

F. No.15/31/2013-DGAD
GOVERNMENT OF INDIA
MINISTRY OF COMMERCE & INDUSTRY
DEPARTMENT OF COMMERCE
(DIRECTORATE GENERAL OF ANTI-DUMPING & ALLIED DUTIES)
4th Floor, Jeevan Tara Building, Parliament Street, New Delhi -110001

Dated, the 23rd March 2015

NOTIFICATION
(Final Finding)

Subject: - Final Findings in the Sunset Review (SSR) anti-dumping investigation concerning imports of Vitamin E originating in or exported from China PR-reg.

F. No.15/31/2013-DGAD: WHEREAS, the original investigation concerning imports of Vitamin E (herein after referred to as the subject goods), originating in or exported from China PR (hereinafter referred to as the subject country), was initiated by the Designated Authority (hereinafter referred to as the Authority) vide Notification No. 14/32/2002-DGAD dated 27th August, 2002. The Preliminary Finding was issued by the Authority vide Notification No. 14/32/2002-DGAD dated 2nd December, 2002 and the provisional anti-dumping duty was imposed by the Department of Revenue vide Notification No. 41/2003-Customs on 7th March 2003. The Final Findings Notification was issued by the Authority vide Notification No. 14/32/2002-DGAD dated 22nd August, 2003; recommending imposition of definitive duty. On the basis of the recommendations made by the Authority in the final findings, a definitive anti-dumping duty was imposed by the Central Government vide Notification No. 145/2003-Customs dated 6th October, 2003 on the imports of the subject goods, originating in or exported from the subject country.

2. Whereas, the Designated Authority (DA) had initiated first sunset review vide notification No. 15/10/2008-DGAD dated 7th March, 2008. The final finding with respect to the said first sunset review, was notified by the Authority vide Notification No 15/10/2008-DGAD dated 5th March, 2009. On the basis of this recommendations made by the Authority in the final findings, a definitive anti-dumping duty was imposed by the Central Government vide Notification No.33/2009 Customs dated 27th March, 2009 and made the antidumping duty effective for a period of five years.

3. Whereas, Merck Limited have filed a duly substantiated application on behalf of the domestic industry before the Authority and in accordance with section 9A(5) of the Act, read with Rule 23 of the Anti-dumping Rules, the Authority initiated second sunset review investigation vide Notification dated 24th March, 2014 to review the need for continued imposition of the anti dumping duties in respect of the subject goods, originating in or exported from the subject country, and to examine whether the expiry of such duty is likely to lead to continuation or recurrence of dumping and injury to the domestic industry. The validity of the antidumping duty on the imports of the subject goods from the subject country was extended by the Central Government up to 26th March, 2015 vide Notification No.16/2014-Customs (ADD) dated 9th May, 2014.

A. PROCEDURE

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

a) The Embassy of the subject country in New Delhi was informed about the initiation of the investigations in accordance with Rule 6(2) of Customs Tariff Rules, 1995

b) The Authority provided copies of the non-confidential version of the application to the known exporters and the Embassy of the subject country in accordance with Rule 6(3) supra. A copy of the non-confidential version of the application was also made available in the public file and provided to other interested parties, wherever requested.

c) The Authority forwarded a copy of the public notice to the following known producers/exporters in China PR (whose names and addresses were made available to the Authority) and gave them opportunity to make their views known in writing within forty days from the date of the letter in accordance with the Rules 6(2) & 6(4):

- (i) M/s Zhejiang Nhu Company Limited
- (ii) M/s. Zhejiang Xinchang Pharmaceuticals Company
- (iii) M/s. Hangzhou Toyond Biotech Co. Ltd.
- (iv) M/s. Vega Pharma Limited
- (v) M/s. Xi'an Rainbow Biotech Co. Ltd.
- (vi) M/s. Qingdao Sunrise Trading Co. Ltd.
- (vii) M/s. Anhui Medifarm Co. Ltd.

d) No response or submission has been filed by any of the producers/exporters from the subject country.

e) A Market Economy Treatment (MET) questionnaire was also forwarded to all the known producers/exporters and the Embassy of China PR with the request to provide relevant information to the Authority within the prescribed time. While for the purpose of initiation the Normal value in China PR was considered based on the cost of production of the subject goods in India, duly adjusted, the Authority informed the known producers/exporters from China PR that it proposes to examine the claim of the applicant in the light of Para 7 and Para 8 of Annexure I of Anti-dumping Rules, as amended. The exporters/producers of the subject goods from China PR were, therefore, requested to furnish necessary information/sufficient evidence as mentioned in sub-paragraph (3) of paragraph 8 to enable the Authority to consider whether market economy treatment can be granted to the cooperative exporters/producers. However, no response has been received from any of the producers/exporters of China PR in this regard.

f) The Authority forwarded a copy of the public notice to the following known importers/consumers (whose names and addresses were made available to the Authority) of subject goods in India and advised them to make their views known in writing within forty days from the date of issue of the letter in accordance with the Rule 6(4):

- (i) M/s C.J Shah & Co., Mumbai
- (ii) M/s Cadila Pharmaceuticals Ltd., Ahmedabad.
- (iii) Glenmark Pharmaceuticals Ltd., Mumbai.
- (iv) Medi Pharma Drug House, Mumbai.
- (v) Nandlal Bankatlal Pvt. Ltd., Mumbai.
- (vi) Nav Maharashtra Chakan Oil Mills, Pune.
- (vii) M/s Sheetal Pharma., Mumbai.
- (viii) Sundar Chemicals Pvt. Ltd., Chennai.
- (ix) Universal Medicare Pvt. Ltd., Mumbai

g) No response or submission has been filed by any of the importers/ users/ associations or any other interested parties.

