

**Government of India
MINISTRY OF COMMERCE & INDUSTRY
DEPARTMENT OF COMMERCE
(DIRECTORATE GENERAL OF ANTI-DUMPING & ALLIED DUTIES)**

NOTIFICATION

NEW DELHI, the 10th February, 2012

CESTAT REMANDED POST DECISIONAL HEARING FINDINGS

Subject: 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 and thereafter (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, as amended from time to time (hereinafter referred to as the Rules) thereof:

Background of the case:

- 1) M/s Nicholas Piramal India Limited (NPIL) had filed an application before the Designated Authority (hereinafter referred to as the Authority) under the above referred Act and the Rules, alleging dumping of Vitamin-A Palmitate (hereinafter referred to as the subject goods) and consequent injury, originating in or exported from Switzerland and China PR (hereinafter referred to as the subject countries), and requested for levy of anti-dumping duties on the imports of the subject goods from the subject countries.
- 2) The product involved in the subject 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.

- 3) The Authority initiated an anti-dumping investigation in respect of the imports of the subject goods, originating in or exported from the subject countries; vide Notification No. 14/11/2005-DGAD dated 23rd March 2006. The period of the said investigation (POI) was from 1st April 2004 to 30th September 2005 and the injury period covered 2000-01 to 2003-04.
- 4) In response to the notice of initiation, the interested parties including the appellant before the CESTAT filed response in the prescribed proforma and also made written submissions.
- 5) The Authority issued the preliminary findings vide Notification No. 14/11/2005-DGAD dated 20th February 2007 recommending provisional duty on the imports of the subject goods, originating in or exported from the subject countries, and the Department of Revenue imposed the provisional duty vide Notification No. 47/2007-Customs dated 28th March, 2007.
- 6) M/s DSM Nutritionals Product Ltd (DNP) filed detailed comments on the preliminary findings, wherein they pointed out, that the examination of the injury parameters on the basis of the information submitted by domestic industry, clearly shows a total absence of injury. The determination of the Non Injurious Price (NIP) was also challenged on the ground that under the Drugs Price Control Order (DPCO) a maximum price had been fixed under law and therefore, the NIP could not be fixed without regard to such price, as the domestic industry could not have sold its products at a price above that fixed under the DPCO.
- 7) The Authority issued the final findings on 14th September 2007 recommending definitive duty on the imports of the subject goods, originating in or exported from the subject countries and the Department of Revenue imposed the definitive duties vide Notification No. 112/2007-Customs dated 30th October, 2007. This definitive duty was made effective from 28.3.2007 i.e., the date of the imposition of the provisional duty.

8) Aggrieved by the final findings issued by the Authority on 14th September 2007 and the Custom notification issued by the Department of Revenues vide Notification No. 112/2007-Customs dated 30th October, 2007, M/s DSM Nutritional Product Ltd, having its registered office in Switzerland, filed an appeal before the Central Excise and Service Tax Appellate Tribunal (CESTAT) New Delhi, under Section 9(C) of the Custom Tariff Act 1995.

9) The Hon'ble CESTAT, New Delhi, vide its order dated 11.08.2011, disposed the petition. The operative part of the said order, inter alia, is as follows:

“15. Accordingly we allow these appeals by remand to the DA for affording post-decisional hearing to the appellants and for making such modifications to the final findings as may be necessary as a result of such post-decisional hearing. The respondent-domestic industry and other interested parties, if any, shall also be allowed to participate in such post-decisional hearing. Any modifications made in the final findings would be considered by giving effect to the same by the Government by carrying out the necessary amendments to the impugned notifications imposing anti-dumping duty. This process shall be completed within 6 months from the date of this order and status quo-shall be maintained-meanwhile. Since we are allowing these appeals by remand, the related stay petitions, MAs and COs stand disposed off.”

10) In compliance with the said orders of the CESTAT and without prejudice to the rights of the Designated Authority to challenge the said orders dated 11th August, 2011 of Hon'ble CESTAT on the matters of law and principle, the Authority held a post decisional oral hearing for the known interested parties on 13th December 2011.

11) The essential facts of the action of the Authority pursuant to the post decisional hearing held by the Authority in compliance with the orders dated 11th August 2011 of Hon'ble CESTAT were disclosed to the interested parties by the Authority and comments received thereon have been examined and addressed by the Authority at respective areas of this finding.

