

**Government of India**  
**MINISTRY OF COMMERCE & INDUSTRY**  
**DEPARTMENT OF COMMERCE**

(DIRECTORATE GENERAL OF ANTI-DUMPING & ALLIED DUTIES)

NOTIFICATION

NEW DELHI, the 14<sup>th</sup> September 2007

**Final Findings**

**Sub: Anti-Dumping Investigation concerning imports of Vitamin-A  
Palmitate originating in or exported from Switzerland and China  
PR**

**NO.14/11/2005-DGAD:** - Having regard to the Customs Tariff Act 1975 as amended in 1995 (hereinafter referred to as the Act) and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, (hereinafter referred to as the Rules) thereof:

2. WHEREAS on the basis of an application filed by M/s. Nicolas Piramal India Ltd. (herein after referred to as the Applicant) the Designated Authority (hereinafter referred to as the Authority), in accordance with the Act and Rules made there under, issued a public notice dated 23rd March, 2006 published in the Gazette of India, Extraordinary, initiating Anti-Dumping investigations into alleged dumping of Vitamin A Palmitate (herein after referred to as subject goods), originating in or exported from Switzerland and China PR (herein after referred to as subject countries).

3. The Authority notified its Preliminary findings vide Notification dated 20th February 2007 recommending provisional antidumping duty on import of subject goods from the subject countries and acting upon such recommendations of the Authority, the Department of Revenue, vide its notification No.47/2007-CUSTOMS dated 28th March, 2007, imposed provisional antidumping duty on the subject goods.

**A. Procedure**

4. Procedure described below has been followed with regard to this investigation after issuance of the public notice notifying the preliminary findings of the Authority.

(i) The Designated Authority sent copies of preliminary findings dated 20th February 2007 to all known interested parties including, the responding exporters, importers and users of the subject goods, Embassies of the subject countries in India, and the domestic industry and invited the comments of the interested parties on the preliminary findings. Parties to this investigation were requested to make their views known in writing within 40 days of the notification of the preliminary findings.

(ii) The comments of the interested parties in response to the preliminary findings have been taken on record and the Authority has examined the issues raised therein in this disclosure statement.

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

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

(v) The Authority held a public hearing on 09.04.2007 to provide an opportunity to all interested parties to present their view. Oral submissions made by the parties during the public hearing reproduced in writing have been taken on record for the purpose of this investigation.

(vi) Confidentiality claims of various interested parties in respect of the data submitted by them have been examined. The information, which is by nature confidential or which has been provided on a confidential basis by the interested parties, along with non-confidential summary thereof, has been treated confidential \*\*\* in this finding represents information furnished by the domestic industry on confidential basis and so considered by the Authority under the Rules.

(vii) The essential facts of the case were disclosed to all interested parties in the form and confidential and general disclosures on 24th August 2007. Comments of the interested parties on the

disclosure statement, to the extent they are relevant and supported by evidence, have been considered by the Authority.

(viii) vii) Investigation was carried out for the period starting from 1st April 2004 to 30th September 2005 (POI).

(ix) viii) For the sake brevity the comments of interested parties and issues raised prior to the preliminary findings and addressed therein have not been repeated in this finding.

### **C. Product under Consideration and Like Article**

5. As recorded in the Preliminary Findings, the product involved in the current investigation is Vitamin A Palmitate. Vitamin Palmitate is manufactured in various strengths and forms and due to technical and commercial substitutability of these grades Vitamin-A Palmitate of all concentrations and forms were included within the product under consideration. However, the responding exporters from the subject countries have raised certain issues on the scope of the product under consideration, which have been examined as follows.

#### **C.1 Views of the exporters and other interested parties**

6. The exporters from China, in their post preliminary finding comments, have submitted that while defining the scope of products concerned, the Designated Authority has only used overall product as the criterion and did not apply its mind in respect of the significant differences in respect of products/grades /uses and market segments. Therefore, the Authority should exclude these products/grades that have not faced any injurious dumping during the POI and to limit the scope of investigation. It has been argued that Vitamin- A Palmitate 1.0 MIU/Gm has not been imported during the POI and grade 1.7 and grade 1.0 are not commercial substitutes. It has been further argued that apart from some differences in prices, the demand for each type of Vitamina A is based on end-user requirements and preferences and convenience and the market segments served, the distribution channels. It has been argued that levels of trade between domestic goods and goods exported by the responding exporters from China are substantially different and there is limited competition between them. Referring to the website information of the domestic industry the exporters have argued that the domestic industry clearly sets out at least 9 distinct products/forms of the grade 1.7 alone and the users, market segments and patterns of consumption of different grades/forms of the Subject Goods are different. Therefore, various forms and concentration of Vitamin-A Palmitates manufactured by the domestic industry and exported from China are not technically and commercially substitutable and hence should not be covered under the product under consideration and like articles.

7. The exporter from Switzerland in its submissions has submitted that there is no other product, other than Vitamin A Palmitate 1.7 MIU/Gm, exported from Switzerland during the POI. Therefore, all other Vitamin A products are required to be excluded from the purview of the product under consideration.

## **C.2 Views of the Domestic Industry**

8. The domestic industry, in its submissions, has argued that “Vitamin A Palmitate” is available in various strengths viz., Vitamin A Palmitate 1.7, and Vitamin A Palmitate 1.0. Since Vitamin A Palmitates of various strengths have the same end use, the present investigations should cover the subject goods in all its strengths and forms. Though the subject goods are imported at present only in 1.7 MIU/g strength, the imports do affect the sales of both 1.7 MIU/g and 1.0 MIU/g as these grades can be used interchangeably by the user industry. It has been argued that availability of higher strength at lower prices proportionately reduces the per unit price of lower strength and as such the user prefers to buy higher strength in order to reduce its cost. Hence, the Authority should consider the imposition of anti dumping duty also on Vitamin A Palmitate on a MIU/g basis, which can be increased or decreased proportionately depending upon the higher or lower strength of the subject goods. It is also submitted that this was done by the Hon’ble Designated Authority in the earlier investigation covering the subject goods imported or originating from EU, Singapore and Georgia. Therefore, this issue has already been settled and confirmed by this Authority in the final findings and the mid term review investigation conducted thereafter.

9. On the issue of the uses of the grades in question, the domestic industry has clarified that primarily the same are used in the human nutrition by way of food and pharma products (including the Unicef programme) along with some usage in the cosmetic products. As regards the feed grade is concerned, it has been clarified that Vitamin A Palmitate Grade 1.6 is the feed grade used for animal consumption and the same is not covered in the product under consideration.

## **C.3 Examination by the Authority**

10. Technical literatures of various manufacturers indicate that Vitamin A Palmitate is an orange yellow to yellowish red oily liquid, which may crystallize below 20 C. It contains a mixture of Vitamin A Palmitate and Vitamin A Acetate, having a content of not less than 90% Vitamin A Palmitate and not more than 10% Vitamin A Acetate. Vitamin A Acetate is present on account of the chemical process of manufacture. It contains BHA and BHT as anti oxidants. Vitamin-A Palmitate is produced in various concentrations/potencies, primarily as 1.7 MIU/Gm and 1.0 MIU/Gm, which are used in pharmaceutical, cosmetic and food supplement applications. It has been clarified by

the domestic industry that Vitamin A Palmitate Grade 1.6 is the feed grade, used for animal consumption, and the same is not covered in the product under consideration.

11. The submissions of the exporters also indicate that Vitamin A Palmitate 1.7M MIU/g is a greenish yellow to golden yellow, oily liquid that may crystallize on storage. It consists of pure vitamin A Palmitate. Other forms of Vitamin A Palmitate can contain an antioxidant, either BHA/BHT or in some cases Tocopherol. Vitamin A 1.0 MIU/gm is also a greenish yellow to golden yellow, oily liquid that may crystallize on storage. It consists of Vitamin A Palmitate in peanut oil. It contains either Tocopherol or BHA/BHT as antioxidants. The basic difference between these two types of Vitamin A Palmitates is in the strength/potency. All forms of A Palmitate 1.7 are of the same potency but the other part of their product description refers to the antioxidant that is a part of the formulation (this is something that makes the form more stable). Same applies to 1.0 MIU/gm. All forms can be used for food, pharmaceutical and cosmetic preparations. The production process, physical and chemical characteristics of both the products are similar and the products are substitutable and can be interchangeably used. The Authority also notes that DPCO combines both Vitamin A Palmitate 1.7 and 1.0 under single category for fixation of ceiling price. It has been brought to the notice of the Authority that the products can be interchangeably obtained by altering the strength merely by dilution.

12. The above examination clearly establishes that Vitamin A Palmitates of different concentrations i.e., 1.7 MIU/Gm and 1.0 MIU/Gm are merely product sub-types rather than separate products themselves, as has been argued by the exporters. These product types are technically and commercially substitutable. Had these been two distinct products the arguments of the interested parties for exclusion of the product not imported during the POI would have held ground. One particular type (1.7 MIU) has been imported during the POI and if the duty is imposed on this type while excluding the other type from duty, the duty could be easily circumvented by importing the excluded category which can substitute the dutiable goods. Therefore, merely because a product sub-types have not been imported during a particular time would not enable it to be excluded from the scope of product under consideration which covers all product subtypes that are technically and commercially substitutable.

13. In their post disclosure submissions the interested parties have reiterated their arguments for exclusion of Vitamin A Palmitate 1.0 MIU/Gm from the scope of product under consideration on the grounds that this product has not been imported during the POI. In support of their argument they have quoted the certain CESTAT rulings in which the Hon'ble Tribunal held that an article which has not been exported to India cannot, be subjected to imposition of anti-dumping duty under Section 9A(1) of the Act.

14. The Authority notes the above arguments of the interested parties in their comments to the disclosure statement. The Article under investigation refers to the article/product as a whole and not to any of its subtypes or models or specifications. As noted earlier Vitamin A Palmitate 1.0 MIU/Gm and Vitamin A Palmitate 1.7 MIU/Gm are product subtypes having same end use, differing only in concentration. Therefore, duty on Vitamin A Palmitate 1.7 MIU/gm could lead to circumvention of duty through import of Vitamin A Palmitate 1.0 MIU/gm which has same end use. Whereas Vitamin A Palmitate 1.6 MIU/gm has a totally different end use for animal feed and hence does not fall within the scope of the product under consideration. Therefore, the arguments of the interested parties cannot be sustained.