h) The Period of Investigation (POI) for the purpose of the present review was 1st January, 2013 to 31st December, 2013. The examination of trends in the context of injury analysis covered the periods January-December 2010, January-December 2011, January-December 2012 and the POI.

i) The domestic industry had relied upon the data from the secondary sources i.e. IBIS. Request was made to the Directorate General of Commercial Intelligence and Statistics (DGCI&S) to arrange details of imports of subject goods for the injury period including the POI and also the post-POI. Since during the POI the volume of the imports of the subject goods from the subject country, is higher as per the IBIS source, the Authority has relied upon the data from the IBIS source in the present investigation.

j) Exporters, producers, importers and other interested parties who have neither responded to the Authority nor supplied information relevant to this investigation have been treated as non-cooperating parties by the Authority.

k) The Authority had 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 as per Rule 6(7) of Custom Tariff Rules, 1995.

l) The Authority has examined the information furnished by the domestic producers to the extent possible on the basis of guidelines laid down in Annexure III to work out the cost of production and the non-injurious price of the subject goods in India so as to ascertain if anti-dumping duty lower than the dumping margin would be sufficient to remove injury to the domestic industry.

m) In accordance with Rule 6(6) of the AD Rules, the Authority also provided opportunity to all interested parties to present their views orally in a public hearing held on 9th January, 2015, which was attended only by the domestic industry and their representatives. The domestic industry which only presented its views in the oral hearing was requested to file written submissions of the views expressed orally.

n) The submissions made by the domestic industry and other interested parties during the course of the investigation and considered relevant by the Authority have been examined and addressed in this investigation.

o) Verification of the information and data submitted by the interested parties was carried out to the extent deemed necessary.

p) Information provided by the interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has accepted the confidentiality claims wherever warranted and such information has been considered as confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non-confidential version of the information filed on confidential basis.

q) Wherever, an interested party has refused access to, or has otherwise not provided necessary information during the course of present investigation, or has significantly impeded the investigation, the Authority has recorded these essential facts on the basis of the facts available and treated such parties as non-cooperative.

r) A Disclosure Statement containing the essential facts in this investigation which would have formed the basis of the Final Findings was issued to the interested parties on 10.03.2015. The post Disclosure Statement submissions were received from the Domestic Industry only and have been considered, to the extent found relevant in this Final Findings Notification.

s) The submissions made by the interested parties considered relevant by the Authority have been addressed in this Final Findings Notification.

o) ***in this Final Findings Notification represents information furnished by an interested party on confidential basis and so considered by the Authority under the Rules.

p) The exchange rate for the POI has been taken by the Authority as Rs.58.95 = 1 US\$.

B. SCOPE OF PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE

5. The product under consideration (PUC) in the previous investigations as well as the present Sunset Review investigation is Vitamin-E in all forms, excluding natural forms, originating in or exported from China PR. The present investigation being a 2nd sunset review, the investigation covers the product as in the original and subsequent sunset review investigations. Vitamin E Acetate is the stable form of Vitamin E, most often used in cosmetic formulations for its skin care benefits. Vitamin E protects cell membranes from damage by oxygen free radicals. It can prevent premature aging of the skin induced by UV irradiation and lipid peroxidation. Whereas, Vitamin E feed grade is used in the preparations for animal feed.

6. The Authority notes that none of the interested parties has contested the meaning and scope of the product under consideration as defined by the Authority. The Authority further notes from the information available on record that the product under consideration produced by the domestic industry is like article to the goods imported from the subject country. Product under consideration produced by the domestic industry and imported from the subject country are comparable in terms of physical & chemical characteristics, manufacturing process & technology, functions & uses, product specifications, pricing, distribution & marketing and

tariff classification of the goods. It is further noted that the Designated Authority has examined the issue of product under consideration and like article in the previous two investigations, which is relied upon. The goods produced by the domestic industry and imported from the subject country are like articles in terms of the Rules. The two are technically and commercially substitutable.

7. The product, Vitamin E-Acetate is classified in Chapter 29 under Customs Classification 2936 28 00 of the Customs Tariff Act whereas Vitamin-E (50% dry powder) feed grade is classified in Chapter 23 under Customs Classification 2309 90 10. However, the above classification is indicative only and is no way binding on the investigation.

C. DOMESTIC INDUSTRY AND STANDING

Submissions by the Domestic Industry

8. The following are the submissions made by the domestic industry with regard to scope of the domestic industry and standing:

(i) The petition has been filed by M/s. Merck Ltd. Another company M/s. Soham Organics Ltd., Nashik also produces the product. The other manufacturer has no objection to the petition though they have not submitted any letter to that effect.

(ii) The petitioner has 84% share in the Indian production during the POI and, therefore, constitutes domestic industry. Further, the scope of domestic industry and standing are not relevant in a sunset review.

Submissions by producers/exporters/importers/other interested parties

9. None of the producers/exporters/importers/other interested parties has made any submissions in this regard.

Examination by Authority

10. The Authority notes that the application in the present Sunset Review investigation has been filed by M/s Merck Ltd. as the domestic industry.

11. The Authority further notes that M/s Soham Organics also produces the product. As per the information provided by the domestic industry, M/s Merck Ltd commands 84% share in Indian production in the POI. The production of the applicant constitutes major portion of the total production of the subject goods and, therefore, applicant constitutes the domestic industry. Moreover, as regards the standing and scope of domestic industry, there is no opposition from any interested party in the present investigation. In view of the above position and having regard to the Rules and information on record, the Authority holds that M/s Merck Ltd., accounts for a major proportion in Indian production of the subject goods and constitutes domestic industry within the meaning of the Rules and has standing under the Rules.