- 12) *** in this finding statement represents information furnished by an interested party on confidential basis and so considered by the Authority under the Rules.
- 13) The submissions made by the interested parties in the written form, who attended the post decisional oral hearing are as follows:
- 14) The representatives of the following interested parties attended the post decisional oral hearing held by the Authority on 13th December, 2011 and made oral submissions:
- a) M/s Nicolas Piramal India Ltd. (NPIL)
 - b) M/s DSM Nutritionals Product Ltd. (DNP)
- 15) The submissions made by the interested parties in writing, pursuant to the post decisional oral hearing, are as follows:

SUBMISSIONS MADE BY M/S DSM NUTRITIONAL PRODUCTS LTD

Submissions concerning scope of Domestic Industry and Standing

- i. Nicholas Piramal is not a Domestic Industry as they have progressively moved away from manufacturing from Citral route to simply buying Vitamin A Acetate 2.8 miu/gm for single step conversion into Palmitate 1.7 miu/gm. During the hearing, it was admitted by the Counsel for Nicholas Piramal that at least from December 2010, the company has stopped production of Vitamin-A Palmitate from the basic stage and that they are presently only undertaking activities for conversion of Vitamin A Acetate to Vitamin A Palmitate.
- ii. The two forms of Vitamin A are like articles. Vitamin A Palmitate and Vitamin A acetate, can be used interchangeably, and are merely sub types of Vitamin A. The activity of conversion from one form of Vitamin A to another would not make Nicholas Piramal a domestic industry.

- iii. As Piramal is no longer a domestic industry, its right of participation, in the proceedings is also defeated. Piramal's factual submissions as to the nature of their manufacturing activities are misleading. The so called '*different production process*' is one of conversion from Vitamin A acetate to Vitamin A Palmitate. The conversion is not a process amounting to manufacture or production.
- iv. Mere fact that excise duty may have been paid on such activity, would not make it manufacture or production. Excise duty is paid by virtue of Note 10 to Chapter 32 of the Schedule to the Central Excise Tariff Act covering vitamins, which provides that packing, repacking, relabeling or carrying out any process to make the product marketable, would amount to manufacture.

Submissions relating to confidentiality

- i. Neither the dumping margin, nor the injury margin calculation has been disclosed to DSM.
- ii. The Authority has failed to disclose the confidential calculations for the dumping and injury margins. The dumping margin is based exclusively on the information provided by the exporter, and therefore, the same ought to have been provided. Similarly, the final injury calculation is based on the DPCO prices, which are in the public domain.

Submissions relating to Export Price, Normal Value, Dumping Margin and Injury Margin

- i. Authority has determined normal value and dumping margin erroneously. In a situation where there are no sales, or when because of the particular market situation or low volume of sales in the domestic market of the exporting country, such sales do not permit a proper comparison, the normal value is to be determined on the basis of third country export prices. DSM submits that sales in Switzerland are less than 2% of the total sales of the subject goods

by the company and, therefore, are not representative for determination of normal value. The appropriate market for determination of normal value is the European Union and not Switzerland.

- ii. A number of factors, other than the imports, such as a reduction in customs duty, appreciation of the rupee etc have caused injury to the domestic industry. Injury was also caused by DPCO prices fixed by the Government during the relevant period, which prevented the domestic industry from raising its prices.
- iii. The capacity utilisation has been given for all products and not for subject goods and, therefore, the figures provided are not relevant to the investigations.
- iv. The data for the period during which anti-dumping duties were in force on imports from the EU, 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. This was a temporary situation and after the duties were removed, competitive imports came into the Indian market from various sources. The information provided does not reflect a natural or potential decline in sales of the domestic industry.
- v. DSM denies that its exports have resulted in price underselling and price undercutting. The sale price of the domestic industry to resellers would naturally be lower than DPCO prices, so as to provide for the expenses and profit margin of the resellers. The average sale price of the domestic industry has to be lower than DPCO prices. Had the sales been made at DPCO prices, there could have been no losses. In view of this factual position, the finding of the Authority, that the landed value of imports from DSM was lower than the sale price of the domestic industry is unjustified, as the landed value of imports is near about the DPCO prices.

- vi. The cost to make and sell of the domestic industry has reduced drastically by almost 50%, whereas the selling price has reduced by about 15%. A marginal decline in prices should not have resulted in significant losses.
- vii. Exports at low prices resulted in heavy losses for the domestic industry. It is unthinkable as to why the domestic industry finds the export prices remunerative, and chooses to increase its exports, whereas, it contends that much higher prices in the local market are causing it injury.
- viii. The productivity of the domestic industry has doubled since 2001-02. These figures are, however, not for the subject goods.
- ix. The observation that the return on capital employed has deteriorated significantly is not supported by figures.
- x. The inventories are not unduly high and not indicative of injury.

Miscellaneous Submissions

- i. The duties are in excess of the injury alleged to have been caused.

