestic industry has submitted that too much reliance has been placed on the price revision undertaken by DPCO (Drug Price Control Order) price in India since the imposition of Antidumping Duty in this matter against which the Domestic Industry has petitioned the concerned authorities for review of the price fixation. They have further submitted that the exercise undertaken by the Hon'ble Designated Authority needs to be separate and distinct from that the DPCO, as they are separate bodies with different consideration and applicable rules.

47. Quoting the final findings in the very same matter the domestic industry has argued that in the said findings itself the Authority had recognized the separation of the prices fixed under DPCO by NPPA and the non-injurious price as ascertained by the authority indicating thereby that there were two separate and distinct prices were fixed by DPCO and the other by the Designated Authority.

48. They have further argued that the above position is sound as it would be unrealistic for the Designated Authority to review its findings each and every time the DPCO revise the price either upwards or downwards.

49. Referring to the arguments of the applicant exporter that the export price of the Domestic Industry is indicative of no injury since the prices are lower than that set by the DPCO, the domestic industry has argued that export price of the Domestic Industry bear no connection with whether or not the exporter is dumping and such dumped imports are causing injury to the Domestic Industry.

50. It has also been argued that the standard for review of injury is beyond the standard required for a finding of injury per se as has been settled in several judicial pronouncements. Which the Appellate Authority has held that while considering the determination of injury, the standard of threat of material injury must necessarily be considered. The domestic industry has argued that given the export prices from E.U. and the capacity available with the exporter and in the EU, there exists a very real and

imminent threat of material injury, in addition to the actual injury within the factual matrix of this review.

51. They further argue that within the factual matrix of the case at hand in the original Petition, the average export price from the EU during the period of investigation was Rs.3164.29 per kg. During the period of investigation in this mid-term review, the export price has gone up only marginally in spite of the duty being in force. Therefore, clearly, the price effect is still being felt in the domestic Indian market, whereby the export price has remained virtually unchanged and as a consequence of the reduction of the Customs duty since the original Period of Investigation, the price effect on the Domestic Industry is even worse. Therefore, removal of the Antidumping Duty will enhance the injury to the Domestic Industry.

F.2.3 Examination by the Authority

52. Rule 11 and Annexure II of the Rules requires the Designated Authority to objectively examine:

- a. Both, the volume of dumped imports and the effect of dumped imports in the domestic market for like article and
- b. The consequent impact of these imports on the domestic producers of such products.

Since the imports from the subject countries have been treated as dumped imports, the Authority proposes to examine the volume and price effect of these dumped imports on the domestic industry and also analyse the injury parameters to determine whether the domestic industry is continuing to suffer material injury on account of such dumped imports.

A) Volume effect:

a) Volume of Imports and Import Prices:

53. DGCI&S data for the injury analysis period shows that Imports have taken place from several sources including the European and Singapore during the injury investigation period. However, no imports have been reported from Georgia. It has also been noticed that imports of Vitamin-A Palmitate has been reported under different strength i.e. 1.0 and 1.7 MIU/g. Since both the strengths have been covered under the product under consideration for the purpose of this analysis all imports have been converted into equivalent of Vitamin-A Palmitate 1.7 MIU/g. Accordingly, the import as reported by DGCI&S are as follows:

Import Statement			Vitamin A palmitate 1.7 MIU/g Equivalent						
			Value in Rs CIF)			Qty in Kg			
Year	2001-02			2002-03			2003-04		
Countries	Quantity	Value	Rate	Quantity	Value	Rate	Quantity	Value	Rate
Total EU	7271	22295955	3066.42	1549	4981655	3216.05	300.59	1071549	3564.84
Singapore	350	1104224	3154.93	0	0		88.24	299033	3389.04
Others	2042	5027265	2461.93	1925	6190387	3215.79	2746.29	9124310	3322.41
Total	9663	28427444	2941.89	3474	11172042	3215.90	3135.12	10494892	3347.53

Source DGCI&S

54. The above data shows that total volume of imports has declined compared to the base year after showing a positive growth only during 2001-02. However, share of the subject countries in the total imports have substantially reduced over the years as can be seen from the above table. Though total imports of the subject goods have shown a substantial decline since 2001-02 and drop in import from the subject countries are more significant. However, the prices have moved in a very narrow band during the said period in spite of the fact that the duty on the subject countries is in terms of reference price based on the landed price in India.

