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F. No. 15/07/2011-DGAD
Government of India
Ministry of Commerce & Industry
Department of Commerce
Directorate General of Anti Dumping and Allied Duties

Date: 21st August 2013

Subject: Sunset Review of Anti dumping investigation concerning imports of Vitamin-A Palmitate originating in or exported from China PR and Switzerland-Final Findings

Having regard to the Customs Tariff Act, 1975 as amended in 1995 (hereinafter referred to as Act) and the Customs Tariff (Identification, Assessment and Collection of Duty or Additional Duty on Dumped Articles and for Determination of Injury) Rules, 1995 (hereinafter referred to as Rules);

A. BACKGROUND

2 Whereas the Designated Authority (hereinafter referred to as the Authority), having regard to the Customs Tariff Act, 1975, as amended from time to time (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 AD Rules); initiated an anti-dumping investigation in respect of the imports of the Vitamin-A Palmitate (herein after also referred to as subject goods), originating in or exported from China PR and Switzerland (herein after also referred to as subject countries); vide Notification No. 14/11/2005-DGAD dated 23rd March 2006. 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. 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.

3. 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. 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.”

4. 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. The Authority confirmed the recommendation of duties by issuance of the CESTAT Remanded Post Decisional Hearing Findings vide dated 10th February, 2012.

5. The Authority received a duly substantiated application from M/s Piramal Healthcare Ltd (“The Applicant/Petitioner”), who is a producer of subject goods requesting the Authority to undertake a Sunset Review of the anti dumping duty imposed on the subject goods originating in or exported from subject countries.

6. Having satisfied that the applicant has provided sufficient positive information substantiating the need for a review, the Authority initiated the Sunset review investigation of anti- dumping duty imposed on imports of the subject goods originating in or exported from the subject country vide Notification No.15/7/2011-DGAD dated 23rd March, 2012 in accordance with Section 9A (5) of the Act, read with Rule 23 of the AD Rules. Following a request from the Designated Authority, the Central Government accorded permission for extension of time up to 21st August, 2013 for completing the subject investigation and notifying the final findings.

GENERAL PROCEDURE

7 The procedure described below has been followed with regard to the investigation:

- i) The Authority forwarded a copy of the public notice to the known producers and/or exporters in the subject countries and provided them opportunity to provide relevant information and make their views known in writing within forty days from the date of the letter in accordance with the Rule 6(2)
- ii) The Authority forwarded a copy of the public notice to all the known importers and/or consumers of subject goods in India and advised them to provide relevant information and make their views known in writing within forty days from the date of issue of the letter in accordance with the Rule 6(2).

- iii) The Authority provided copies of the non-confidential version of the application to the known producers and/or exporters and the Embassy of the subject country in accordance with Rules 6(3) supra. A copy of the non-confidential application was also made available for other interested parties, on request.

- iv) The Authority sent a questionnaire to elicit relevant information to the Embassies of subject countries, including known exporters/producers in accordance with the Rule 6(4). However only one producer and exporter from Switzerland and its subsidiary in Singapore has submitted the response to the exporter's questionnaire.
 - 1. DSM Nutritional products, Switzerland (DNP).
 - 2. DSM Singapore Industrial Pte. Ltd. (DSI), Singapore trading as DSM Nutritional products Asia pacific (DNPAP).

- v) Questionnaire was sent to known importers or user for providing necessary information in accordance with Rule 6(4). The Authority provided opportunity to the industrial users of the product under consideration, to furnish information considered relevant to the investigation regarding dumping, injury and causality. However only one of the importers namely M/s K. Sevantilal & Co has filed response to the questionnaire. A letter has been received after the public hearing from another importer M/s Softesule Pvt Ltd, Mumbai. This importer has not submitted any response to the importers questionnaire. However the arguments made by M/s Softesule Pvt Ltd, Mumbai have been taken into account by the Authority in this final findings.