A. Submissions by M/s Piramal Healthcare Ltd (earlier known as M/s. Nicholas Piramal India Limited

Submissions concerning scope of Domestic Industry and Standing

- i. M/s Piramal Healthcare Ltd (“M/s Nicolas Piramal India Ltd.” as it was known during the original Period of Investigation), the Domestic Industry, had temporarily shut down operations at their plant in Thane, Maharashtra with effect from 30th September 2010 in order to shift the operations to another plant which is now situated at Digwal, Andhra Pradesh with effect from December 2010 and commercial production of the product under consideration has resumed at the new plant. M/s Piramal Healthcare Ltd is obviously qualified as the Domestic Industry for the product under consideration and accounts for complete production of subject goods in India. M/s Piramal Healthcare Ltd. (“M/s Nicolas Piramal India Ltd.” as it

was known during the original Period of Investigation) continues to be the sole producer of the subject goods in India.

- ii. Due to the continued and incessant dumping of the subject goods from the subject countries, the Domestic Industry was forced to stop manufacturing from the basic stage and change the manufacturing site and process, in order to effectively compete with the unfair imports from the subject countries.

Submissions relating to confidentiality

- i. The Designated Authority is not liable to provide complete calculations of export price, dumping margin, injury margin etc to DSM as claimed by them. They themselves provided data selectively.
- ii. While allegation of over confidentiality has been raised by DNP, they have not even disclosed the total sales data of Switzerland to the Authority.

Submissions concerning scope of the PUC

- i. Product under consideration has been defined by the Authority as Vitamin A Palmitate, which covers Vitamin A Palmitate 1.7MIU/gm and Vitamin A Palmitate 1.0 MIU/gm in all its strengths and forms. Hence, the issue of the scope of the Product under consideration and “like articles” has been appropriately decided by the Authority and is not liable for any modification.
- ii. It is denied that Vitamin A Acetate crystals and Vitamin A Palmitate 1.7 are like articles. The crystals are in acetate form and the Domestic Industry is the only domestic manufacturers with the technological know-how and infrastructure to convert Vitamin A crystals into vitamin A Palmitate 1.7.

Submissions relating to Export Price, Normal Value, Dumping Margin and Injury Margin

- i. The 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 Anti-dumping

Rules. Authority has determined normal value and dumping margin for DSM correctly. The allegation of DSM to that extent is false.

- ii. The Designated Authority has not recommended the duties to the extent of the benchmark of DPCO prices, despite the submissions made in this behalf by the Domestic Industry. The Designated Authority has appropriately decided the issue in the Final Findings dated 14th September, 2007 and therefore the allegation of DSM in this regard is liable to be rejected.
- iii. Authority mandates co-operating importers to file a comprehensive Importers Questionnaire Response supported with necessary documentary evidence in this regard. However, no such response appears to be filed by the said reseller within the prescribed time-limits. Hence, accepting the information of the said reseller would amount to unfairly circumventing the established practice. Designated Authority justifiably declined from making any adjustment for the re-sellers profit margin on the DPCO prices.
- iv. The submission that the website of the National Pharmaceutical Pricing Authority (NPPA) should be relied is wholly irrelevant as the margins referred to therein pertain to formulations and not bulk drugs.
- v. The import data indicates that dumped imports of the subject goods from the subject countries had increased substantially during the injury period.
- vi. The increase in capacity utilization mentioned by DSM is in respect of Vitamin A crystals are due to increase in demand of commercial premixes. Vitamin A crystals are used for captive consumption in manufacture of food & feed premixes. The production of Vitamin A Palmitate 1.7 has not increased significantly during the Period of Investigation.
- vii. The subject goods produced by the domestic industry grew steadily, but fell significantly during the Period of Investigation.
- viii. The domestic sales and total sales of the domestic industry followed a similar trend and after increasing significantly up to 2003-04, declined significantly.

- ix. The dumped imports from the subject countries increased in absolute term as also in relation to imports into India, production in India and consumption in India.
- x. The volume of imports increased more than the increase in demand affecting the market share of the Domestic Industry.
- xi. The dumped prices and consequently the landed price of imports from the subject countries have been lower than the net sales realization and non-injurious price of the domestic industry, thus resulting in significant price undercutting and price underselling.
- xii. The submissions of DSM concerning decline of profits is false and based on mere conjecture. In fact, there have been negligible exports of the Product under consideration as compared to sales in domestic market in the last 5 years. Thus, it is clearly due to the constant pressure on the Domestic Industry as a result of dumped imports, significant losses have been experienced in the domestic sales and have plunged the situation into financial losses from a situation of profits.
- xiii. The number of employees has declined, whereas the wages of the Domestic have significantly increased over the injury period.
- xiv. Due to the financial losses, the cash flow and the return on capital employed also deteriorated considerably during the injury period.
- xv. The allegations made by DSM in its appeal that there is no injury to the Domestic Industry are false, misconceived and unsubstantiated.