55. In its post disclosure submissions the domestic industry has disputed the import data relied upon by the Authority based on the DGCI&S data on the grounds that the data available through the secondary source i.e. IBIS shows higher imports than that reported by DGCI&S. In this connection the Authority notes that the instant investigation covers only Vitamin-A Palmitate. Therefore, while analyzing the import data for dumping margin and injury determination Vitamin A imported in other forms and other unrelated imports reported under the same head have been removed from the analysis to arrive at an accurate analysis. The methodology of analysis of this data has also been explained in the disclosure itself and therefore, the objection of the domestic industry in this regard is not valid.

b) CAPACITY, OUTPUT AND CAPACITY UTILIZATION OF DOMESTIC INDUSTRY

56. The performance of the domestic industry has also been examined with reference to its capacity, output and capacity utilization and impact of the dumped imports on these parameters, if any.

57. The domestic industry has indicated that their total installed capacity for the liquid plant, where the subject goods is manufactured, is 110 MT per annum, on single shift basis. However, it is noted that this installed capacity is not dedicated for the product

under consideration and in this plant the company manufacture about 35 different products. Production of individual product varies from year to year depending upon the demand.

58. Therefore, the capacity of the producer has been assessed based on three shift operation for which the plant is actually available and based on total output from the plant of various products, including the product under consideration. Accordingly, the capacity and capacity utilization has been worked out as follows:

Year	Installed capacity (KG)	Production (All Products) (Kg)	Capacity Utilization (%)
2000-01	*****	*****	46.60
2001-02	*****	*****	33.40
2002-03	*****	*****	48.50
2003-04	*****	*****	55.40

59. The above examination shows that the capacity utilization during the period of investigation is the highest in the last four years including the period of investigation. Therefore, capacity or capacity utilization do not appear to indicate any deterioration of the performance of the domestic industry.

c) DEMAND AND MARKET SHARES

60. The total demand has been estimated based on the combined volume of supplies made by the Domestic Industry in the domestic market, captive consumption, imports from other third countries, as well as imports made into the domestic market from the Subject countries.

Quantities in Kgs

Production of DI				
	*****	*****	*****	*****
Viatmin A 1.0	*****	*****	*****	*****
Vitamin A 1.7	*****	*****	*****	*****
Total	*****	*****	*****	*****
Total Production 1.7 MIU/g EQ	*****	*****	*****	*****
Indexed	100	55.31	76.55	97.70
Total Imports 1.7 MIU/g EQ	5100.00	9663.00	3474.00	3135.12
Subject Countries Imports	4550.00	7621.00	1549.00	388.82
% (subject countries)	89%	79%	45%	12%
Domestic sales	*****	*****	*****	*****
Indexed	100	25.14	67.63	67.40
Captive Consumption	*****	*****	*****	*****
Indexed	100	291.5	165.3	344.4

Demand	*****	*****	*****	*****
Indexed	100	78.15	78.42	96.68
Market Share				
Domestic Industry	85.53%	64.93%	87.43%	90.80%
Subject countries	12.91%	27.66%	5.60%	1.14%
Others	1.56%	7.41%	6.96%	8.06%

61. As can be seen from the table above, the demand of the subject goods in the Domestic Market decreased marginally from about 35 MT in the year 2000-2001 to 34 MT in the year 2003-2004. At the same time total imports have also shown substantial decline both in absolute term as well as in terms of the market share. The market share of the domestic industry has increased from about 85% to 91% during the corresponding period. As far as the share of dumped imports is concerned, the share of the countries attracting duty in this case, account for only about 1% of the total market share, down from about 13% in the year 2000-01. The share of imports from subject countries as a percentage of total imports as well as total demand shows substantial decline. Therefore, the data indicates that after imposition of duty the condition of the domestic industry has substantially improved in terms of its market share and output and there is no volume effect of the dumped imports. However, the current scenario is in the background of the duty already in force.