- vi) The Authority held a public hearing on 27th November 2012 to provide an opportunity to the interested parties to present relevant information orally, which was attended by responding producer and Exporter from subject country, responding importer and the petitioner representing the domestic industry. The parties attending the public hearing were advised to file written submissions of the information presented orally. The Designated Authority has considered these written submissions received from interested parties.

- vii) Arguments raised and information/evidence provided by domestic industry during the course of the investigation, to that extent the same are supported with evidence and considered relevant to the present investigation, has been appropriately considered by the Authority in this final findings.

- viii) The Authority during the course of investigation satisfied itself as to the accuracy of the information supplied upon which these findings are based. For that purpose, the Authority conducted on-the-spot verification of the domestic industry to the extent considered relevant and necessary. Additional/ supplementary details regarding injury were sought from the domestic industry, which were also received.

- ix) In accordance with Rule 16 of the Rules supra, the essential facts/basis considered for these findings were disclosed to known interested parties and comments received on the same would be considered in Final Findings.
- x) The Authority made available non-confidential version of the evidence presented by domestic industry through a public file maintained by the Authority and kept open for inspection by the interested parties as per Rule 6(7).
- xi) Cost investigations were conducted to work out optimum cost of production and cost to make and sell the subject goods in India on the basis of Annexure III of the anti dumping rules and the information furnished by the applicant so as to ascertain if anti-dumping duty lower than the dumping margin would be sufficient to remove injury to the domestic industry.
- xii) *** represents information furnished by an interested party on confidential basis and so considered by the Authority under the Rules on merits.
- xiii) The Period of Investigation (POI) for the purpose of the present review is 1st January 2011 to 31st December 2011 (12 months). However, injury analysis covers the years 2008-09, 2009-10, 2010-11 & POI. The data beyond period of investigation has also been examined to determine likelihood of dumping and injury.
- xiv) Wherever an interested party has refused access to, or has otherwise not provided necessary information during the course of the present investigations, or has significantly impeded the investigation, the Authority has recorded findings on the basis of the facts available.
- xv) Information provided by interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has granted confidentiality, wherever warranted and such information has been considered 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.

PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE

8. The product under consideration in the present investigation is 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 (referred to as subject goods in the present investigation) originating in or exported from Switzerland and China PR (referred to as subject countries in the present investigation)

Views of Domestic Industry

9. The Domestic Industry has made the following Submissions:

- i. The domestic industry, in its submissions, has submitted that “Vitamin A Palmitate” is available in various strengths viz., Vitamin A Palmitate 1.7 and Vitamin A Palmitate 1.0. As Vitamin A Palmitates of various strengths have the same end use, the present investigations should continue to cover the subject goods in all its strengths and forms, as these grades can be used interchangeably by the user industry. It has been argued that availability of higher strength at lower prices proportionately reduces the per unit price of lower strength and as such the user prefers to buy higher strength in order to reduce its cost. Hence, the Authority should continue the imposition of anti dumping duty on Vitamin A Palmitate of various strengths viz., Vitamin A Palmitate 1.7 and Vitamin A Palmitate 1.0.
- ii. This issue has already been settled and confirmed by this Authority in the final findings in the original investigation covering the subject goods imported or originating from Switzerland and China PR, and the CESTAT REMAND POST-DECISIONAL FINDINGS dated 10th February, 2012 concluded thereafter.
- iii. The present investigation is for the review, enhancement and continuance of anti dumping duty in force against dumping of Vitamin A Palmitate in the Indian market by the producers and/or exporters of Switzerland and China PR.
- iv. Being a review investigation, product under consideration should be considered the same as has been in the original investigation
- v. The claim of DSM Nutritional Products (“DNP”) that Vitamin A Palmitate and Vitamin A Acetate are *like article* is false and they cannot be used interchangeably. Vitamin A Acetate 2.8 MIU is the raw material for the manufacture of the subject goods and is not a “like article”. The technical and physical properties of the subject goods and Vitamin A Acetate are distinct and dissimilar and cannot be directly substituted with Vitamin A Acetate as claimed by the Exporter. Further, the manufacture of the subject goods involves a complex chemical reaction with a series of processes that is undertaken on Vitamin A Acetate crystals incurring a substantial value addition to the raw material, i.e., Vitamin A Acetate and employment of labour and technology.
- vi. 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.
- vii. A product which is penultimate stage in the manufacture of the subject goods cannot be construed as a ‘like article’ and import of the same does not disentitle the producer from being defined as “Domestic Industry”
- viii. The product under consideration in the present investigation is Vitamin A Palmitate. The complete description of the product including nomenclature, formula, description, grades, uses, packing, transport, classification, handling etc. in respect of the product under consideration being imported from the subject countries is already examined by the Designated Authority in the original investigation and the relevant information is on record of the Designated Authority.
- ix. Vitamin A Palmitate is a pale yellow to light orange or reddish yellow oily liquid, which may crystallize below 20 C. It contains a mixture of Vitamin A Palmitate and Vitamin A