D. Market Economy Treatment, Normal Value, Export Price and Determination of Dumping Margin – Methodology, Parameters and Likelihood of Continuation of Dumping.

Submissions by the Domestic Industry

12. Following are the submissions made by the domestic industry:

- i. Since no questionnaire response has been filed by any of the Chinese companies, the subject country should be treated as non-market economy.
- ii. In the previous sunset review investigations, the Authority had not granted market economy treatment to any of the exporters from China and determined the normal value in China on the basis of the constructed normal value based on the estimated cost of production of the subject goods in China with reasonable profit in terms of Para 7 & 8 of the Annexure 1 to the said Rules as amended. Authority should consider the same methodology to calculate the normal value for China PR in the current investigation.
- iii. The Normal value in China can be determined on the basis of (a) price in India, and (b) cost of production in India, duly adjusted, including selling, general and administrative expenses and profit. Normal Value in China should be determined on the basis of cost of production in India, duly adjusted.
- iv. The petitioner has claimed consideration of the same methodology to calculate the normal value for China PR in the current investigation also as none of the exporters/producers from China have responded to the initiation of investigation.
- v. The petitioner considered IBIS data to assess the volume and value of subject import in India. However, the price reported to Indian customs is unreliable. This is established by the fact that the price at which Vitamin-E has been exported from China to the rest of the world is materially lower than the price at which the goods have been exported to India. The prices at which the goods have been reported in Indian customs are at the prevailing benchmark price for the product in India. The price at which the imported goods have been resold in India, as evidenced by the resale price of the product, is materially lower.
- vi. In view of the above, petitioner requests the Designated Authority to ignore the prices reported to Indian customs and considers the resale price of the product for constructing the import price. Petitioner requests the Designated Authority to kindly consider the definition of the export price under the law. In the present case, since the price at which the goods have been exported is unreliable, the export price is required to be constructed from the resale price in India.
- vii. It would be seen from calculations of dumping and injury margin on the basis of country-wise exports from China as per China Customs data that exports from China to third countries are at dumped prices. It would be seen that the dumping margin and injury margin in respect of majority of the countries is quite significant.

Submissions by producers/exporters/importers/other interested parties

13. None of the producers/exporters/importers/other interested parties has made any submissions in this regard.

Examination of Market Economy Claims

14. At the stage of initiation, the Authority proceeded with the presumption by treating China PR as a non-market economy country. Upon initiation, the Authority advised the producers/exporters in China to respond to the notice of initiation and provide information relevant to determination of their market economy status. The Authority sent copies of the MET questionnaire to all the known producers/exporters for rebutting presumption of non-market economy in accordance with criteria laid down in Para 8(3) of Annexure-I to the Rules. The Authority also requested Government of China to advise the producers/exporters in their country to provide the relevant information. However, none of the Chinese producers/exporters have filed any response. The Authority notes that in the past three years China PR has been treated as a non-market economy country in anti-dumping investigations by India and other WTO Members. In view of the above position, the Authority treats the subject country as non-market economy in the present investigation.

Determination of Normal Value

15. The Authority notes that none of the producers and exporters of the subject goods from the subject country has submitted the exporter's questionnaire response and market economy questionnaire response, consequent upon the initiation notice issued by the Authority and rebutted the non-market economy presumption. In view of the above position and in absence of rebuttal of non-market economy presumption by the respondent Chinese company, the Authority considers it appropriate to proceed with para-7 of Ann.I to the Rules for determination of normal value in case of China PR.

16. Para 7 of Annexure I of the Anti-dumping Rules provide that:

“In case of imports from non-market economy countries, normal value shall be determined on the basis of the price or constructed value in the market economy third country, or the price from such a third country to other countries, including India or where it is not possible, or on any other reasonable basis, including the price actually paid or payable in India for the like product, duly adjusted if necessary, to include a reasonable profit margin. An appropriate market economy third country shall be selected by the Designated Authority in a reasonable manner, keeping in view the level of development of the country concerned and the product in question, and due account shall be taken of any reliable information made available at the time of selection. Accounts shall be taken within time limits, where appropriate, of the investigation made in any similar matter in respect of any other market economy third country. The parties to the investigation shall be informed without any unreasonable delay the aforesaid selection of the market economy third country and shall be given a reasonable period of time to offer their comments.”

17. None of the exporters/producers from the subject country has cooperated with the Authority and responded to the present investigation. Further none of the interested parties has provided any other alternate basis as defined in the Rules on which normal value can be determined. In view of the above position and considering China as a non-market economy, the Authority has determined the normal value in accordance with Para 7 of Annexure I of the

AD Rules. In the absence of sufficient information on record regarding the other methods as are enshrined in Para 7 of Annexure I of the Anti-dumping Rules, the Authority has determined the normal value by adopting the method of "other reasonable basis". The Authority has, therefore, constructed the normal value for China PR on the basis of the best estimates of cost of production of the applicant domestic industry in India. The Authority has also provided for reasonable profit as per its consistent practice. Accordingly, the constructed normal value for Chinese exporters as determined is given in the dumping margin table below.