15. In view of the above the Authority holds that the product under consideration has been correctly defined as Vitamin A Palmitate, which would cover both 1.7 MIU and 1.0 MIU. However, the product under consideration would not cover 1.6 MIU as it has been clarified to be a different product with a different end use. Accordingly, the product under consideration is defined as Vitamin A Palmitate, which covers Vitamin A Palmitate 1.7MIU/gm and Vitamin A Palmitate 1.0 MIU/gm (herein after termed as the “subject goods”) in all its strengths and forms.

16. The product is classified 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.

#### **D. Standing of the Domestic Industry and initiation of the investigation**

17. The application has been filed by M/s Nicolas Piramal India Ltd. The applicant is the sole known producer of subject goods in India and accounts for complete production of subject goods in India. The petitioner, therefore, satisfies the standing to file the present petition and constitutes domestic industry within the meaning of the Rules.

#### **E. Other submissions and issues raised:**

18. As recorded in the preliminary findings the importer of the subject goods in India, M/s Hexagon Nutrition Pvt. Ltd., in its submission, has argued that Switzerland has maintained its price level of US\$70/- per Kg in the last 3 years, whereas China has reduced its price from US\$66/- to the current export price of US\$56/-. They have also argued that Nicholas Piramal has exported the subject goods at a price much lower than the price at which the subject goods have been exported from Switzerland.

19. They have further argued that cost effective availability of this product is essential as several charitable organizations are funding projects in India for vitamin supplements to fight wide spread vitamin deficiency. Imposition of ADD would lead to monopolizing situation for NPIL and the consumers have to bear the burden of higher price due to antidumping duty.

20. M/s DSM Nutritional Products (DNP), has reiterated its arguments that DNP does not pursue a policy of dumping its products on the Indian market and no material injury is caused to the domestic industry on account of their exports to India. It has been argued that the purchasing powers and market structures, in Switzerland and in India, are entirely different, as are the volumes of products sold per transaction – an element that has a direct effect on sales price. They have argued that sales to the EU market more closely resemble the characteristics of the export sales to India than sales to the Swiss market, and the prices that can be achieved in that market are comparable as well. It has been further submitted that imposition of an anti-dumping duty on imported products from Switzerland would lead to recreating the monopoly in India that the Petitioner was able to establish for itself in 2003 and the first half of 2004 following the imposition of duties on imported products from Singapore, Georgia and the EU. This will inevitably result in higher sales prices to Indian customers and harm the Indian economy.

### **E.1 Confidentiality issues**

21. In addition to their comments on various aspects of the case both, the domestic industry, as well as the exporters participating in this investigation, has raised the issue of excessive confidentiality claimed by the other interested parties. As far as the issue of confidentiality and insufficient non-confidential disclosure of information by the parties to the investigation is concerned, the issues raised have been examined. The Authority notes that to the extent possible and practicable the confidentiality claims of various parties submitting the information have been examined and confidentiality claims admitted on the basis of nature of information provided by the parties. The information, which is by nature confidential or which has been provided on a confidential basis by the interested parties' alongwith non-confidential summary thereof, have been treated confidential.

22. The domestic industry in its comments to the disclosure statement has argued that the participating exporters from Switzerland and China PR should be declared non-cooperative and dumping margins should be determined on facts available basis because of the fact that these exporters have not placed complete facts before the Authority in terms of the standards set. They have also raised the issue of insufficiency of non-confidential disclosures by these parties.

23. In this connection the Authority notes that the degree and extent of cooperation and information submitted by the participating exporters, as well as non-confidentiality issues have been adequately examined and the submissions filed by these exporters have been accepted though certain claims made these exporters have not been accepted by the Authority. Authority also notes that non-acceptance of certain claims or rejection of certain information by the Authority does not render the exporter concern non-cooperative or attract best information available clause.

## **F. Determination of Dumping and Dumping Margins**

### **F.1 China PR**

24. The Authority, noted in its preliminary findings that in the past three years China PR has been treated as a non-market economy country in the anti-dumping investigations by WTO members such as EU and USA and therefore, in terms of para 8 (2) of the annexure 1 of AD rules China PR was treated as a non-market economy country for the purpose of provisional assessment of the normal value.

25. Paragraph 8, Annexure I to the Anti Dumping Rules as amended provides that the presumption of non-market economy against a country can be rebutted by individual exporters for individual treatment if the exporter(s) from such country provide information and sufficient evidence, on the basis of the criteria specified in sub paragraph (3) in Paragraph 8 and prove the contrary. The cooperating exporters/producers of the subject goods from People's Republic of China were asked 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 Designated 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.

26. Only one Manufacture of the subject goods in China i.e., M/s Zhejiang NHU Company Limited (NHU), and its related exporter M/s Synchem International Co. Ltd. have filed their questionnaire response and Market Economy Questionnaire response claiming market economy status and individual treatment. The views of the interested parties on the market economy claim of the producer/exporter from China are as follows:

### **F.1.1 Views of Domestic Industry**

27. In its various submissions commenting upon the market economy claims of the Chinese exporters the domestic industry has inter alia argued that:

- As per the Company's information published in their own website, the Company was established after the reorganization of the former Xinchang Chemical Company which was founded in November, 1988 and has now developed into a state-level hi-tech enterprise. Such being the case, it is required to be established by them that the ownership of such plant has been transferred to private parties on the basis of market price and was not influenced with the erstwhile non market economy system. Para 8 (3) (b) also requires the Authority to examine whether the production costs and financial situation of such firms are subject to significant distortion carried over from the former non-market economy system, in particular in relation to depreciation of assets, other write-offs, barter trade and payments via compensation of debts. Therefore, it is essential to examine the process of transformation and how the assets and liabilities of the entity have been valued for the purpose of the privatization. Hence the argument of the exporter that the Authority cannot look beyond the period of investigation to find the status and the process of privatization is not tenable. Thus, whether the price at which the plant was sold was according to the market principles, requires investigation. Also, the shareholders who invested in the share capital and their relationship with any of the related companies or the States also requires to be verified.

- As per the information available in the public domain the earlier company Xinchang Chemical Company had been one of the approved companies recognized by the Ministry of Science and Technology of PRC as one of the important new and high tech enterprises in National Torch Plan. The Torch Programme is a national plan that was implemented in August 1988 with the State Councils approval. It aims to

propel regional economic growth through developing high-tech industries. It also helped cultivate thousands of high-tech firms and 53 high-tech zones, and develop patented products which have reached world advanced levels. The Central Science and Education Leading Group, since it was highlighted in March at the National People's Congress, had decided to invest 7 billion yuan (US \$ 843 million) within the next three years to try a knowledge and technology innovation project in the Chinese Academy of Sciences.

- The domestic industry has also argued that as per the information available on Torch Plan in the public domain, the same is said to be a subsidy as defined under the WTO Agreement as it is a financial contribution made by the Government body and has been made available to specific entities such as Xinchang Chemical Company. It has also been argued that while under the SCM Agreement, an actions can be instituted against China as regards countervailing duties is concerned, in the facts of the present case the contribution is subsumed in the cost of production and financial benefits which have been conferred on the Company and therefore, the principles of MET cannot said to have been met.

- It has also been argued by the domestic industry that the producer is also recognized to obtain supporting policies under the Brand Name Policy implemented for 2 years starting 26.1.2005 (which is during the Period of Investigation) specifically for improving export competitiveness and this producer has been specifically named as one of the companies to receive the said benefits conferred under this program.

- Further, the Producer has not even disclosed has an affiliate company in US with the name of China Vitamins LLC., based in New Jersey in the US. The MET Questionnaire clearly requires the producer to give specific information as to the companies which are related to the producer. This information too has not been disclosed by the producer anywhere in the responses filed.

- In its post disclosure submissions the domestic industry has argued that the profit margins etc. of the intermediaries involved in the export transactions to India should be adequately deducted to arrive at the export price;

### **F.1.2 M/s Zhejiang NHU Company Limited (NHU), China PR and M/s Synchem International Co. Ltd.**

28. The exporter from China PR in its submissions has refuted the arguments of the domestic industry in respect of its Market Economy claims. It has been claimed that NHU has no “US website”, and it has not authorized anyone in the United States to disclose information regarding NHU or any of its related companies. NHU has disclosed all its related companies in its response to the MET questionnaire.

29. The exporter in its submission has argued that several leading economies and members of WTO have recognized China as a market economy and Designated Authority in India has also given market economy treatment to several Chinese exporters in the past. It has been further argued that in Annex 2a2 of the Chinese Protocol of Accession to WTO, China has transparently and in good faith listed out the business sectors and, even companies, that continue to be under state control or receive subsidies or where the Government plays a role in decisions, *inter alia*, including on price and which shall be reformed during the transitional period. It is submitted here that neither is Subject Goods identified in the said Annex 2A2 to the said Protocol as such a business sector under state control or influence, nor is the exporter or the producer named in the said annex 2a2. Therefore, there is, *prima facie*, no reasonable basis to assume that the said Subject Goods business sector in China operates as a NME. Therefore, it has been argued that NHU/SYNCHEM may be excluded from being deemed to be operating under NME conditions and the information furnished by NHU/SYNCHEM clearly shows that NHU/SYNCHEM makes its business decisions exclusively in a manner of business in a market economy.

30. It has been further submitted that the laws introduced in China in recent years as applicable to this business sector and to NHU/SYNCHEM are similar to the comparable laws in market economies and had begun to be enforced by the POI. It has been further argued that NHU does not enjoy a monopoly on Subject Goods production, trade or exports and that there is no State/Government control on pricing and costing of NHU. NHU purchase the raw materials and sell the finished products at market driven prices that are not regulated by the State/Government. It is submitted that the accounting system used by NHU/SYNCHEM is consistent with international norms in a market economy. NHU/SYNCHEM does not receive any subsidies other than permitted VAT reimbursement that are levied on domestic sales and purchases its foreign exchange through the authorized dealer bank. Further, there is no distortion of production costs and financial situation of the Producer as is clear from the Confidential Response and accompanying confidential information. It has been argued that the Producer has not converted former State assets, or distorted depreciation

thereof, or engaged in barter trade or debt forgiveness or debt/equity swaps, or received the benefit of any write-off.