Miscellaneous Submissions

- i. The re-adjudicating authority cannot go beyond the remand order and the powers and jurisdiction of lower authority is limited to the extent the case is remanded back. In the instant case, the Designated Authority is restricted from adjudicating any new issues, which are beyond the order of the CESTAT.
- ii. Petitioners did not contest in their appeal before CESTAT on the ground that the Designated Authority, who had heard, did not pass the final finding. All

claims and issues raised by M/s DSM Nutritional relate to the status of M/s Piramal Healthcare as the Domestic Industry.

- iii. Designated Authority has accepted the data of DSM even when they have been non-cooperative throughout the investigation.
- iv. No second hearing before the new Designated Authority is required as none of the parties sought any fresh hearing before the new Designated Authority. Hence, the impugned order of the Hon'ble CESTAT does not apply in the instant case.
- v. DSM could have filed a Mid-Term Review in 2006 when it has been alleged that the Domestic Industry was importing the Vitamin A Acetate crystals. DSM has not filed any such review under Rule 23 of the Rules establishing any such 'change in circumstances' nor has DSM modified its Appeal in this regard.
- vi. Authority should hold DSM "non-co-operative" and rightfully recommend residual duties for DSM in place of the individual margin unfairly granted to DSM.

Comments on the Disclosure statement

16)The comments have been received by the Authority from both domestic industry and M/s DSM. The domestic industry has broadly concurred with the facts as detailed in the disclosure statement. However, M/s DSM have reiterated its earlier submissions with regards to determination of dumping margin, determination of injury margin and non disclosure of some parameters on dumping margin calculations, while accepting the standing of Nicholas Piramal as domestic industry during the POI. The Authority notes that the submissions of the interested parties on all the parameters, to the extent considered relevant, have already been dealt with at appropriate places in these findings. Accordingly, these findings covers the comments of the all the interested parties made in the course of the investigation including the post decisional hearing held by the Authority on 13th December 2011.

EXAMINATION BY THE AUTHORITY

17) The submissions made by the interested parties, to the extent considered relevant, are addressed by the Authority as under:

Scope of Domestic Industry and Standing

- i. As regards submissions by the interested parties on the standing of the domestic industry, the Authority notes that in its final findings dated 14th September 2007, M/s Nicolas Piramal India Ltd. (NPIL), being the sole known producer of the subject goods in India, was considered as domestic industry satisfying the provisions laid down under the Rules. During the entire course of the investigation, none of the interested parties had raised any issue regarding M/s NPIL not being eligible to file the petition.
- ii. The contention by M/s DNP that M/s NPIL have stopped the production of Vitamin-A Palmitate from the basic stage from December 2010 is irrelevant for the present investigation, the same being a post-POI development. Moreover, any change in the process/technology of production of the product under consideration, does not disentitle the domestic producer from the status of 'domestic industry', provided it continues to produce the product under consideration. If the opposite interested parties had to challenge the continued status of the domestic industry, they could have applied for a mid-term review, substantiating the changed circumstances with adequate documentary support. The Authority notes that the period of investigation in the subject investigation was from 1st April 2004 to 30th September 2005 (18 months period). Therefore, any subsequent developments with regard to the changes in the manufacturing process and/ or continuation or discontinuation of manufacturing of the subject goods by the domestic industry, are not relevant to the scope of the present remand proceedings. In case there is any change in the structure of domestic industry, post-POI, the interested

parties can still seek review for the changed circumstances, if any, in terms of the relevant provisions of the Anti-Dumping Rules. In view of the above, the Authority reaffirms the standing of M/s Piramal Healthcare Ltd ("M/s Nicolas Piramal India Ltd." as it was known during the original Period of Investigation) as the domestic industry, within the meaning of the Rules.

iii. On the one hand, the opposite interested parties argue that Vitamin A Palmitate and Vitamin A Acetate are like articles and at the same time allege that Nicholas Piramal is not a domestic industry as they are presently engaged in converting Vitamin A Acetate in to Vitamin A Palmitate. The Authority notes that when an intermediate input is converted in to a final product, through a chemical process, the process of conversion does constitute manufacturing and the two cannot constitute like articles. Moreover, change in the route/technology/process of production does not disentitle a domestic producer from the status of domestic industry, as long as it is engaged in the production and supply of the subject goods.