Acetate, having a content of not less than 90% Vitamin A Palmitate and not more than 10% Vitamin A Acetate. Vitamin A Acetate is present on account of the chemical process of manufacture. It may contain antioxidants like BHA, BHT or Tocopherol as added substances for stabilization. Vitamin-A Palmitate is produced in various concentrations/potencies, primarily as 1.7 MIU/Gm and 1.0 MIU/Gm, which are used in pharmaceutical, cosmetic and food supplement applications

- x. There is no known difference in subject goods exported from Switzerland and China PR and the subject goods produced by the petitioner company. The goods produced by the domestic industry are *like article* to the goods imported from Switzerland and China PR. Both products have comparable characteristics in terms of parameters such as physical & chemical characteristics, functions & uses, product specifications, pricing, distribution & marketing and tariff classification, etc.
- xi. The goods produced by the domestic industry are like article within the meaning of anti dumping Rules.
- xii. Post disclosure, the domestic industry has reiterated its submissions on the issue of PUC, like article and domestic industry. It has been submitted that the claim of DNP that Vitamin A Palmitate 1.7 MIU and Vitamin A Acetate are “like article” and can be used interchangeably is false and erroneous and is liable to be rejected outright. It has been reiterated that the manufacture of the Product under Consideration involves a substantial value addition to the raw material i.e. Vitamin A Acetate crystals. It has been submitted that there is a complex chemical reaction with a series of processes that is undertaken on Vitamin A Acetate crystals for the manufacture of the Product under Consideration involving a substantial value addition and employment of labour and technology.

Views of Exporters, Importers and Other Interested Parties

10. The Exporter from Switzerland DNP has made the following Submissions:

- i. The petitioner undertakes minimal operations in India, which do not result in any substantial transformation in the goods, as evidenced by a change in the tariff heading.
- ii. Both Vitamin –A Palmitate and Vitamin –A Acetate fall under heading 2936 21 00 of the Harmonised System Nomenclature. Conversion from one derivative to another does not take the article, into a new heading nor constitutes a substantial transformation.
- iii. Vitamin A Acetate and Palmitate, are just protected and stabilized forms of the same active ingredient, Retinol. Both forms are readily converted in the human body to Retinol by naturally occurring enzymes without any need for further components and have practically the same bioavailability, bio potency, and beneficial effects.
- iv. They are both Retinol esters just using different acid components to protect and stabilize Retinol.
- v. Post disclosure, the exporter has reiterated its submissions on the issue of PUC, like article and domestic industry status.

11. No other the importers, consumers, exporters or other interested parties have filed any comment or submissions with regard to product under consideration, like articles and scope of the present investigations.