B) PRICE EFFECTS:

a) Sales realization of the domestic industry

62. The selling price of the domestic industry has reduced from Rs. *****/Kg in 2000-2001 to Rs. *****/ Kg during the Period of Investigation signifying a reduction of 18.29 % from 2000-2001 levels. There is also a significant reduction in the cost of production during previous three years. The cost of production and net selling prices of the domestic industry as per the record maintained by it has been as follows:

Indexed data

Year	Cost to make & sell Per MT (Rs.)	1 Selling Price / MT (Rs.)	Profit / (Loss) per MT (Rs.)
2000-2001	100	100	100
2001-2002	102.33	93.11	(188.32)
2002-2003	85.15	97.22	466
2003-2004	79.56	81.71	147.40

63. It is noticed that there is a very significant reduction in the cost of production of about Rs*****/per Kg in 2000-01 to Rs*****/ per Kg in 2003-04, a reduction of about Rs*****/ per Kg. The corresponding decline in selling prices is also about Rs*****/ per Kg. However, the drop in selling price is significant when compared to the

previous year while cost has been reduced marginally.. The profit per Kg of the product after showing significant improvement after imposition of the duty has shown a sharp decline between 2002-03 and 2003-04. However, the drop in selling price seems to have been triggered by the DPCO price revision.

64. It is also noted that the Authority is proposing to fix the Non-Injurious Price for the Period of Investigation as Rs*****/- Per Kg taking into account various factors of production and a reasonable return on the investment. Compared with the above figures the profit margin per Kg of the product would show significant improvement as the selling price of the domestic industry is above the non-injurious price determined by the Authority.

b) PRICE UNDERCUTTING AND UNDERSELLING

65. For the purpose of price undercutting the selling price of the Domestic Industry was compared with the landed value of the subject goods (CIF price + basic customs duty) as per the DGCI&S data for the cumulated imports from the EU and Singapore. Based on the weighted average CIF price of imports from Singapore and the EU the landed price has been worked out as Rs *****Per Kg. The following tables show the extent of price undercutting from EU:

Year	Domestic Selling Price	Import Price (Landed Value)	Price Undercutting
2003-2004	*****	*****	Negative

66. Therefore, the imports from the subject countries have no undercutting effect on the domestic selling prices. Since the landed value of the imports as determined above is also above the NIP determined by the Authority for the domestic industry, the imports also do not have any underselling effect on the domestic prices. The Authority also notes that the NPPA has revised the ceiling price for the product under consideration under the DPCO regulation to the level of Rs.2436/kg on 1.0 MIU/g basis, which works out to Rs.4141.20/kg on 1.7 MIU/g basis with effect from 03.03.2004. Based on the above ceiling price the landed value of imports also work out to have negative price undercutting and underselling effects on the domestic prices.

C) OTHER INJURY PARAMETERS:

67. After having examined the effect of dumped imports on the volumes and prices of the domestic industry and major injury indicators like volume and value of imports, capacity, output, capacity utilization and sales of the domestic industry as well as demand pattern with market shares of various segments in the earlier section, other

economic parameters which could indicate existence of injury to the domestic industry have been analysed here as follows:

a) **PROFITABILITY**

68. The profitability of the domestic industry has been analysed from the record of the company:

Indexed

Year	Profit / (Loss) Rs. Lakhs
2000-2001	100
2001-2002	(49.85)
2002-2003	321.95
2003-2004	114.73

69. It can be seen from the above table that the profits of the Domestic Industry have reduced to Rs. ***** Million during the Period of Investigation from Rs. ***** Million in the previous year 2002-2003. In percentage terms on a yearly basis, the profits during the period of investigation decreased by *****% over the previous year. However, the deterioration of the profit as mentioned above is in spite of the fact that there is a very marginal import of the subject goods from the subject countries and there is no price undercutting or underselling effects of the dumped imports. The landed value of the dumped imports is significantly above the selling price of the domestic industry as well as the DPCO prices. Therefore, the dumped imports do not appear to have contributed to the drop in profitability of the domestic industry.

b) **EMPLOYMENT**

70. As far as Employment and wages are concerned there is no significant drop in employment level as indicator of injury to the domestic industry. However, the Company seems to have undertaken significant cost cutting measure in terms of wage reduction.

c) **PRODUCTIVITY**

71. There is a significant drop in productivity in terms of production per employee due to drop in output during this period.