31. It has been submitted that NHU/SYNCHEM is subject to China's laws and regulations with respect to bankruptcy and property respectively and the exchange rate is based on the market rate as determined by the Central Bank. NHU/SYNCHEM has borrowed from the banks on market terms and repaid its loans as per schedule. As in a market economy NHU/SYNCHEM has acquired its land through market economy mechanisms.

32. As far as the National Torch Programme is concerned, the exporter has argued that this programme is to promote development and application of high-tech products/process, which provide some marginal support to the covered product/process. This is a kind of program that is used by most, if not all, market economy WTO members, including India. In addition, the program has not transferred any financial contribution and/or benefit, whatsoever, within the meaning of WTO Agreement on Subsidies and Countervailing Measures to NHU, let alone in respect of the Subject Goods.

33. As far as the history and antecedents of the previous companies and holding companies the exporter has argued that information requested cannot be for an unspecified period and that neither the Questionnaire nor the NME Questionnaire, nor any letter to NHU/Synchem from the Hon'ble Authority, has specified a separate period for which information is sought other than the POI and period set out in the initiation notification. It has been argued that no question in the NME Questionnaire requests "history" of the cooperating party. Similarly, none of the four criteria of Market Economy provided in paragraph (3) of Article 8 in Schedule I to the said Rules specify unlimited "history". It is thus unfair and unreasonable to make a finding on the price structure of domestic sale of NHU and that of export to India of Synchem during the POI based on the legal status of antecedents or "history" of the respondent 10-15 years ago, which should not have any impact on the normal value and/or comparability of the prices. It is also unfair and unreasonable to impose obligation of responding to this investigation to the shareholders of NHU.

### **F.1.3 Examination by the Authority**

34. The Authority has noted the arguments of the interested parties. M/s Zhejiang NHU Company Limited (NHU), China PR, alongwith M/s Synchem International Co. Ltd., has filed the exporter's questionnaire response and market economy questionnaire response. NHU is the producer of the subject goods in China and exports the same to India through its related company Synchem, which is a trading Company. NHU has claimed that it is a publicly listed company in China and major

portion of its shares are held by a holding Company named, M/s Xinchang County Synthetic Chemicals Factory (Xinchang), and part of it is invested by public shareholders. The questionnaire response and Market Economy Response of the Company were examined and an on-spot investigation and verification was carried out in the premises of NHU and Synchem.

35. M/s. Zhejiang NHU Co. Ltd was established in 1998 as a limited liability Company under the Chinese Company Law. The Authority examined the antecedents of the responding Chinese Companies to find if the cost and prices of the producer has been significantly affected by state interference or carry over of distortions from earlier non-market economy system. Verification revealed that the production unit of NHU was earlier owned by Xinchang County Synthetic Chemical Factory. This factory was established in 1989 as a collectively owned enterprise under the prevalent collective enterprise system in the transition phase of Chinese enterprise law. However, verification revealed that the enterprise was initially invested by certain schools and school teachers in the Xinchang county. In 1994 the enterprise was incorporated as a 'collectively owned corporation' under the new Chinese Company Law.

36. Zhejiang NHU, the responding producer Company in this case, was established in 1998 as a new company limited by shares with major shareholding by Xinchang Chemical Factory and obtained the approval of the Zhejiang Provincial Government in 1999. The production unit of the M/s Xinchang Synthetic Chemical Factory was transferred to this unit as capital contribution of Xinxhang in NHU.

37. The assets of M/s Xinchang Synthetic Chemical Factory were appraised by M/s Xinchang Assets Appraisal Company in 1998 and as per the appraisal report the purpose of this appraisal was to set up a limited company by shares. The appraisal was carried out for the entire assets of the Company except the land. All of the net assets of Xinchang Synthetic were invested into NHU by the former as a major promoter for the establishment of the company. However, the fixed assets of Xinchang in the form of land and building have not been transferred to the new entity and do not form a part of the capital of the new company. NHU became a public limited company in 2004 by way of issuance of ordinary shares to the general public. However, the original promoting enterprise i.e., Xinchang remains the major shareholder of this company. The Board of Directors of NHU is headed by Mr Hu Baifen, the chief promoter of Xinchang and other promoters are directors in the board.

38. During the verification certain issues in respect of financial support received by the Company under National Torch Programme and Brand Promotion Programme were also examined. A questionnaire was also sent to the Ministry of Commerce of Government of Peoples Republic of China with a request to provide certain information on these programmes and benefits, if any, received by the responding company in this case. A meeting was also held with the Chinese officials in MOFCOM. The MOFCOM has also filed a written reply to the said questionnaire. MOFCOM has submitted that subsidy issues are not relevant criterion for market economy status. However, these programmes and benefits accruing to the Company have been examined to see if these programmes have significant distorting effect on the cost and prices of the subject goods in the domestic market of the exporter concerned.

39. During the verification process and meetings with Chinese officials it was revealed that the National Torch programme was initiated in 1988 as a non-binding programme designed to promote industrialization of high-tech research and development (R&D) to facilitate local economic development. The Science and Technology Commissions at various levels of governmental agencies administered the programme. The subject product Vitamin was covered under the said programme. During the verification the Company confirmed that they are a beneficiary of the above programme and produced a copy of the certificate of July 2002. Verification certificate under the national Torch Programme was also produced which indicates that the entire investment for this product is self-financed. It was clarified by the Company that the entire project was implemented by the Company in its NHU plant and they have not received any contribution under the High Tech Industrial Development Area Scheme. Therefore, there is no contribution from the state to this Company under the above programme.

40. The Policy documents of this policy indicate that the following benefits are provided to the producers covered under the policy:

- a) Govt. support for obtaining funds from the banks for the products; Priority access to funds
- b) Fund support from the state also;
- c) Facilitates loans at lower interest rates;
- d) Entitles the beneficiaries for special grade credit from China Construction bank

Relevant extracts of the Annual Report of the administering agency for the programme for 2003 was produced by the company to claim that the subsidy component of the programme was negligible. Annual Report of National Torch programme 2003, a copy of which was produced for verification shows that total bank loans under this programme for all projects was 18.49 Billion RMB and subsidy element for 36 high tech project was 1.85 Billion RMB. The exporter, in its comments has submitted that these 36 high tech projects are 36 high tech development areas rather than specific products and bank loans were made at commercial terms. However, the policy document stated earlier does not support this argument.

41. As far as Brand Promotion Programme is concerned, this programme was initiated in 2005 by the Government of Peoples Republic of China. The programme is implemented by the Ministry of Commerce, National Committee of Reform and Development, Ministry of Finance and Ministry of Science and Technology. As per the clarification given by MOFCOM the objectives of the programme are to guide enterprises for brand-oriented approach, to strengthen quality control and R&D, to enhance product quality etc., mainly aimed at combating counterfeited products. The Company confirmed that they had received one time grant of RMB \*\*\*\*\* in 2005 for R&D development under this scheme for the company as a whole and not for any particular product.

42. As far as the status of Syncjem, i.e., the related exporter of NHU is concerned, the Authority notes that Synchem is a private limited liability company established in 1998 by way of investment by Xinchang Synthetic Chemical Factory, which is also the major shareholder of NHU; and one individual entrepreneur Mr Wu Tieping. Therefore, both the producer company (NHU) and the trading company (Synchem) are related and controlled by their major shareholding entity M/s Xinchang Synthetic Chemical Factory and would have the same status as of the main holding company (Xinchang). It is basically a trading company established in the Bonded Zone of Dalian to take advantage of the differential tax benefit available to the enterprises established in the bonded zones prior to 2001. However, this company basically acts as an external arm of NHU to procure orders and execute them while actual export documentation etc are done in the name of M/s NHU imports and Exports Company which holds the export licence for the product and is eligible for VAT refund benefit under the Chinese Law.

43. The producing Company, M/s NHU provided the list of major raw materials and utility suppliers and claimed that the raw material suppliers are private entities and not related to them. The list of suppliers of raw material and utilities is quite long and it

was not possible to verify the antecedents of these suppliers. As far as power is concerned, the same has been procured from the state power producers.

44. The above examination indicates that the ownership status of the major share holders of NHU i.e., M/s Xinchang Synthetic Chemical Factory remains doubtful, because of the involvement of the schools and investments made through them in the holding Co. Therefore, controlling ownership of NHU and involvement of the State, in the form of capital investments through the schools, cannot be ruled out. The transfer of assets and liabilities of NHU from Xincheng to the new entities is also not transparent and does not appear to reflect the true market value. The assets transferred by the holding company also do not include the land and buildings and the value of such assets have not been taken into account in the capital assets of NHU. As far as the financial and infrastructure support of the Government to NHU and the product involved through National Torch Programme and Brand Policy of the Government are concerned, admittedly the Company has been benefited by these programmes though in a limited way. The Authority also notes that though this is not a subsidy investigation, the impact of such support on the cost and prices of the company would affect the normal value determination.

45. The Chinese producer/exporter, in its post disclosure submissions are argued that even if the Authority finds certain issues in respect of the evidence furnished for transformation of NHU and in respect also of the trivial subsidy program such issues cannot pass the “significance” test, to establish significant distortion. In this connection the Authority notes that the issue of carry over of distortions from the erstwhile non-market system has been addressed adequately in the foregoing paragraphs which establishes significant distortions in the cost of prices of the subject goods due to the nature of transformation and existence of state intervention through various policy instruments having direct impact on cost and prices.

46. In view of the above the Authority concludes that the cost and prices of the company are significantly distorted due to carry over of the distortions from the erstwhile non-market economy system and therefore, do not qualify for consideration for the purpose of determination of normal value of this company. Accordingly, the Authority proceeds to determine the normal value for this exporter in terms of para 7 of annexure I to the Rules.