Examination by Authority

12. The product under consideration in the present investigation is 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 originating in or exported from Switzerland and China PR. As noted in the earlier investigation Vitamin A Palmitate 1.0 MIU/Gm and Vitamin A Palmitate 1.7 MIU/Gm are product subtypes having same end use, differing only in concentration. Therefore, duty on Vitamin A Palmitate 1.7 MIU/gm could lead to evasion of duty through import of Vitamin A Palmitate 1.0 MIU/gm which has same end use. Whereas Vitamin A Palmitate 1.6 MIU/gm has a totally different end use for animal feed and hence does not fall within the scope of the product under consideration. The product under consideration is the same as considered in the original investigation.

13. The product is classified under heading No. 293621.00 in Chapter 29 of the First Schedule to the said Customs Tariff Act and ITC HS Classification. This classification however, is indicative only and in no way binding on the scope of the present investigation.

14. It is noted that in the original investigation, the scope of the Product under Consideration was concluded as follows –

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

15. It is noted that the Domestic Industry had shut down operations at its earlier plant in Thane, Maharashtra with effect from *** and shift the operations to another plant which is situated at Digwal, Andhra Pradesh. With effect from *** commercial production of the Product under Consideration from the new plant has resumed.

16. It is recalled that in the Final Findings in the CESTAT REMAND POST-DECISIONAL FINDINGS dated 10th February, 2012, the Designated Authority held that :

“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.”

17. It is noted that Vitamin A Acetate 2.8 MIU is the raw material for the manufacture of the subject goods and is not a “like article”. The technical and physical properties of the subject goods and Vitamin A Acetate are distinct and dissimilar and cannot be directly substituted with Vitamin A Acetate as claimed by the Exporter. Further, the manufacture of the subject goods involves a complex chemical reaction with a series of processes that is undertaken on Vitamin A Acetate crystals incurring a significant value addition to the raw material, i.e., Vitamin A Acetate.
18. Having regard to the evidence of record and the scope in the earlier final findings, the Authority considers it appropriate to keep the scope of the product under consideration to the same as was kept before. The Authority therefore has therefore defined the product under consideration 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.
19. In order to determine whether goods produced by the domestic industry can be considered like article to the goods produced and/or exported from the subject countries, it is noted that the issue has earlier been examined by the Authority in the original findings. The Authority, on the basis of the examination, again holds that the material produced by the domestic industry is like article to the goods imported from the subject countries within the meaning of the Anti-dumping Rules.

DOMESTIC INDUSTRY

Views of Domestic Industry

The Domestic industry made following submissions regarding standing and status of domestic industry:

20. The application has been filed by M/s Piramal Enterprises Ltd (“M/s Nicolas Piramal India Ltd.” as it was known during the original investigation). The applicant is the sole known producer of subject goods in India and accounts for complete production of subject goods in India. The petitioner, therefore, satisfies the standing to file the present petition and constitutes domestic industry within the meaning of the Rules.
21. The Domestic Industry had shut down operations in its earlier plant in Thane, Maharashtra with effect from *** in order to shift the operations to another plant which is situated at Digwal, Andhra Pradesh. With effect from ***_commercial production of the Product under Consideration at the new plant has resumed.

22. Primarily, these further streamlining changes to the plant and processes were made to continue serving the Indian consumers which also consists of International Agencies such as the UNICEF in their Indian programs and also safeguard the Domestic Industry against the dumped imports which continue unabated from the subject countries.
23. The Applicant presently continues to be the sole producer of Product under Consideration in India and accounts for complete production of subject goods in India. Hence, M/s Piramal Enterprises Ltd. is the “Domestic Industry” for the Product under Consideration in India.
24. 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.
25. There is a complex chemical reaction with a series of processes that is undertaken on Vitamin A Acetate crystals, i.e. the imported raw material for the manufacture of the Product under Consideration involving a substantial value addition and employment of labour and technology. The raw material and the subject goods are not like articles. Hence, the Petitioner is not an importer but continues to be the Domestic Industry.
26. The mere fact that the activity is carried out in an EOU facility does not adversely affect the status of the Petitioner as “domestic industry”. The clearances made by the Petitioner to the Domestic Tariff Area are not restricted or contingent on the exports of the Product under Consideration and are treated as excise-paid domestic sales and not as imports, as the case would have been if they were not domestic goods.
27. Post disclosure, on the issue of domestic producer being 100% unit, it has been reiterated that the Petitioner is a multi-product company and the facility at Digwal is an EOU, wherein the unit for the manufacture of the Product under Consideration is undertaken. The clearance made by M/s Piramal Enterprises made to the Domestic Tariff Area is not restricted or contingent on the exports of the Product under Consideration and are treated as excise-paid domestic sales not as imports, as the case would have been if they were not domestic goods.