Indexed

Year	No. of Employees	Production (Kg)	Productivity Per Employee (Kg)
------	------------------	-----------------	--------------------------------

2000-2001	100	100	100
2001-2002	101	52.95	52.19
2002-2003	101	71.69	70.66
2003-2004 (Period of Investigation)	100	91.64	91.65

d) INVENTORIES

Indexed

Year	Opening Stock MT	Closing Stock MT
2000-2001	100	100
2001-2002	50	0
2002-2003	0	139
2003-2004	695	21

72. Inventory position of the Company shows significant improvement. The stocks of the Domestic Industry decreased to *****MT during the Period of Investigation as compared to the opening stock during the same period.

e) Investment and return on investment

73. There has been no capacity addition or any fresh investment by the applicants during the investigation period.

74. The return on investment, after a massive increase after imposition of the duties has come down substantially to about *****%. However, as stated above the drop in profit is not due to the dumped imports which are entering the market at higher landed cost than the non-injurious price as well as the NIP proposed to be fixed by the Authority.

Indexed

Year	(%)
2000-2001	100
2001-2002	(227)
2002-2003	692
2003-2004	211

f) Magnitude of Dumping

75. Magnitude of dumping as an indicator of the extent to which the dumped imports can injure the domestic industry shows that the dumping margin determined against

the subject countries for the POI, is substantial, even when the antidumping duty is in force.

g) Factors affecting prices

76. Change in cost structure if any, competition in the domestic industry and prices of competing substitutes have been examined for analyzing the factors other than dumped imports that might be affecting the prices in the domestic market. There is no viable substitute to this product and M/s Nicolas Piramal is the sole producer of the subject good in India. Therefore, domestic competition does not affect the prices. The only other factor that might have affected the prices of the domestic industry is the DPCO prices.

F.3 Other known factors

i) Volume and prices of imports from other sources

77. During the POI, other than the subject countries, imports have taken place from USA, China and Switzerland only. Total import from these sources is much higher compared to imports from the subject countries. The Authority notes that imports from the un-dumped sources is 87% of the total imports and weighted average import price from these sources is lower than the dumped import prices from the subject countries. Therefore, the imports from the subject countries do not appear to have significant effect on the domestic industry, both in terms of volume and value.

ii) Contraction in demand and / or change in pattern of consumption

Quantity in Kgs Indexed

	2000-01	2001-02	2002-03	2003-04
Demand	100	78.15	78.42	96.68

78. Total domestic demand of the product under consideration, after declining from 2000-01 till 2002-03 has increased substantially during the POI but still remains below the base year level. The share of domestic industry in the demand has shown substantial increase whereas the share of subject countries has substantially decreased. At the same time, share of imports from other sources has increased from 1.5% to 8% of demand. Therefore, contraction in demand is not a significant factor.

iii) Trade restrictive practices of and competition between the foreign and domestic producers

79. The subject goods are freely importable and there are no trade restrictive practices in the domestic market. M/s Nicolas Piramal is the sole producer of the subject goods in the country. However, drug price control restricts the selling price of the product for the domestic producers. Moreover, imports from other sources have fairly sizable presence in the Indian market, which has grown substantially.

iv) Development of technology and export performance

80. Technology or technology related issues have not been raised by any interested party as cause of injury to the domestic industry. However, the export performance of the domestic industry has been raised by the applicants as a cause of injury to the domestic industry, as the domestic producers exports the subject goods to other countries at substantially lower prices. However, the domestic industry has claimed that the export price decision is based on their market entry strategy in order to establish new markets for this product as they are too small a player in the global market. Authority has examined this issue and is of the view that the domestic industry has exported rather a very small quantity only during the POI as a market entry move and that does not substantially affect the profitability of the company.

v) Productivity of the Domestic Industry

81. Productivity of the domestic industry in terms of labour output and daily output has shown substantial decline compared to the base year. However, compared to the previous year the productivity has improved substantially.