#### **a) Normal Value**

47. Para 7 of Annex 1 to the 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 for 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.*

48. In the initiation notification the interested parties were intimated that the domestic industry had suggested that in view of non-market economy situation in China the European Union should be considered as the appropriate market economy third country for the purpose of determination of normal value in China. The Authority notes that there are only four major producers of the subject goods in the world out of which two are in the Europe, remaining two being in India and China. Therefore, considering the nature of the product and scale of sales of the product in Chinese and European markets, European Union would constitute an appropriate third country for the purpose of determination of normal value in China. The exporters from China, in their submissions have not commented on the proposal by the Hon’ble Authority to treat EU as comparison economy. However, it has been mentioned in the submissions that it is assumed therefore that the Hon’ble Authority is using EU as the comparison territory thereby concurring with the proposal of the Authority. Therefore, the Authority proceeds to determine the Normal Value in China in terms of para7 referred above on the basis of selling price of the subject goods in the European Union.

49. The Authority notes that the selling prices of Vitamin-A Palmitate 1.7 MIU/gm, in the European market, are available for such a determination. The average selling price of Vitamin-A Palmitate 1.7 BHA/BHT in the European market during the POI was US\$ \*\*\*\*\* per KG at ex-factory level. The exports from China are of 1.7 MIU/Gms and a small quantity of 1.6 MIU/Gms. However, Vitamin A Palmitate 1.6 MIU/Gm is not covered under the product under consideration as discussed earlier. Therefore, normal value in China PR has been determined based on the price in the European market which works out as US\$ \*\*\*\*\* per Kg of Vitamin A Palmitate 1.7 MIU/Gms.

## **b) Export Prices**

## **i) NHU-Synchem**

50. The exporter has exported 9900 Kgs of Vitamin A Palmitate 1.7 MIU/gm during the POI. However, NHU does not export the subject goods directly to India. It has a fully owned subsidiary M/s NHU Imports and Exports which functions as a division of NHU which handles the exports of this commodity manufactured by NHU. However, as far as export to India is concerned, there is another intermediary company, M/s Synchem, which is a related company of NHU, which actually makes the exports to India. NHU first sales the goods to NHU Imports and Exports through an internal invoice and NHU Imports and Exports raises another invoice on M/s Synchem, which is a trading Company, located in Dalian Bonded Zone. Synchem raises the commercial invoice on the importer in India. The documentations for exports are actually back-to-back and show the name of NHU as the producer of the goods. However, there is a considerable difference in the invoice values of NHU, NHU Imports and Exports and Synchem.

51. Since there is a two-stage transaction involved and the transactions are through two affiliated intermediates the export price needs to be constructed on the basis of sales of Synchem to unaffiliated Indian customers and after applying adjustments for direct selling expenses and profit margins at each stage.

52. NHU has transferred \*\*\*\*\* Kgs of the subject goods to NHU Imports and Exports at RMB \*\*\*\*\* (US\$ \*\*\*\*\* at average exchange rate of RMB 8.26). NHU Imp & Exp has transferred the same quantity of the subject goods to Synchem at US\$ \*\*\*\*\*. Transactions between NHU Imports and Exports and Synchem are FOB Ningbo port. Therefore, the transactions involve adjustments towards inland transportation from plant of NHU to port of loading and actual profit margin of NHU I&E as well as the credit cost involved.

53. Synchem has purchased \*\*\*\*\* Kgs of Vitamin A Palmitate 1.7 MIU/gm from NHU Imp & Exp at US\$\*\*\*\*\* and sold the same in Indian market at a gross invoice value of US\$ \*\*\*\*\*. The sales of Synchem to Indian Customers are on CIF term and on DA/LC basis. Therefore, adjustments towards direct selling expenses, credit costs and profit margin of Synchem has been made to arrive at net export price at ex-factory level of NHU. Commission, overseas ocean freight and ocean insurance; and bank charges, as verified from the records of the company have been adjusted.

54. It is also noticed that VAT of 17% has been paid by the exporter on the net invoice value of NHU Imp & Exp and refund has been obtained @13% of this value. Therefore, the exporter has absorbed VAT of 4%, which is required to be adjusted to arrive at the net export price at ex-factory level. As far as profit of Synchem is concerned, records of Synchem show an overall profit margin of \*\*\*\*% on the

subject goods during the POI. Therefore, in order to arrive at the net export price at NHU's factory level, an adjustment towards actual profit margin of the related exporter i.e., Synchem is also proposed to be made.

55. Accordingly, the net ex-works export price of NHU/Synchem works out as follows:

Product	Qty	Net Invoice		Total Adjustment Synchem	VAT Adjustment	Profit I&E **%	Prfofit Synchem **%	Net Value at NHU factory	Net Export Price
		Value Synchem	Total Adjustment NHU I&E						
	Kg	US\$							US\$/Kg
1.7 MIU	****	****	****	****	****	****	****	****	****

#### ii) Others

56. The export price for other non-cooperating exporters from China PR has been determined based on the lowest export price of the cooperating exporter. Accordingly, net ex-works export price for other non-cooperating exporters have been determined as US\$\*\*\*\* per Kg.

#### c) Dumping Margins

57. On the basis of above normal value and export prices determined at the ex-works levels the dumping margins for exporters in China has been determined as follows:

Exporter	NV	EP	DM	DM %
China	US\$/Kg	US\$/Kg	US\$/Kg	
NHU/Synchem	****	****	****	48%
All others	****	****	****	70%

#### F.2 Switzerland

58. The Authority notes that this exporter produces the subject goods and sells the same in the domestic market as well as in the European market and Indian market. However, during the POI only Vitamin-A Palmitate 1.7 BHA/BHT and 1.7 TOCO have been exported to India. The exporter has submitted that their sales in the home market being less than 2% of the total sale of the subject goods by the company are not representative sales for the purpose of Normal Value determination. It was also submitted by the exporter that more appropriate home market would be the EU, which represents around 60% of sales during the POI. In this connection the Authority notes that footnote 2 of the Agreement provides that

*“ Sales of the like product destined for consumption in the domestic market of the exporting country shall normally be considered a sufficient quantity for determination of the normal value if such sales constitutes 5% or more of the sales of the product under consideration to the importing member, provided that a lower ratio should be acceptable where*

*evidence demonstrate that domestic sales at such lower ratio are nonetheless of sufficient magnitude to provide for a proper comparison”*

59. The Authority notes that the exporter sold \*\*\*\* Kg of Vitamin A palmitate 1.7 MIU/Gm and \*\*\*\* kgs of \*\*\*\*MIU/Gm in the home market during the POI against export of \*\*\*\* Kgs of 1.7 MIU/Gm to India during the same period. Therefore, home market sales of the like product constituted more than 5% of the sales to India. Such home market sales being in sufficient quantities as per the Agreement are therefore, required to be considered for the purpose of determination of Normal value and accordingly, the Authority has considered the same for determination of normal value in the exporting country.

60. The exporter, however, made a plea that if their home market sales are required to be considered for the purpose of determination of normal value due consideration has to be made towards the difference in sales quantities and level of trade as the domestic sales are in smaller quantities and to direct retail customers and therefore, not comparable with the export sales transactions. The exporter, vide letter dated 10th April 2007, was asked to quantify and demonstrate the level of trade adjustments and other factors that affect the price comparability as claimed by them for fair comparison. The exporter, vide its letter dated 24th April and 16th May 2007 provided certain information and arguments for quantification of the adjustments towards the factors affecting price comparability and direct selling expenses in respect of domestic sales on account of small quantity sales to direct customers in Switzerland.

61. The Authority notes that Rule 6(i) in Annexure I and Article 2.4 of the Agreement provide that “*due allowance shall be made in each case, on its merit, for differences which affect price comparability, including difference in conditions and terms of trade, taxation, level of trade, quantities, physical characteristics, and other differences which are also demonstrated to affect price comparability*”. In terms of the above provisions the claims of the exporter has been examined by the Authority as follows:

a) The claim of the exporter on adjustments towards lower transaction volumes in domestic market has been examined. It has been claimed that the domestic sales are in small quantities and average quantity sold per transaction in the domestic market is 41 Kgs whereas average quantity per sale in the Indian market is about 416 Kg. It has been argued that the difference in order quantities affects the respective prices as they charge a minimum quantity surcharge on small order quantities. In support of this some export invoices with small quantities have been produced. However, no evidence of small order surcharge in domestic market has been provided. It has been further argued that the quantities have direct impact on the price and an adjustment has to be made for comparison purpose. Accordingly, the exporter has quantified the adjustment based on the difference in unit price for sales transactions to India of quantity below 300 Kg and above 300 kg. However, these quantity difference and small quantity surcharges are with reference to the export sales and no evidence of such a variation in prices on account of quantities in the home market has been provided. Therefore, the Authority is of the view that such adjustment cannot be admitted.

b) In addition to the adjustment towards quantities, the exporter has claimed level of trade adjustment on the grounds that the domestic sales are mostly to direct consumers, whereas the export sales to India are mostly to resellers, which also affects price comparability. It has been argued that the price to direct customers in Switzerland and European markets is generally higher by about 5 to 7% than the prices to resellers. In support of this claim they have produced the evidence of

contemporary invoices of same products to direct customers and reseller in Swiss market, which indicates a difference of about 5% between these prices. It has been argued that this mark up is allowed to the reseller to take care of its expenses and profit. Usually, resellers or agent gets a commission; or a markup in its prices which takes into consideration its expenses and margins and a commission/margin of 3% to 5% is normal in the trade. Therefore, the Authority is of the view that an adjustment of 3% towards this may be justified.

c) The exporter has also claimed adjustments towards direct selling expenses in the home market i.e., inland freight from the plant to warehouse and associated insurance, storage and handling expenses, freight from warehouse to customer and associated insurance expenses. As far as domestic freight from warehouse to domestic customers are concerned, the exporter has provided the evidence of actual cost incurred for delivery through DHL courier and accordingly, the revised freight cost has been worked out as US \*\*\*\*\* per Kg.