Export Price

18. None of the exporters in the subject country has provided any information that can be used for determination of the export price. The applicant has claimed that the prices declared in Bill of Entry to Indian customs is unreliable because of the benchmark form of anti dumping duty imposed on the product. They are alleging it on the grounds that the price at which Vitamin-E has been exported from China to rest of the world is materially lower than the price at which the goods have been exported to India. The subject goods have been exported to India nearly at the prevailing benchmark price for the product as notified in earlier ADD Notification. The applicant has submitted one resale invoice relating to post-POI period, wherein the price is lower than the import price, thereby supporting their claim that prices declared to Customs are incorrect and is just to avoid payment of customs duty under ADD notification.

19. The Authority considers it inappropriate to determine export price on the basis of reported resale price in India. Also the goods are coming into India at approximately the same price from all the countries. None of the exporters from China have cooperated with the Authority and therefore export price cannot be determined on the basis of questionnaire response. The Authority has determined the export price for all exporters from China PR on the basis of IBIS import information. These prices are CIF export price to India. The adjustments from the CIF prices have been made as per facts available on record. Accordingly, the export price has been adjusted for commission, port expenses, bank charges, inland, sea freight and marine insurance. The Net Export Price worked out by the Authority is given in the dumping margin table below.

Dumping Margins

20. Comparing the constructed normal value with the export price at ex-factory level as determined above, the dumping margin for all the producers/exporters in the subject country is determined as follows:-

Normal value	US\$/Kg	***
Net Export price	US\$/Kg	***
Dumping Margin	US\$/Kg	***
Dumping Margin percentage	%	***
Dumping Margin Range	%	5-15

E. Injury Determination and Examination of Injury and Causal Link

Submissions by the domestic industry

21. The domestic industry has made the following submissions with regard to the injury and causal link:

i. There is continued dumping of the product under consideration from China.
ii. Dumping of the product under consideration is likely to intensify from the subject country should the current anti-dumping duty cease.

iii. Volume of dumped imports has increased in spite of current anti-dumping duties.

iv. Price undercutting is significantly positive. Further, Chinese exporters are dumping the product to various other countries in significant volumes as is evident from the price undercutting determined for the major importing countries.

v. Performance of the domestic industry in terms of profits, return on investments, inventories etc. has deteriorated in the current Period of Investigation.

vi. Even though performance of the domestic industry improved on account of production, sales and capacity utilization; the performance of the domestic industry was clearly sub-optimal despite anti dumping duty imposed, as is clearly established by the past levels of capacity utilization of the domestic industry and suspension of production by the domestic industry in the post-POI period.

vii. Despite anti dumping duty in force, the price parameters of the Domestic Industry have declined. Should the current anti dumping duties cease, the Domestic Industry would be forced to sell its product at a price comparable to import prices. This would mean significant financial losses, negative return on investment and significant cash losses.

viii. Following parameters show that injury to the domestic industry has been caused by the dumped imports and thereby establish causal link:

a) The dumped imports from the subject country have continued to enter the Indian port in the period of investigation.

b) Subject imports are available at prices lower than domestic prices. Once anti-dumping duty is discontinued, the dumped imports will cause further injury.

c) Imports of the product under consideration have increased over the injury period. Consequently, the market share of the domestic industry has declined.

d) The capacities available with the Chinese producers and their export orientation suggest that in case anti dumping duty is discontinued; the volume of dumped imports would surge further.

e) The imports are entering the country at low and dumped prices and are undercutting the prices of the domestic industry. The domestic industry would, therefore, be forced to reduce the prices in the event of cessation of anti dumping duty.

f) The imports are undercutting the domestic prices. Resultantly, the domestic industry is already faced with price depression in the market. This has resulted in financial losses to the domestic industry, which would increase further in the event of cessation of anti dumping duty.

g) Performance of the domestic industry has deteriorated in respect of parameters such as profits, return on investment and cash flow as a result of price depression.

h) In the absence of an anti dumping measure, the likelihood of continuation of dumping and injury cannot be ruled out.

i) Calculations of dumping and injury margin in respect of exports from China to all third countries to which China has exported, including dumping margin and injury margin on the basis of weighted average export price show that the dumping margin and injury margin in respect of majority of the countries are significant.

Submissions by producers/exporters/importers other interested parties

22. None of the producers/exporters/importers/other interested parties has made any submissions with regard to injury to the domestic industry.

Examination by the Authority

23. In consideration of the various submissions made by the domestic industry in this regard, the Authority proceeds to examine the current injury, if any, to the domestic industry before proceeding to examine the likelihood aspects of dumping and injury on account of imports from the subject country.

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

25. 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 supra.

26. According to Section 9(A)(5) of the Customs Tariff Act, anti-dumping duty imposed shall, unless revoked earlier, cease to have effect on the expiry of five years from the date of such imposition, provided that if the Central Government, in a review, is of the opinion that the cessation of such duty is likely to lead to continuation or recurrence of dumping and injury, it may, from time to time, extend the period of such imposition for a further period of five years and such further period shall commence from the date of order of such extension.