F.5 Likelihood of recurrence of dumping and injury

82. Since the Authority has already determined that the subject goods are continuing to enter the Indian market at dumped prices from the subject countries, an analysis of recurrence is not required. However, looking at the non-cooperation of the exporters to provide credible evidence on the normal value of the product in the subject countries it can be reasonably concluded that the exports would continue to enter the market at dumped prices. But looking at the price level at which the product is entering the Indian market from all sources it is unlikely that further reduction of the export prices could take place immediately.

83. Therefore, it is pertinent to examine whether injury to the domestic industry is likely to recur due to these dumped imports if the duty is removed or varied. It has already been established that the landed value of imports from the subject countries without the antidumping duty is significantly above the selling price of the domestic industry and the NIP determined by the Authority for the domestic industry.

Therefore, removal of the duty fixed in terms of reference price is not likely to materially affect the price level.

84. However, in addition to the examination of material injury, likelihood of recurrence of injury or threat of injury to the domestic industry has been examined by the Authority on the basis of the claims made by the domestic industry.

85. The Domestic Industry has submitted that the threat of material injury should be examined in terms of Annexure II (vii) of the Rules, which states as under:

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

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

86. Though the above provision do not provide appropriate parameters for examination of likelihood of recurrence of injury in a review investigation, in the absence of any express provision In this regards the Authority has examined some of these parameters to draw inference on the subject.

87. In the instant case, the imports of the subject goods have decreased over the injury period and demand also do not show a very healthy growth to attract more imports. The domestic industry has submitted that as per their market intelligence the capacities of the Exporters worldwide, is estimated to be around 5000 MT and the exporters have sufficient freely disposable capacities. There are only two global producers having plants worldwide, and domestic industry’s capacities are too small compared to these global players. Therefore, these producers have tremendous capacity to undercut the prices to establish themselves in the Indian market. However, the current import data does not indicate that a significant price undercutting will

occur immediately, if the duty is withdrawn. The cost of production and the selling price of the domestic industry during the period of investigation do not show significant price suppression or depression due to the landed value of dumped imports, which is above these levels.

F.6 Determination of Non-injurious Price of the Domestic Industry

88. Non-injurious Price for the subject goods has been worked out by the Authority after a detailed analysis and scrutiny of information provided by the domestic industry. Weighted average Non-injurious price for the domestic industry is proposed to be fixed by the Authority as Rs.***** per Kg. The domestic industry in its post disclosure submissions has disputed the non-injurious price fixed by the Authority and has argued that the NIP fixed by the Authority is even below the DPCO price fixed after detailed audit by the competent Authority. The Authority notes that the methodology and elements of NIP has been explained to the domestic industry after the disclosures were issued. Therefore, the NIP fixed is confirmed by the Authority.

F.7 Magnitude of Injury and injury margin

89. The non-injurious price determined by the Authority has been compared with the landed value of the exports for determination of injury margin. Since the landed value of the dumped imports has been found to be above the Non-injurious price, injury margin has been found to be negative during the POI.

G. Conclusion:

90. Having examined all the above parameters and various arguments of the interested parties, the Authority concludes that:

- a. Dumping continues from the subject countries and is likely to continue
- b. However, the domestic industry does not suffer any material injury on account of these dumped imports as the import prices and the sales realizations of the domestic industry are above the non-injurious price so determined.
- c. Injury to the domestic industry is not likely to recur if the duties are revoked.

H. Recommendations

91. Having concluded that the domestic industry suffers no material injury on account of imports of the subject goods from the subject countries, the Authority finds no justification for continuation of the duty against these countries and therefore, in terms

of Rule 23 of the said Rules recommends revocation of duty in force against these countries.

I. Further Procedures

92. An appeal against this order shall lie before the Customs, Excise and Service tax Appellate Tribunal in accordance with the relevant provisions of the Act.

Christy Fernandez
Designated Authority