62. Accordingly, the Normal value in Switzerland at ex-works level for the product under consideration works out as follows:

<b>Representative sales in Home Market</b>	Qty in Kg	Price in Euro	Price in US\$	Exch Rate	Adjustments US\$/Kg	Normal Value US\$/Kg
<b>VIT A PALM 1.7 BHA/BHT</b>	****	****	****	****	****	****
<b>VIT A PALM 1.7 TOCO</b>	****	****	****	****	****	****

**b) Export Price and Dumping Margins**

**i) DSM Nutritional products**

63. DNP has reported \*\*\*\* Kgs of export sales of the subject goods to India during the POI covering Vitamin A Palmitate 1.7 BHA/BHT and 1.7 TOCO. The Authority notes that the products of DNP for sale to India generally go (via ship) from the Netherlands to Singapore before being sent on to India. It has been submitted by the exporter that the products concerned are handled by the DSM Nutritional Products regional office for Asia Pacific in Singapore. It is a trading organization with a warehouse and invoices and re-exports the products to India and other Asia pacific countries. The exporter has submitted that prices provided in the questionnaire response is the final export price for the Indian customer and the pricing mechanism between the related companies, i.e., DNP Switzerland and DNP Singapore them is not relevant for this investigation.

64. The exporter has provided information for adjustments towards direct selling expenses on account of Inland Freight from the Sisseln site to Venlo, Netherlands (warehouse) and associated insurance expenses; storage and handling charges; overseas freight from Switzerland to Singapore and Singapore to India and associated insurance expenses; and shipping charges. No adjustment has been claimed on packing expenses as the same is included in the cost and there is no difference between the export packing and domestic packing. Accordingly, the net export price at ex-works level works out as follows:

<b>Export Price to India</b>	Qty in KG	Value EURO	Rate Euro/kg	Value US\$	Rate US\$/Kg	Adjustments US\$/KG	Net Price US\$/Kg
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**VIT A PALM**  
**1.7 BHA/BHT**      \*\*\*\*      \*\*\*\*      \*\*\*\*      \*\*\*\*      \*\*\*\*      \*\*\*\*      \*\*\*\*

**VIT A PALM**  
**1.7 TOCO**      \*\*\*\*      \*\*\*\*      \*\*\*\*      \*\*\*\*      \*\*\*\*      \*\*\*\*      \*\*\*\*

65. On the basis of Normal value determined for Switzerland and net export price determined for DNP, dumping margin for this cooperating exporter has been assessed as follows:

	NV US\$/Kg	Qty Kg	EP US\$/Kg	Qty Kg	DM US\$/Kg	DM value
VIT A PALM 1.7 BHA/BHT	****	****	****	****	****	****
VIT A PALM 1.7 TOCO	****	****	****	****	****	****
Weighted Average	****	****	****	****	****	****

21%

66. DSM, in its post disclosure submissions has argued that since the Indian law does not provide for a threshold limit for the domestic sales to be treated as in sufficient quantities for determination of normal value the Authority should not merely relied on the WTO Agreement in this respect and evaluated the matter on its own merit in view of the fact that the domestic sales in Switzerland was very small (less than 2%) compared to its total sales. It has also been argued that a particular market situation i.e., the sales in Switzerland have been made in very small quantities whereas sales for exports to India are in much larger quantities exists in Switzerland, which should have been taken into account for determination of normal value in Switzerland . Under the above circumstances appropriate market for determination of normal value is the European Union and not Switzerland. The exporter has also commented that the weighted average dumping margin should be worked out on the basis of weighted average normal value and weighted average export price.

67. Domestic industry, in its post disclosure submissions, has argued that argued that, without conducting the on-site verification, acceptance of the data and other claims made by DSM is unwarranted and unsubstantiated. Domestic industry has further argued that under the above circumstance dumping margin for the exporters from Switzerland, including DSM, should have been based on the best information available i.e. third country information (European Union) or constructed cost on the basis of price paid or payable in India duly adjusted as prescribed under the Rules.

68. In this connection the Authority notes that the sales in Swiss market were found to be in sufficient quantities in relation to the exports to India, (which constituted more than 20% of sales to India) and therefore, considered appropriate for comparison with the exports to India. However, the exporters claimed certain adjustment on its home market prices towards certain factors that affected the price comparability and such adjustments, which could be demonstrated and justified by the exporter with evidence, have been accepted by the Authority. The claim for adjustment on account of a minimum quantity surcharge could not be demonstrated by the exporter with reference to domestic sales and therefore, has not been accepted. Therefore, the arguments of the exporter in this regard are not tenable. As far as the error in dumping margin calculation is concerned, Dumping Margin is determined as the weighted average of the intermediate dumping margins, determined at subtype levels (weighted on the

export quantities of product subtypes). The dumping margin has been determined for the above exporter correctly on the above basis. Therefore, there is no need for any change of dumping margins.

69. As far as the arguments of the domestic industry is concerned, the Authority notes that the exporter concerned had submitted the information required for determination of its dumping margin and offered itself for verification. On the factual matrix of the case the Authority decided to accept the data, to the extent it was substantiated, without verification and accordingly, dumping margin has been determined on the basis of the home market sales of the company as explained earlier. Therefore, the Authority does not find any merit in the argument of the domestic industry to determine the normal value of the Swiss exporters based on selling price in the EU market or on constructed cost plus profit basis.

## ii) Other exporters

70. Export price for other exporters has been determined based on the lowest export price of the cooperating exporter from Switzerland as best facts available after allowing for adjustments as per exporters data. The export price so determined has been compared with the normal value determined for Switzerland. Accordingly, export price and dumping margin for all other exporters from Switzerland works out as follows:

NV US\$/Kg	Lowest EP Euro/Kg	EP US\$/Kg	Adjustments US\$/Kg	Net EP US\$/Kg	DM US\$/Kg
84.420	****	****	****	****	****
					33%

## F.4 Dumping Margins: Summary

Product	Country	Exporter	Dumping Margin US\$/KG	Dumping Margin %
Vitamin-A Palmitate	Switzerland	M/s DSM Nutritional Products	****	21%
	Switzerland	All Others	****	33%
	China	NHU with Synchem	****	48%
		All Others	****	70%

The dumping margins so determined are significant and above de minimis.

## G. injury determination

### G.1 Views of the Exporters and other interested parties

#### G.1.1 DSM Nutritional Products Ltd. (DNP)

71. DNP, in its post preliminary finding submissions, has argued that the conditions of competition between the imported article from China and domestic articles are quite different from the competition between Swiss exports and domestic articles and therefore, cumulative assessment of

injury is not justified in this case. It has been argued that While Swiss product has been there in the Indian market since many year, Chinese products have entered the Indian market since 2003 and has increased by three fold since then. Whereas China exports have shown a surge in volumes, exports from Switzerland have been more or less steady and market share of Swiss product has significantly declined compared to the previous years. The prices of Chinese products are also at lower prices compared to Swiss prices indicating that the conditions of competition between these products in the Indian market are quite different and therefore, cumulative assessment of injury is not warranted.

72. DNP further argues that the data for the period for which ADD was in force on imports from EU and other countries should be excluded from the examination as the imposition of duties led to a sudden reduction in imports, creating a virtual monopoly for the domestic industry. Therefore, this temporary situation does not reflect a natural or potential decline in sales of the domestic industry. DNP further argues that the domestic industry hopes to earn extraordinary price in the home market to finance its losses in the exports and therefore, the analysis of domestic industry's export and domestic sales should not be separated. DNP further argues that its export price does not have any price undercutting or underselling effects on domestic industry's prices because of the fact that the maximum sale price of the subject goods in India are fixed by Drug Price Control Order of India. Domestic industry sales its product both to formulation manufacturers and resellers. Prices to resellers would be lower than the DPCO price so as to provide for the expenses and profit margins of the reseller. Therefore, DNP's landed value being close to DPCO price, there could be no price undercutting/underselling effect.

73. It has also been argued that the basic customs duty on the product under consideration have been more than halved (i.e., falling from 35% to 15%) during the last five years which has clearly made imported material progressively more competitive, despite the fact that DNP has not reduced its CIF price during this period, and is no indicator for either dumping, or material injury caused thereby. The Rupee has also appreciated from approximately Re 48 to less than 44 against the US dollar from 2001 until 2005. Both of these changes occurred as a result of Government policy and help to explain the preference for imported material. Therefore, there is no causal link between the Swiss exports and the injury allegedly suffered by the domestic industry.

74. In its post disclosure submission DSM has reiterated its arguments on injury and causal links. They have also submitted certain information regarding sales by one of their reseller/importer through the said importer to support their arguments made earlier. In this connection the Authority notes that importer/reseller of DSM did not file any questionnaire response or any information at appropriate time. Therefore, submission of certain information by the reseller on its selling price at this stage of the investigation cannot be taken on record. As far as the issue of DPCO price and its impact on the injury to the domestic industry is concerned, it has been adequately addressed in the causal link analysis in this finding.

#### **G.1.2 Views of NHU/Synchem**

75. NHU/Synchem in their post preliminary findings submissions have argued that the Volume of imports has grown due to import liberalisation in India, declining tariffs, currency appreciation and due to increase in domestic demand in India, which has one of the World's fastest growing economies. It has also been argued that the poor exports remuneration of the Applicant indicated in the Petition itself has led to any loss of income or profits during the POI. It has been further argued that the domestic industry seeks a unreasonable rate of ROCE return of 26% and injury to the Applicant domestic industry is not evident as it has clearly not had any difficulty in raising capital as reflected, as per its public domain website, in its acquisitions spree in India and abroad from 2004-2006. It has also been argued by the Chinese exporters that the principal concern of Public Policy in India concerning the Subject Goods is to ensure that prices of the Subject Goods are reasonable and inexpensive and not the normal pharmaceutical industry profits to the producers in view of the critical importance of vitamin A for public health in India. In its post disclosure comments the exporter has reiterated its arguments on injury and causal link.