Export price, normal value, dumping margin:

iv. The Authority notes that the petitioners before the Hon'ble CESTAT M/s DNP have primarily contested the determination of normal value based on the domestic sales in Switzerland, which are stated to be less than 2% of the total sales of the subject goods and hence, not representative for determination of the normal value. M/s DNP have also contested that some of its claims with regard to the level of trade, sales based on different levels of order quantities etc were not considered by the Authority in its findings dated 14th September 2007. However, no additional information supported by documentary evidence has been furnished by M/s DNP to substantiate its claim in this regard.

v. While examining the submissions of the interested parties, the Authority in the final findings dated 14th September 2007 had observed as under:

*"59. The Authority notes that the exporter sold *** Kg of Vitamin A palmitate 1.7 MIU/Gm and *** kgs of 1.0 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:

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

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:

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

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

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 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.”

18) The Authority notes that all the submissions of M/s DNP, as regards determination of normal value, export price and dumping margin are concerned, to the extent considered relevant by the Authority and duly substantiated by the interested parties, were examined and addressed by the Authority in its final findings dated 14th September 2007. In view of the above the Authority reaffirms the normal value, export price and dumping margin determined in respect of M/s DNP, Switzerland in the final findings issued by the Authority.

Injury and Causal Link

19) It has been argued by M/s DNP that the injury has been caused to the domestic industry due to the subject goods being controlled by the Government under Drug Price Control Order (DPCO). The Authority notes that any injury to the domestic industry for the reasons other than the dumped imports needs to be assessed and segregated. In this regard the Authority in its final findings, dated 14th September 2007 noted as under:

*“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 Rs *** 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%

20) The analysis as above clearly demonstrates that the submissions of M/s DNP with regard to injury on account of DPCO controlled prices were duly

addressed and considered by the Authority in the final findings issued on 14th September, 2007.

- 21) The Authority in its final findings dated 14th September 2007 further observed as under:

“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.”

- 22) In view of the above, the Authority notes that the submissions made by DNP that the injury has been caused to the domestic industry due to the subject goods being controlled by the Government under Drug Price Control Order (DPCO) and not due to the dumped imports, are unfounded and baseless.

- 23) As regards the submissions by M/s DNP for the sales price to the resellers being lower than the DPCO prices in order to provide for profit margins and the expenses of the sellers, the Authority in its final findings dated 14th September 2007 noted as under:

“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.

24) *Although, the submissions regarding adjustment of resellers margin was made by M/s DNP post disclosure, nevertheless the same has already been addressed by the Authority in the final findings dated 14th Sep. 2007 as under:*

“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.”

25) *M/s DNP, Switzerland has also reiterated submissions on other aspects of injury analysis, which inter-alia includes capacity utilization, reduction in custom duty, export price being lower than domestic selling price, productivity of the domestic industry, returns on capital employed etc. The Authority notes that the submissions of the interested parties to the extent considered relevant by the Authority, have already been addressed by the Authority in its final findings dated 14th September 2007. The Authority in its conclusions on the injury to the domestic industry noted as under in the final findings dated 14th September 2007:*

“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.”

Confidentiality

26) As regards the submission by M/s DNP that the information on the workings of dumping margin and the injury margin calculations has not been disclosed to them by the Authority, the Authority notes that the calculation of injury margin is based on the NIP of the domestic industry and therefore being confidential in nature, cannot be disclosed. As far as information on the workings of dumping margin is concerned, M/s DNP in their comments dated 31st August, 2007 on the disclosure statement issued by the Authority, stated as under:

“We further submit that there appears to be a calculation error in the dumping margin. The average weighted normal value as per figure provided should be ***, and the weighted export price should be ***.

This would give a dumping margin of ***.”

The above stated comments of M/s DNP imply that they were very much aware of the required information.

Miscellaneous Submissions

27) As regards the submission of M/s DNP that the duties imposed are in excess of the injury alleged to have been caused, the Authority notes that the duties recommended by the Authority in its final findings dated 14th September, 2007, are lesser of the margins of dumping and injury and thereby reasonable as per the Rules.

Conclusion and Recommendation

28) After examining and addressing the submissions made by the interested parties pursuant to the post decisional hearing held by the Authority, in compliance with the orders dated 11th August 2011 by the Hon'ble CESTAT, the Authority notes that no modification is warranted in the final findings issued by the Authority vide Notification No.14/11/2005-DGAD dated 14th September, 2007. The Authority, therefore, hereby re-affirms its findings made vide Notification No. 14/11/2005-DGAD dated 14th September, 2007 and the recommendations made therein.

Vijaylaxmi Joshi
Designated Authority