27. For the purpose of current injury analysis, the Authority has examined the volume and price effects of dumped imports of the subject goods on the domestic industry and its effect on the prices and profitability to examine the existence of injury and causal links between the dumping and injury, if any. The Authority has examined injury to the domestic industry by considering information relating to M/s Merck Ltd., constituting domestic industry under the Rules. Accordingly, the volume and price effect of dumped imports have been examined as follows:

VOLUME EFFECT

Volume effect of dumped imports and impact on domestic industry

Demand and Market Share

28. The demand and market share are analyzed as below:

Particulars	Unit	2010	2011	2012	POI
Assessed Demand	MT	837	980	1,071	1,377
Sales of Domestic industry (including captive consumption)	MT	316	370	438	461
Sales of Other Producers	MT	100	100	100	100
Imports ó China PR	MT	49	105	243	253
Imports ó Other countries	MT	372	405	289	562
Market share in demand					
Domestic Industry	%	38	38	41	34
Other Indian Producers	%	12	10	9	7
Subject country-Imports	%	6	11	23	18
Other Countries-Imports	%	44	41	27	41

29. The Authority has determined demand or apparent consumption of the product in the country as the sum of domestic sales of the Indian producers (the sale of other producer is an estimated figure by the petitioner) and imports from all sources as available from IBIS. The petitioner has claimed import volumes from China to be considered on the basis of exports to India from China as per China Customs, as submitted by the petitioner. However, the Authority has considered injury analysis based on IBIS import data. Based on this, the demand has been assessed, as mentioned in the above table. The Authority notes that demand for the product in the country during POI increased vis-à-vis the base year as well as the immediate preceding year.

30. The Authority further notes that the market share of the domestic industry has declined during the POI as compared to the base year as well as the immediate preceding year. On the contrary, the share of imports from the subject country has increased during the POI as compared to the base year.

Import Volume & market share

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

Particulars	Unit	2010	2011	2012	POI
Subject Country	MT	49	105	243	253
<i>Trend</i>	Indexed	<i>100</i>	<i>212</i>	<i>493</i>	<i>513</i>
Other Countries	MT	372	405	289	562
<i>Trend</i>		<i>100</i>	<i>109</i>	<i>78</i>	<i>151</i>
Total Imports	MT	421	510	533	816
Demand	MT	837	980	1071	1377
Domestic production	MT	360	426	466	508
Market share of imports from subject country in relation to					
Total Imports	%	12%	21%	46%	31%
Demand	%	6%	11%	23%	18%
Domestic Production	%	14%	25%	52%	50%

32. The Authority notes that the volume of imports from the subject country on this basis is significant in absolute terms. Further, the imports from the subject country vis-à-vis domestic demand and production have also increased during the POI as compared to the base year.

PRICE EFFECT

Price effect of dumped imports and impact on domestic industry

33. The impact on the prices of the domestic industry on account of imports of the subject goods from the subject country have been examined with reference to price undercutting, price underselling, price suppression and price depression. For the purpose of this analysis the cost of production, net sales realization (NSR) and the non-injurious price (NIP) of the domestic industry have been compared with landed value of imports from the subject country. A comparison for subject goods during the period of investigation was made between the landed value of the dumped imports and the domestic selling price in the domestic market. In determining the net sales realization of the domestic industry, taxes, rebates, discounts and commission incurred by the domestic industry have been adjusted. The price underselling is an important indicator of assessment of injury; thus, the Authority has worked out a non-injurious price and compared the same with the landed value to arrive at the extent of price underselling. The non-injurious price has been evaluated for the domestic industry in terms of the principles outlined in Annexure-III to the Rules by appropriately considering the cost of production for the product under consideration during the POI. The landed value of subject imports has been considered on the basis of export price based on IBIS import data. The position is as follows:

Particulars	Unit	2010	2011	2012	2013
Import Volume	MT	49	105	243	253
Import Value	Rs. Lacs	736	1419	3439	3596
Landed price of imports	Rs./Kg	***	***	***	***
Net Selling Price of DI (Avg.)	Rs./Kg	***	***	***	***
Price Undercutting	Rs./Kg	***	***	***	***
Price Undercutting	%	***	***	***	***
Price Undercutting Range	%	10-20	0-10	0-10	(0-10)

34. It is noted from the table above that there is no price undercutting in the POI, even though the price undercutting was positive in previous years. The applicant has claimed that exports from China to third countries show significant price undercutting and price underselling on weighted average basis as well as in majority of the third countries. The applicant has provided details of reported price undercutting and price underselling considering the price at which goods have been exported by China to various third countries which shows that both the price undercutting and price underselling are quite significant.

Price Underselling

Particulars	Unit	POI
Non injurious Price	Rs./KG	***
Landed Value	Rs./KG	***
Price Underselling	Rs./KG	***
Price Underselling	%	***
Price Underselling Range	%	0-10

35. It is noted that the landed price of imports of subject goods from the subject country is below the non-injurious price of the domestic industry, resulting in price underselling.

Price Suppression and Depression

36. To examine the price suppression and depression effects of the dumped imports on the domestic prices, the trend of net sales realization of the domestic industry has been compared with the cost of sales. The data given in table below shows that the cost of sales of the domestic industry has declined in 2011, remained at the same level in 2012 and then increased significantly in the POI. On the other hand, the selling price has declined over the injury period, resulting in significant losses to the

domestic industry in the POI. This shows that the domestic industry was affected by price depressing and suppressing effects of dumped imports from the subject country.

Particulars	Unit	2010	2011	2012	POI
Cost of sales	Rs./Kg	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>97</i>	<i>97</i>	<i>120</i>
Selling price	Rs./Kg	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>82</i>	<i>83</i>	<i>80</i>
Landed price of imports	Rs./Kg	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>91</i>	<i>98</i>	

Examination of other economic parameters of the domestic industry

37. Annexure II to the Anti-dumping Rules requires that a determination of injury shall involve an objective examination of the consequent impact of these imports on domestic producers of like product. The Rules further provide that the examination of the impact of the dumped imports on the domestic industry should include an objective and unbiased evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including actual and potential decline in sales, profits, output, market share, productivity, return on investments or utilization of capacity; factors affecting domestic prices, the magnitude of the margin of dumping; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital investments. An examination of performance of the domestic industry reveals that the domestic industry has suffered material injury. The various injury parameters relating to the domestic industry are discussed below.