#### **G.1.3 DPCO issue**

76. The exporters from China PR and Switzerland, in their respective submissions have submitted that the Drug Price Control Order, 1995 of Government of India applies also imported formulations, and therefore, the domestic industry's submissions at the hearing stage that the price

ceiling applies only in respect of the re-sale price in India by the Importer is misleading. It has been argued that the price ceiling fixed by DPCO applies to all sales of the subject goods in India and sets the final selling price to the ultimate user. Since the imports are mostly by traders/resellers who supply the goods to local customers/users the importer/trader must buy the product at a landed value that is less than the DPCO price ceiling to take care of his resale margin. For this reason alone fixing the NIP at the DPCO price ceiling as requested by the Applicants must necessarily lead to exclusion of the exporters from the Indian market and unlawful denial of market access since there will be no margin for importers profit and further transport/logistics costs in India prior to final point of sale and after addition of such profits/costs, as the case may be, the final re-sale price in India would necessarily be higher than the DPCO ceiling price and thus ineligible for sale in India. Hence, such market access by the concerned exporters is possible only when the NIP at highest (if not lower still) is lower than the DPCO Ceiling price with sufficient margin left for importers (and any further distribution channels used by the importer prior to final point of sale to the customers) profits and transport/logistics costs within India.

## **G.2 Examination by the Authority:**

77. The Authority notes the views expressed by the interested parties in respect of the injury claims of the domestic industry and proceeds to examine the issues raised and injury claims of the domestic industry s follows:

### **G.2.1 Cumulative assessment of injury**

78. The Annexure II (iii) of the Anti Dumping Rules requires that where 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

I) the imports from individual countries are above de minimis or cumulatively account for more than 7% of imports;

II) the dumping margin against individual countries are above 2%; and

III) 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.

79. DNP has argued that since the prices of the subject goods exported by them is significantly different from the price at which goods are being imported from China PR there is a lack of competition between these two products and hence they cannot be cumulated for assessment of injury to the domestic industry. In this connection it is noted that the dumped imports of the subject goods were entering the Indian market simultaneously from the subject countries during the POI. Though there was no export of the subject goods from China till 2003, both the countries have exported comparable quantities during the POI and margins of dumping of subject goods from each of the subject countries are more than the de minimis limit. The domestic products and products supplied by producers in the subject countries are like articles and are being used interchangeably. Transaction wise information on imports from various countries shows that the imports are being made by actual users in the Pharmaceutical industry, as well as traders who have imported the material for reselling to pharmaceutical as well as other user industries. Goods supplied by the countries involved are entering the Indian markets through the similar channels of distributions, during the same period through comparable sales channels and under similar commercial conditions. The domestic producer and exporters in the subject countries are selling the product to the same category of consumers. Imports from the subject countries are significantly undercutting and underselling the prices of the domestic industry in the market. Therefore, the products manufactured by the domestic industry and that exported by Chinese exporters and Swiss exporters are directly competing amongst themselves in the same market. In view of the above, the arguments of DNP cannot be accepted for decumulated injury assessment. Accordingly, the Authority holds that cumulative assessment of injury is appropriate in this case.

### G.3 Examination of Injury and Causal Links

80. Rule 11 of Antidumping Rules read with Annexure –II provides that an injury determination shall involve examination of factors that may indicate injury to the domestic industry, “... taking into account all relevant facts, including the volume of dumped imports, their effect on prices in the domestic market for like articles and the consequent effect of such imports on domestic producers of such articles...” In considering the effect the dumped imports on prices, it is considered necessary to examine whether there has been a significant price undercutting by the dumped imports as compared with the price of the like article in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree.

81. Since Vitamin A Palmitates of various strengths have the same end use, the present investigations shall cover the subject goods in all its strengths and forms. Accordingly, overall condition of the industry and effects of the imports on the Vitamin-A business of domestic industry has been examined to the extent relevant.

82. For the examination of the impact of the dumped imports on the domestic industry in India, indices having a bearing on the state of the industry such as production, capacity utilization, sales volume, stock, profitability, net sales realization, the magnitude and margin of dumping, etc. have been considered in accordance with Annexure II of the Rules. All economic parameters affecting the Domestic Industry as indicated above such as production, capacity utilization, sales volume etc. have been examined in this section.

#### G.3.1 Volume Effects of Dumped Imports: Import volumes and market shares

##### a) Import Volumes

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

84. The applicant has submitted the import data compiled from IBIS data source which shows that Imports have taken place from several sources including the subject countries during the injury investigation period. DGCIS transaction-wise import data has also been obtained for examination. However, examination of DGCIS data as well as the import data reported by the cooperating exports indicates that the DGCIS has underreported the import data of the POI to a very large extent. The cooperating exporters have reported significantly higher quantities of exports during the POI compared to import reported by DGCIS. Therefore, for the purpose of analysis of import volumes and its impact on the domestic industry the import volumes have been worked out after adjusting the DGCIS data for the imports reported by the cooperating exporters. Accordingly, the import volumes of subject goods are as follows:

Qty in Kgs

COUNTRY	2001-02	2002-03	2003-04	2004-05	POI	POI Annualized
SWITZERLAND	2197	2370	1200	1560	11240.7	7494
Trend	100	108	55	71	511	341
CHINA	0	0	2005	1750	9900	6600
Trend	0	0	100	87	493	329
Total Subject Countries	2197	2370	3205	3310	21140.7	14094

Trend	100	108	146	151	962	642
OTHERS	8096	1549	458	25	1315	877
Trend	100	19	6	0	16	11
TOTAL	10293	3919	3663	3335	22456	14970
Trend	100	38	36	32	218	145

85. The above data indicates that dumped imports of the subject goods from the subject countries have increased substantially during the injury examination period, particularly during the POI. Imports from Switzerland have increased after decline upto 2003-04. Import from China has started only in 2003-04 and has increased significantly thereafter. The growth in import volume from the subject countries is significantly higher than the growth in total imports. It also shows that there is a quantum jump in dumped imports during the POI compared to the previous years.

**b) Actual and potential effects on capacity, output and capacity utilization of the domestic industry**

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

87. 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, the plant is available for three shifts operation and accordingly, available capacity is 330MT per annum. Against this capacity the plant is used for about 67%. It is noted that this installed capacity is not dedicated for the product under consideration and in this plant the company manufactures about 35 different products. Production of individual product varies from year to year depending upon the demand. Therefore, the capacity of the producer has been assessed based on three shift operation for which the plant is actually available and total output of various products from the plant, including the product under consideration. Accordingly, the capacity and capacity utilization has been worked out as follows:

Indexed

Year	Installed capacity (KG)	Production (All Products) (Kg)	Capacity Utilization (%)
2000-01	100	100	47%
2001-02	100	72	33%
2002-03	100	104	48%
2003-04	100	119	55%
2004-05	100	122	57%
POI Annualized	100	144	67%

88. The above examination shows that annualized production and capacity utilization of the liquid plant during the period of investigation is the highest in the last four years including the period of investigation. Therefore, capacity utilization does not appear to indicate any deterioration of the performance of the domestic industry taking into account total out put of the liquid plant.

89. However, production of Vitamin A Palmitate by the domestic industry has been examined as follows:

Qty in Kgs

<b>Production Vitamin A</b>	<b>2001-02</b>	<b>2002-03</b>	<b>2003-04</b>	<b>2004-05</b>	<b>POI Annualized</b>
production for domestic market	****	****	****	****	****
Trend	100	135	158	96	126
Production for exports	****	****	****	****	****
Total production	****	****	****	****	****
Trend	100	135	173	182	212

90. The data shows that while total production of the subject goods by the domestic industry shows a steady growth the production for the domestic market has dropped significantly after showing a healthy growth till 2003-04, whereas the export by the domestic industry has grown significantly in the same period.

**b) Actual and potential effect on sales and market share of the domestic industry:**

91. The volume of domestic sales and effects of dumped imports on the domestic sales have been examined in terms of absolute sales of the domestic industry, demands and market shares:

Qty in Kgs

<b>Sales</b>	<b>2001-02</b>	<b>2002-03</b>	<b>2003-04</b>	<b>2004-05</b>	<b>POI Annualized</b>
Domestic sales	****	****	****	****	****
Trend	100	234	233	106	166
captive consumption	****	****	****	****	****
Trend	100	57	118	90	100
DI Sales including Captive consumptions	****	****	****	****	****
Trend	100	128	164	97	127

92. The above data shows that domestic sales and total sales of the domestic industry, after increasing significantly upto 2003-04, has declined significantly. The exporters have argued that the recovery of the production and sales till 2003-04 was due to the duty in force against EU, Georgia and Singapore and decline thereafter was bound to happen due to competition from several sources after removal of antidumping duty on these countries. The Authority notes that the antidumping duty was earlier imposed to neutralize the effects of dumped imports from certain countries and it had its desired result in terms of recovery of the domestic industry. However, decline in the production and sales from 2004-05 coincides with significant increase in dumped imports from China and Switzerland as shown in the previous section whereas the imports from the countries against which duty was in force earlier has not increased even after revocation of duty. Therefore, the arguments of the exporters are not valid.

93. Demand and market share of the subject goods have been examined taking into account the domestic sales of the product and revised import volumes as noted earlier.

Qty in kgs

<b>Demand Vitamin A</b>	<b>2001-02</b>	<b>2002-03</b>	<b>2003-04</b>	<b>2004-05</b>	<b>POI Annualized</b>
DI Sales including Captive consumptions	****	****	****	****	****
Trend	100	128	164	97	127
TOTAL Imports	****	****	****	****	****
Trend	100	38	36	32	145
Total Domestic Demand	****	****	****	****	****
Trend	100	96	119	74	133

94. The above data shows that while the demand for the subject goods show a steady increase of about 33%, the sales of the domestic industry, after significant increase upto 2003-04, declined significantly. The imports from the subject countries have increased by over 500% while total imports have increased by only 145%. The dumped imports from the subject countries account for 94% of the total imports to India.

95. The market share of the domestic industry and dumped imports have also been examined as follows:

<b>Market shares</b>	<b>2001-02</b>	<b>2002-03</b>	<b>2003-04</b>	<b>2004-05</b>	<b>POI Annualized</b>
Domestic Industry	100	133	138	131	95
Switzerland	100	112	46	96	256
China	0	0	100	87	494
Other countries	100	20	5	0	8

96. The Authority notes that antidumping duty was in force on the subject goods imported from the European Union and other countries upto 2003-04. The Authority also notes that dumped imports from China PR has started entering the Indian market in significant quantities from 2004-05. Data shows that market share of the dumped imports from the subject countries have increased significantly whereas the market share of the domestic industry has declined after recovery during the intervening period.

97. The above analysis shows that the dumped imports from the subject countries have increased in absolute term as also in relation to imports into India, production in India and consumption in India. It is also seen that the volume of imports have increased more than the increase in demand. In other words, rate of increase of imports was more than rate of increase of demand.

### G.3.2 Price effect of dumped imports

98. 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.

#### a) Price undercutting and Price underselling

99. The net sales realization of the domestic industry has been determined considering selling price, excluding taxes & duties, rebates, discounts & commissions and freight & transportation. Landed price of imports has been determined considering weighted average CIF import price, with 1% landing charges and applicable basic customs duty. The net sales realization of the domestic industry was compared with the landed value of the dumped imports to examine whether the dumped imports have significant price undercutting effect on the domestic industry.

100. For the purpose of price underselling analysis the non-injurious price of the domestic industry has been determined taking in to account verified cost and SGA expenses of the industry with a reasonable profit margin. The landed value of dumped imports was also compared with the non-injurious prices of the subject goods to determine the price underselling effect of the dumped imports as follows:

	2001-02	2002-03	2003-04	2004-05	POI Annualized
Cost to Make and Sale	*****	*****	*****	*****	*****
Trend	100	83	78	101	89
Net Sales Realization	*****	*****	*****	*****	*****
Trend	100	104	92	85	85
Landed values					
SWITZERLAND	4014.15	3982.98	3889.60	3842.42	3812.81
CHINA	0.00	0.00	3402.25	3284.27	3535.91
Subject countries	4014.15	3982.98	3584.72	3547.32	3561.07

#### Price Undercutting

SWITZERLAND	*****	*****	*****	*****	*****	5-15%
CHINA	*****	*****	*****	*****	*****	10-20%
Subject countries	*****	*****	*****	*****	*****	10-20%
NIP					*****	
<b>Price Underselling</b>					*****	
SWITZERLAND					*****	10-20%
CHINA					*****	15-25%
Subject countries					*****	15-25%

101. The above data indicates that landed price of imports from the subject countries have been significantly below the net sales realization and non-injurious price of the domestic industry, thus resulting in significant price undercutting and price underselling.

**b) Price suppression and depression**

102. To examine the price suppression effect of the dumped imports on the domestic prices the trend of net sale realization of the domestic industry has been compared with the cost of production. The data indicates that though there is a decline in the cost of production of the subject goods during the injury investigation period, the fall in sales realization has been significantly higher than the decline in cost of production. The Authority notes that the product is subject to price control and therefore, the domestic industry has been prevented to increase its prices to recover the full cost. However, it also appears that the price effect of the dumped imports have kept pressure on the domestic industry and forced it to keep its prices lower in order to retain its market share.

103. The above analysis shows that the dumped imports have adverse volume and price effect on the domestic industry in terms of increase in volume of dumped imports both in absolute terms and market shares and by depressing the prices of the domestic market and eroding its market share.

**G.3.3 Examination of other injury factors**

104. Some of the injury factors i.e. actual and potential decline capacity, production, capacity utilization, sales and market shares; were examined in the previous section along with actual and potential increase in volume of imports and it was noted that

a) Production and sales of the domestic industry for the domestic market has decreased over the injury period after showing significant increase upto 2003-04 in spite of the increase in the demand of the subject goods in the domestic market. The domestic industry has been prevented from increasing the production to the extent it could, in spite of good demand in the domestic market.

b) While the Domestic Industry has the capacity to produce and sell the subject goods in the domestic market, the domestic industry has not been able to utilize the capacities adequately.

c) Sales of the domestic industry decreased substantially after healthy growth upto 2003-04, which also resulted in declining the market share of the domestic industry. The domestic industry has not benefited from the increase in demand.

**a) Actual and potential effects on Profits**

105. Profits earned by the domestic industry from the sales of the subject goods in the domestic market were as follows:-

Year	Cost to make & sell	Selling Price / MT	Profit / (Loss) per MT
	Per MT (Rs.)	(Rs.)	(Rs.)
2001-2002	100	100	(100)
2002-2003	83	104	247
2003-2004	65	92	145
2004-2005	65	85	(352)
POI (Annualized)	58	85	(155)

106. It is seen that the Domestic Industry has made significant losses in its domestic sales and has moved to a situation of financial losses from a situation of profits, as is clear from the decline in production and sales volumes of the domestic industry over this period.

**b) Actual and potential effects on Employment and wages**

107. 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 Authority notes that the domestic industry produces several products in the same plant and there is no dedicated employee strength for the product under consideration. Overall employment and wage scenario of the company shows that number of employees has declined whereas the expenses on wages have significantly increased.

Year	No. of Employees	Wages (in Lakhs)
2001-2002	100	100
2002-2003	100	31
2003-2004	99	37
2004-2005	95	44
Period of Investigation (Annualized)	93	45

**c) Actual and potential effect on productivity**

108. The labour productivity with reference to the total liquid production of the unit shows that the productivity has significantly improved.

Year	Total Production		
	(All liquids) KG	No of employees	Productivity Kg
2001-02	****	100	100
2002-03	****	100	145
2003-04	****	99	168
2004-05	****	95	178
POI Annualized	****	93	216

109. However, the improvement in productivity has not translated into profitability for the domestic industry. It is found that even when productivity of the domestic industry significantly improved, which helped in reduction in unit cost of production, profits of the domestic industry significantly declined from a situation of profits to losses due to decline in selling prices.

**d) Actual and potential effects on Cash flow and Return on Capital Employed**

Vitamin-A Palmitate	2001-02	2002-03	2003-04	2004-05	POI Annualized
<b>Profit on domestic sales</b>	(****)	****	****	(****)	(****)
<b>Trend</b>	(100)	646	372	(494)	(754)
Cash Profit local Production	****	****	****	****	****
Cash Profit per MT for Local - Rs	****	****	****	****	****
Capital Employed (In Lacs)	****	****	****	****	****
<b>Trend</b>	100	212	248	280	322
Return on Capital Employed (%)	(****)	****	****	(****)	(****)
<b>Trend</b>	(100)	305	93	(741)	(698)

110. The above data shows that the cash flow and the return on capital employed have deteriorated after significant improvement in the intervening period.

**e) Inventories**

111. Examination of the stock position of the domestic industry shows that the stocks of the Domestic Industry have increased at the close of the Period of Investigation in spite of increase in captive consumption and export sales.

<b>Year</b>	<b>Opening Stock MT</b>	<b>Closing Stock MT</b>
2001-2002	100	100
2002-2003	0	13900
2003-2004	13900	2100
2004-2005	2100	300
POI Annualized	300	2200

**f) Growth**

112. The Authority notes that though there is a healthy growth in demand the performance of the domestic industry in terms of parameters, such as production, sales, market share, profits, cash flow and return on investments shows significant decline.

**g) Ability to raise fresh Investment**

113. The exporters have argued that the domestic industry has not faced any investment problem and is in fact in an acquisition spree. Therefore, their ability to raise fresh investment has not been affected. However, the Authority notes that the domestic industry has not made fresh investments in the subject goods in the period of investigation. The financial performance of the domestic industry has significantly eroded which may have adverse impact on its future ability to raise fresh investments.

**h) Degree of dumping margin**

114. The Authority notes that dumping margins from the subject countries, as an indicator of injury, are found to be significant and above de minimis.

**G.3.4 Overall assessment**

115. The above analysis of the factors shows that in spite of the good demand in the domestic market, improvement in productivity and reduction in its cost of production compared to the previous years, the industry suffers injury on account of decline in production, and sales; low net sales realization; higher inventory built up; negative or low return on investments and profits. The injury suffered is material and significant. Therefore, the arguments of the interested parties that the petitioner domestic industry does not suffer any material injury are not valid.

**G.4. Causal link**

116. The Authority notes that interested parties have argued that the injury to the domestic industry, if any, has been caused by factors other than the imports from the subject countries. It has been argued that the price fixed under Drug Price Control Order is the ceiling price at which the imported goods can be sold in the domestic market. Therefore, their prices to Indian customers and the landed values of their exports are also

guided by the DPCO price. The domestic industry is also selling its goods close to the DPCO price and injury, if any, suffered by the domestic industry on account of its higher cost cannot be attributed to the imports from the subject countries.

117. It has also been argued that DPCO price being the selling price to the ultimate customers their export price take care of reseller's margin. Therefore, the Authority should calculate the injury margin based on the DPCO price and not on the basis of NIP if any, determined by the Authority.

118. In this connection the Authority notes that the landed value of the subject goods from the subject countries are significantly below the DPCO price as well as the selling price of the domestic industry even if a nominal margin for the reseller's margin is considered.

119. Existence of material injury and volume and price effects of dumped imports on the prices of the domestic industry in terms of its price undercutting, price underselling, price suppression, and depression effects have been confirmed in the previous section. However, before examining the issues of non-attribution raised by the interested parties, the mandatory factors have been examined as follows

a) **Imports from Third Countries:** - Imports from countries not under investigation are either insignificant as some of them appear to be sample sales and not commercial sales or at prices higher than the import prices from the subject countries and therefore, do not affect the prices in the domestic industry. Dumped imports account for 94% of total imports during POI;

b) **Contraction in Demand:** - Demand for the subject goods have increased substantially during the injury examination period. Therefore, possible contraction in demand cannot be attributed to the injury to the domestic industry.

c) **Pattern of consumption:** - No significant change in the pattern of consumption has been alleged by any interested party.

d) **Conditions of competition:** - The goods are freely importable. The petitioner is the major producer of the subject goods as the other viable producers have either stopped significant production or turned traders of the subject goods. Therefore, domestic competition could not be attributed to the injury to the domestic industry. No other evidence of conditions of competition or trade restrictive practices has been brought to the knowledge of the Authority.

e) **Developments in technology:-** There is no allegation of significant changes in technology which could have caused injury to the domestic industry. However, no cost disadvantage to the domestic industry due to technological difference has been claimed.

f) **Export performance of the domestic industry:-**

	2001-2002	2002-2003	2003-2004	2004-2005	April 2004 to September
Exports In MT	-	-	****	****	****

The export sale of the domestic industry is substantial and shows significant growth. But the profitability from the export has been negative. The interested parties have argued that the export performance and lower price realization from its export sales have actually affected the domestic industry which cannot be ignored. However, the Authority notes that the performance of the domestic industry has been examined in relation to its domestic sales and the imports from the subject countries for the injury analysis purpose by segregating the prices and profitability in the domestic and export markets. Therefore, injury if any, caused due to the company's export performance has not been attributed to the dumped imports. Therefore, the arguments of the interested parties are not valid.