Sales, Capacity, Production, Capacity Utilization and Inventories

38. The Authority notes from the table below that there is no change in the capacity for the product under consideration. Production and sales volume of the domestic industry have increased over the injury period. The capacity utilization has also improved as a result of increase in production due to outsourcing. The petitioner has claimed that the capacity is still under-utilized. This is in spite of the fact that the demand in the country is significantly higher than the petitioner's capacity. The petitioner has further claimed that they were forced to curtail and even suspend production in the post-POI period due to significant rise in inventories. This shows that increase in domestic sales is not proportionate to the increase in production which is leading to piling up of stock.

Particulars	Unit	2010	2011	2012	POI
Capacity	MT	600	600	600	600
Production	MT	360	426	466	508
Capacity Utilization	%	60	71	78	85
Domestic Sales	MT	175	242	273	326
Captive transfer	MT	141	129	165	135
Average Inventories	MT	16	12	7	32

Profit/loss, return on investment and cash flow

39. The return on investment, profit/loss before and after interest and cash profit are as shown in the table below:

Particulars	Unit	2010	2011	2012	POI
Cost of Sales	Rs./Kg	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>97</i>	<i>97</i>	<i>120</i>
Selling Price	Rs./Kg	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>82</i>	<i>83</i>	<i>80</i>
Profit/loss	Rs./Kg	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>37</i>	<i>40</i>	<i>-43</i>
Profit/loss (total)	Rs. Lacs	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>51</i>	<i>62</i>	<i>-81</i>
Cash Profit	Rs. Lacs	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>54</i>	<i>65</i>	<i>-75</i>
Return on Capital employed	%	***	***	***	***

40. The Authority notes that the cost of sales has declined in 2011, remained at the same level in 2012 and then increased significantly in the POI. The reason for increase in cost mentioned by the DI is that there is significant increase in price of one of the raw material namely Isophytol. However, the selling price has declined over the injury period, resulting in significant losses to the domestic industry. It is also noted that the domestic industry has incurred losses during the POI. Further, return on investment was significantly negative in the POI. The petitioner has claimed that the imports are depressing the domestic prices, leading to deterioration in profitability of the domestic industry.

Market Share

41. The data given in the table below shows that the market share of domestic producers has declined; whereas market share of imports from the subject country has increased with reference to the preceding year.

Market share in Demand	Unit	2010	2011	2012	POI
Domestic Industry	%	38	38	41	34
Other Indian Producers	%	12	10	9	7
Subject country-Imports	%	6	11	23	18
Other Countries-Imports	%	44	41	27	41

Employment and wages

42. From the table given below, the Authority notes that both the employment and wages of the domestic industry has increased during the POI as compared to the base year. It is, however, noted that the petitioner being multi-product company, these parameters may not show current and potential adverse impact.

Particulars	Unit	2010	2011	2012	POI
Employment	Nos.	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>132</i>	<i>174</i>	<i>211</i>
Wages	Rs. Lacs	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>86</i>	<i>102</i>	<i>159</i>

Productivity

43. The Authority notes from the table below that productivity per day of the domestic industry during POI has increased as compared to the base year. However, the productivity per employee shows a decline as the number of employees has increased. This could also be one of the factors for increased costs.

Particulars	Unit	2010	2011	2012	POI
Productivity per day	MT	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>118</i>	<i>130</i>	<i>141</i>
Productivity per employee	MT	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>90</i>	<i>74</i>	<i>67</i>

Magnitude of Dumping Margin

44. The Authority notes that the dumping margin of the imports of the subject goods from the subject country is positive.

Growth

45. The Authority notes that the domestic industry has shown positive growth in some of the economic parameters such as production and domestic sales. However,

price parameters such as profit, cash profit and return on investments have deteriorated during the POI as compared to the base year.

Growth year by year	Unit	2010	2011	2012	POI
Production	%	-	18.07	9.53	8.91
Sales Volume	%	-	37.81	13.06	19.42
Cost of Production	%	-	-2.59	0.06	23.64
Selling Price	%	-	-17.55	0.87	-3.85
Return on Capital Employed	%	-	-55	9	-230

Ability to raise Capital Investment

46. Since the domestic industry is a multi-product company, its ability to raise capital investment has not been affected due to dumping of the subject goods from the subject country.

F. Causal Link

47. The Authority examined whether other known factors could have caused injury to the domestic industry.

i. Imports from Third Countries: - The Authority notes that imports of product under consideration from other countries are significant in volume. The applicant has submitted that imports from third countries are at a price slightly higher than the import price from China. It has been claimed that the exporters from third countries are being forced to sell at the prices offered by Chinese exporters so as to compete with them. The Authority notes from the information available on record that the claimed injury cannot be attributed to imports from third countries.

ii. Contraction in Demand: - The Authority notes that there is no contraction in demand as the demand of the subject goods in the country has consistently increased over the injury period.

iii. Pattern of consumption: - It is noted that no significant change in the pattern of consumption for the subject goods has come to the knowledge of the Authority, nor any interested party has made any submission in that regard.

iv. Conditions of competition: - The Authority notes that the investigation has not shown that conditions of competition or trade restrictive practices are responsible for the claimed injury to the domestic industry.

v. Developments in technology: - The Authority also notes from the information available on record that the investigation has not shown that the claimed injury could be due to change in technology.

vi. **Export performance of the domestic industry:** - The export performance of the domestic industry is not relevant since the price and profitability of the domestic industry has been segregated by the Authority for domestic and export markets separately for the purpose of assessing injury to the domestic industry.