**g) Productivity:** - Productivity of the domestic industry has improved in terms of total output and productivity per employee. Therefore, this cannot be attributed to the injury of the domestic industry.

120. As far as the arguments of the interested parties that injury caused to the domestic industry is on account of the Government's pricing and tax policies and has nothing to do with the dumped imports, the Authority notes that the landed value of the imports from the subject countries are much less than the DPCO price, even if a reasonable margin for the resellers is considered, indicating thereby that even if DPCO price is taken as the bench mark the dumped import have significant injurious effect on the domestic industry. Therefore, the arguments of the exporters that the Govt. Policies and DPCO prices are sole cause of injury are not valid.

#### **G.5 Factors establishing causal link**

121. Examination of the performance of the domestic industry over the injury period shows that the performance of the domestic industry has materially deteriorated due to dumped imports from subject countries. The dumped import prices and consequently the landed price of imports from the subject countries resulted in significant price undercutting and price underselling. Price under cutting has resulted in significant erosion in the market share of the domestic industry and reduction in absolute volume of sales of the domestic industry. It is also seen that though DPCO price has also prevented the domestic industry from increasing its prices to recover its cost of production, the price pressure of the dumped imports has prevented the domestic industry from increasing its sales volume and realizing its full capacity in spite of a very healthy demand situation in the domestic market.

122. The above non-attribution analysis shows that though there are other factors that could have affected the domestic industry, the dumped imports from the subject countries, through their volume and price effects, have caused significant injury to the domestic industry. The injury caused to the domestic industry on account of such dumped imports from the subject countries is significant and material.

123. The above non-attribution analysis shows that though there are other factors that could have affected the domestic industry, the dumped imports from the subject countries, through their volume and price effects, have caused significant injury to the domestic industry.

124. Therefore, the Authority concludes that the domestic industry suffers material injury and the injury has been caused by the dumped imports from the subject countries alongwith other factors discussed above. However, injury caused to the domestic industry on account of such dumped imports from the subject countries is significant and material.

#### **H. Magnitude of Injury and injury margin**

125. The Authority has determined the non-injurious price for the domestic industry taking into account the cost of production and other associated costs of the domestic producer during the POI taking into account the principles laid down in the Supreme Court Judgment in Reliance Industries Vs Designated Authority which works out to Rs4301.03 per Kg of Vitamin A Palmitate 1.7 MIU/gm.

126. The domestic industry, in its post disclosure submissions, has commented that NIP determination by the Authority is not in conformity with the books of accounts maintained by the Petitioners and the cost audit reports which have been duly certified and audited as mandated under the Drugs (Prices Control) Order, 1995 submitted to the National Pharmaceutical Pricing Authority (NPPA), the government organization formed under the aegis of the Ministry of Chemicals and Fertilizers. It has been argued that NPPA allows for a fair return of 26% as compared to 22% calculated by the Hon'ble Domestic Authority. These factors clearly bring down the Non injurious Prices. The domestic industry has further submitted that DPCO ceiling price level has been increased by NPPA during the investigation period based on the records submitted for the financial year 2005-2006 to Rs4564.50 per Kg. But the Non –Injurious Price fixed for the same period is much lower than the price level fixed by the NPPA.

127. The domestic industry further submits that as per the latest imports data for the period April to June 2007, the imports of the product concerned from China PR and Switzerland show that they have been adjusting the prices downwards and therefore are absorbing the preliminary duties. In order words, the prices of the subject goods from subject countries especially China PR is being further reduced as compared to the prices at which they were imported during the Period of Investigation. Clearly, the price effect is still being felt in the domestic Indian market, whereby the export price has now drastically reduced to absorb the Preliminary Duties and also as a consequence of the reduction of the Customs duty since the original Period of Investigation and due to the strengthening of the India rupee, resulting into the price effect on the Domestic Industry being even worse.

128. The domestic industry has further argued that in view of the above, the duties should be recommended on the basis of the NIP worked out taking into account their cost data and not on the basis as calculated by the Designated Authority in the disclosure statement. However, if the Designated Authority rejects the higher NIP figures as submitted and adopts the DPCO pricing, it should take into consideration the revised DPCO figures which came into effect from 27.3.2007 based on the financial year data 2005-2006 which coincides with the Period of Investigation in the instant investigation.

129. The interested parties have argued that since DPCO price is the maximum price for sale in India this price should be taken into account for determination of injury if any caused to the domestic industry and injury caused to the domestic industry due to the DPCO price during the injury investigation period should not be attributed to the dumped imports. It has been further argued that the DPCO price being the maximum price for sales in India the comparison should take into account a margin for reseller's profit. In support of this some additional information of reseller has been produced by the interested parties after disclosure which could not be taken on record for the reasons stated earlier.

130. The Authority notes that the export transactions of these exporters are to direct customers as well as resellers. The importers have not provided any information about their reselling price and SGA expenses incurred or profit earned by them on such imports. Therefore, the Authority does not find any justification to make such allowance for the reseller's profit margin on the DPCO prices for comparison purpose and determination of injury margin.

131. The Authority also notes that in the instant case the NIP has been determined based on the data for the period of investigation as per the consistent practice of the Authority. The NIP has been determined as Rs4301.03 per Kg of Vitamin A Palmitate 1.7 MIU/Gm. The current DPCO price fixed by NPPA is Rs4564.50 per Kg with effect from 27.03.2007, supposed to have been fixed on the basis of cost data for the period 2005-2006. There is a significant difference in the period for which data has been examined by the Authority, i.e., 18 months from 1st April 2004 to 30th September 2005, against 12 months data supposed to have been examined by NPPA for April 2005-March 2006. Further apparently, the rate of return adopted by NPPA and the Authority are different. Therefore, it would not be appropriate to adopt NPPA current price under DPCO for injury margin determination. By the same logic the NPPA price for the earlier period would also not be appropriate to determine the injury margin in this case. Therefore, the Authority has compared the NIP determined as above with the landed value of imports to work out the injury margins.

132. However, the Authority notes that during the injury investigation period the DPCO ceiling price had set the maximum price at which the domestic industry could have sold the goods in the domestic market. Therefore, as per the non-attribution standards, any injury, which could have been caused to the domestic industry due to this ceiling price, cannot be attributed to the dumped imports and the injury margin of the dumped imports needs to be restricted to the extent to which the dumped imports were below the DPCO price prevalent during the investigation period. Accordingly, the injury margin that can be attributed to the dumped imports work out as under:

Country	Exporter	NIP	LV	DPCO Price during POI	Injury Margin	Injury attributed to dumped imports	Injury attributed to dumped imports
		Rs/Kg	Rs/Kg	Rs/Kg	Rs/Kg	Rs/Kg	%
Switzerland	DSM Nutritional Products	*****	*****	4125.9	*****	*****	5-15%
Switzerland	All Others	*****	*****	4125.9	*****	*****	15-25%
China PR	NHU with Synchem	*****	*****	4125.9	*****	*****	10-20%
China PR	All others	*****	*****	4125.9	*****	*****	25-35%

## I. Conclusions

133. 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:

- i) The subject goods have entered the Indian market from the subject countries at prices less than their normal values in the domestic markets of the exporting countries;

ii) The dumping margins of the subject goods imported from the subject countries/territories are substantial and above de minimis;

iii) The domestic industry suffers material injury; And

iv) The injury has been caused to the domestic industry both by volume and price effect of dumped imports of the subject goods originating in or exported from the subject countries alongwith other factors.

#### **J. Indian industry's interest & other issues**

134. 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 in any way, and, therefore, would not affect the availability of the products to the consumers.

#### **K. Recommendations**

135. Having initiated and conducted 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 against the subject countries, as well as material injury to the domestic industry caused by such dumped imports, the Authority is of the view that imposition of definitive duty is required to offset dumping and injury to the domestic industry. 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.

136. 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, the Authority recommends that definitive anti dumping duties be imposed on all imports of the subject goods falling under chapter 28 of Custom Tariff Classification Act 1975, originating in or exported from China PR and Japan, to be collected definitively from the date of imposition of the provisional duty. The anti-dumping duty shall be the amount mentioned in Column No. 9 of the duty table annexed herewith.

137. Subject to the above the provisional findings, notified vide notification dated 23rd February 2007, are hereby confirmed

#### **L. Further Procedures**

138. An appeal against the orders of the Central Government that may arise out of this recommendation shall lie before the Customs, Excise and Service tax Appellate Tribunal in accordance with the relevant provisions of the Act.

139. The Authority may review the need for continuation, modification or termination of the definitive measure as recommended herein from time to time as per the relevant provisions of the Act and public notices issued in this respect from time to time. No request for such a review shall be entertained by the Authority unless the same is filed by an interested party as per the time limit stipulated for this purpose.

**R. Gopalan**

**Designated Authority**

**Duty Table**

Sl. No	Sub-heading	Description of goods	Specifi- cation	Country of origin	Country of Export	Producer	Exporter	Amount	Unit of Measurement	Currency
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
1.	293621	Vitamin-A Palmitate	Any	Switzerland	Any	DSM Nutritional Products, AG Switzerland	DSM Nutritional Products Asia Pacific Pts Ltd, Singapore	313	KG	Rs
2	-Do-	-Do-	Any	Switzerland	Any other than China	Any other than above	Any	690	KG	Rs
3	-Do-	-Do-	Any	Any other than China	Switzerland	Any	Any Synchem	690	KG	Rs
4	-Do-	-Do-	Any	China PR	Any	Zhejiang NHU Company Ltd	International Company Ltd.	590	KG	Rs
5	-Do-	-Do-	Any	China PR	Any	Any other than above	Any	941	KG	Rs
6	-Do-	-Do-	Any	Any	China PR	Any	Any	941	KG	Rs