G. Likelihood of dumping and injury

Submissions by the domestic industry

48. Following are the submissions made by the domestic industry:

i. Exporters in the subject country have capacities far in excess of Indian demand. In case of revocation of anti-dumping duty, the volume of subject goods imports is bound to increase further.

ii. Production capacity available with some of the Chinese producers are as below, while the actual production capacity in the country may be in the range of 55000 to 60000 MT per annum (obtained from online sources):

S. No.	Name of the Producer	Annual Production Capacity (MT)
1	Hangzhou Toyond Biotech Ltd.	15,000 ó 40,000
2	Zhejiang Medicine Co. Ltd.	20,000

iii. The exporters from China PR have very high export orientation worldwide. The export percentage of the Chinese companies varies from 81-100% (obtained from online sources):

Producer/exporter	Export Orientation
Vega Pharma Limited	81% ó 90%
Xian Rainbow Biotech Co. Ltd.	81% - 90%
Qingdao Sunrise Trading Co. Ltd.,	91% - 100%
Anhui Medifarm Co. Ltd.,	91% - 100%

iv. Majority of the producers of the product under consideration in China producing Vitamin E are state owned/controlled enterprises. Chinese Government has major stake in shares or they control the management. The objective of these companies is therefore only somehow getting business and not the prices at which they would sell the product. It would be seen that about 80% of exports of the product under consideration from China are by state owned/ controlled entities.

v. Dumping margins in the previous two investigations were significantly high.

vi. The performance of the domestic industry was sub-optimal despite anti dumping duty was in force.

vii. Imports from the subject country would undercut the prices of the domestic industry in the Indian market in the absence of anti-dumping duty.

viii. The landed price of imports is substantially below the cost and selling price of the domestic industry. Thus, in the event of cessation of current anti-dumping duty and if the domestic industry chooses to sell at the import prices, the domestic industry would suffer significant financial losses.

ix. The exporters and producers from the subject country have continued to export the material at the dumped prices even after the imposition of the anti-dumping duty. There is no reason to consider that revocation of duties in the present case would not result in intensified dumping from China PR.

x. In the event of revocation of the anti-dumping duty, the product is likely to be dumped more intensively and undercut the prices of the domestic industry.

Submissions by producers/exporters/importers/other interested parties

49. None of the producers/exporters/importers/other interested parties has made any submissions in this regard.

Examination by the Authority

50. The present investigation is a sunset review of anti-dumping duties imposed on the imports of subject goods from China PR. Under the Rules, the Authority is required to determine whether continued imposition of antidumping duty is warranted. This also requires examination as to whether the duty imposed is serving the intended purpose of eliminating injurious dumping. In the present investigation, as there are continued dumped imports, the Authority is not required to examine whether revocation of duty is likely to lead to continued dumping of the product. However, considering the fact that the dumping margin in the original as well as the present investigation is positive and that there are favorable market conditions in the Indian market as far as demand and price for the subject goods are concerned, the Authority has reason to believe that dumping may intensify if the anti dumping duty is revoked. It is a matter of fact that despite the anti-dumping measures in force, the subject country could still dump the subject goods in the Indian market. The following analysis would show about the likelihood of continuation/intensification of dumping and injury to the domestic industry in the event of revocation of anti dumping duty:

(I) Dumping margin, price undercutting and injury margin in respect of exports to third countries

51. The applicant has also provided information showing that exports from China to third countries are at prices materially below the normal value. The petitioner has provided details of dumping margin, injury margin and price undercutting considering the price at which goods have been exported to third countries.

52. The Authority has also determined dumping margin and injury margin if the imports from China were to be made at prices at which China had exported to various third countries based on the data provided by the Domestic Industry. It may

be noted from the Table given below that both the dumping margin and injury margin are quite significant.

Third Country Analysis

Particulars	Unit	POI
Normal Value	US\$/KG	***
Net Export Price	US\$/KG	***
Dumping margin	US\$/KG	***
Dumping margin	%	***
Dumping margin Range	%	75-85

Third Country Analysis

Particulars	Unit	POI
Non injurious Price	US\$/KG	***
Landed Value (<i>reported for 3rd country</i>)	US\$/KG	***
Injury margin	US\$/KG	***
Injury margin	%	***
Injury margin Range	%	60-70

(i) Level of current and past dumping margin

53. The level of dumping margin both in the original, first sunset review as well as present investigation is significant. Despite significant demand in the country, the domestic industry could not utilize its full capacity. Further, the import of the subject goods from the subject country still continues to be at dumped prices. Given the level of price undercutting, price underselling and price depression and considering the capacity in China and demand in India, the volume of dumped import is likely to increase further in the event of revocation of anti-dumping duty.

(ii) Price attractiveness of Indian market

54. The price at which the subject goods are being exported by China PR to India is an indicator of the likelihood of continuation/intensification of dumping. At the current landed price in India, there is no price undercutting during POI. The applicant has provided information which shows that exports from China to third countries are at prices materially below the selling price of the domestic industry. It is therefore noted that, with the revocation of anti-dumping duty, the Indian prices would be too attractive for the Chinese producers to intensify their exports to India at dumped prices and there is strong likelihood that Indian consumers would resort to large scale imports of the subject goods from China..

(iii) **Export orientation of Chinese producers**

55. From the available information it is evident that the Chinese producers /exporters are very much export oriented. Considering the high demand and favorable market conditions for the subject goods in India and the high production capacity and export orientation of the Chinese producers, the Authority holds that if the existing antidumping duties are withdrawn, the entire demand for the subject goods in India can be catered by the Chinese producers.

(iv) **Huge Production Capacity in China**

56. As per the information furnished by the domestic industry, the producers of the subject goods in China hold production capacity of the subject goods far more than Indian demand. In the event of revocation of anti-dumping duty and considering the Chinese export orientation, the producers in China are capable of overtaking the Indian manufacturing sector engaged in subject goods.

H. Magnitude of Injury and injury margin

57. The non-injurious price of the subject goods produced by the domestic industry as determined by the Authority in terms of Annexure III to the AD Rules has been compared with the landed value of the exports from the subject country for determination of injury margin during the POI and the injury margin so worked out is as under:

Particulars	Unit	POI
Non injurious Price	Rs/kg	***
Landed Value	Rs/kg	***
Injury margin	Rs/kg	***
Injury margin Percentage	%	***
Injury margin Range	%	0-10

58. It is noted that the level of injury margin, as above, is considered significant.

J. INDIAN INDUSTRY'S INTEREST & OTHER ISSUES:

59. 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/territory in any way, and, therefore, would not affect the availability of the product to the consumers.

60. It is recognized that the imposition of anti-dumping duties might affect the price levels of the product manufactured using the subject goods and consequently might have some influence on relative competitiveness of this product. However, fair competition in the Indian market will not be reduced by the anti-dumping measures, particularly if the levy of the anti-dumping duty is restricted to an amount necessary to redress the injury to the domestic industry. On the contrary, imposition of anti-dumping measures would remove the unfair advantages gained by dumping practices, would prevent the decline in the performance of the domestic industry and help maintain availability of wider choice to the consumers of the subject goods.

K. POST DISCLOSURE STATEMENT SUBMISSIONS BY THE INTERESTED PARTIES

61. The Domestic industry as repeated their claims and submissions. The views of the Domestic Industry in brief are as below:

- a) Non-injurious price may be re-determined confirming to AD Rules.
- (b) Product under consideration continues to be exported to India below its normal value resulting in dumping from the subject country.
- (c) Both dumping margin and injury margin in the current Period of Investigation may be considered on the basis of dumping in third countries for the purpose of determining the quantum of anti dumping duty protection required for the domestic industry in the present case.
- (d) Domestic Industry has once again suffered injury in spite of existing anti dumping duty due to form of measures.
- (e) The anti dumping duty is required to be determined on the basis of dumping and injury determined for third countries.
- (f) The anti dumping duty is required to be modified to fixed form and the duty expressed in US\$ terms.

L. EXAMINATION OF THE POST DISCLOSURE COMMENTS

62. The NIP for the domestic industry has been determined in terms of the principles outlined in Annexure-III to the AD Rules. The Domestic Industry has furnished the data of China Customs for their claims of benefit based on third country exports. However, the Authority is not relying on third country data provided by Domestic Industry as it is not verifiable. The continuity of injury has been established in above paras and the fact of likelihood of dumping and injury in case of removal of anti-dumping duty has also been established in above paras. Further, it is noted that the anti dumping duty which is in force for last ten years has not been able to prevent the injurious effect of dumping of goods by the subject country and therefore it is recommended to impose fixed form of anti dumping duty instead of benchmark.

L. CONCLUSION

63. After examining the submissions made by the domestic industry and issues raised therein; and considering the facts available on record, it is concluded that the product under consideration has been exported to India from the subject country below its associated normal value, thus, resulting in dumping of the product. The domestic

industry has suffered material injury in respect of the subject goods. The material injury has been caused by the dumped imports from the subject country.

O. RECOMMENDATIONS

64. It is noted that the investigation was initiated and notified to all interested parties and adequate opportunity was given to the domestic industry, exporters, importers and other interested parties to provide positive information on the aspects of dumping, injury and the causal link. Having initiated and conducted investigation into dumping, injury and the causal link thereof in terms of the AD Rules and having established positive dumping margins as well as material injury to the domestic industry caused by such dumped imports, it is felt that the imposition of definitive anti dumping duty is required to offset dumping and consequent injury. Therefore, the Authority recommends imposition of definitive anti-dumping duty on imports of the subject goods from the subject country in the form and manner described hereunder.

65. Having regard to the lesser duty rule followed by the Authority, Authority recommends imposition of definitive anti-dumping duty equal to the lesser of the margin of dumping and the margin of injury, so as to remove the injury to the domestic industry. Accordingly, definitive antidumping duties as per the amount specified in the table below are recommended to be imposed from the date of the Notification to be issued by the Central Government, on all imports of the subject goods originating in or exported from the subject country.

Duty Table

S No	Sub-heading	Description of Goods	Specification	Country of origin	Country of exports	Producer	Exporter	Amount	Unit of measurement	Currency
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
1.	2936 28 00 2309 90 10	Vitamin E in all forms excluding natural form	100% grade	China PR	China PR	Any	Any	1.77	KG	USD
2.	2936 28 00 2309 90 10	Vitamin E in all forms excluding natural form	100% grade	China PR	Any country other than China PR	Any	Any	1.77	KG	USD
3.	2936 28 00 2309 90 10	Vitamin E in all forms excluding natural form	100% grade	Any country other than China PR	China PR	Any	Any	1.77	KG	USD

Note:- The amount for the purposes of column (9) above, for concentrations other than those specified in column (4) shall be calculated on pro rata basis.

66. Landed value of imports for the purpose of this Notification shall be the assessable value as determined by the Customs under the Customs Act, 1962 (52 of 1962) and includes all duties of customs except duties under sections 3, 3A, 8B, 9 and 9A of the said Act.

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

(J K Dadoo)
Designated Authority