Views of Exporters, Importers and Other Interested Parties

28. The Exporter from Switzerland M/s DNP has made the following Submissions:
 - i. Since end of 2010, that is during the review period of investigation, and thereafter, a single step conversion is being carried out. The so-called improvement in process is that the petitioner no longer carries out the production activity, in India.
 - ii. The petitioner is simply importing Vitamin A (Acetate derivative) crystals from BASF Germany / BASF Singapore, and carrying out a process of dilution to make Vitamin A (Palmitate derivative). The processing carried out is minor, and the article is already Vitamin A at the point of import.

- iii. The petitioner undertakes minimal operations in India, which do not result in any substantial transformation in the goods, as evidenced by a change in the tariff heading. Hence, the petitioner does not satisfy the requirement of a domestic producer
 - iv. DNP submits that as per the petition, the entire processing is being carried out in Digwal, Andhra Pradesh which is a 100% Export Oriented Unit (EOU). EOUs are set up principally with an objective to promote exports. Various tax and other benefits are extended to such units so that they can compete in the International market. The claim for protection, for its sales in the Indian market is totally unjustified. Post disclosure, the exporter has reiterated its submissions that the petitioner does not qualify as 'domestic industry'. It has been reiterated by them that at present, minimal processing is being done in India, on account of which, the petitioner no longer constitutes a domestic industry. Further, it has been submitted that because of its 100% EOU status, the petitioner is not a domestic industry, as it is not a producer of subject goods in India. The review investigations suffer from want of jurisdiction, as there is no domestic producer of subject goods in India. The petitioner is, an importer and not a producer of goods.
29. M/s Softesule Pvt Ltd, Mumbai has submitted that they are importers of the subject goods and if anti dumping duty is levied on the said import, local suppliers will increase their price and keeping in view the fact that there is one supplier of this product, this will affect the delivery schedules to their buyers. It has also been submitted by them that M/s DSM produces the subject goods from basic raw material while the Indian producer produces the subject goods through semi finished route. No other the importers, consumers, exporters or other interested parties have filed any comment or submissions with regard to product under consideration, like articles and scope of the present investigations.

Examination by the Authority

30. According to the Rule 2 (b), "domestic industry" means the domestic producers as a whole engaged in the manufacture of the like article and any activity connected therewith or those whose collective output of the said article constitutes a major proportion of the total domestic production of that article except when such producers are related to the exporters or importers of the alleged dumped article or are themselves importers thereof in such case the term 'domestic industry' may be construed as referring to the rest of the producers only"
31. The present petition has been filed by M/s. Piramal Enterprises Ltd ("M/s. Nicolas Piramal India Ltd." as it was known during the original investigation). The applicant is the sole known producer of subject goods in India. The production of the Petitioner accounts for complete production of subject goods in India. The petitioner, therefore, accounts for "a major proportion in total Indian production".
32. It is noted that the Domestic Industry had shut down operations in its earlier plant in Thane, Maharashtra with effect from ***in order to shift the operations to another plant

which is situated at Digwal, Andhra Pradesh. With effect from *** commercial production of the Product under Consideration at the new plant has resumed. There is a complex chemical reaction with a series of processes that is undertaken on Vitamin A Acetate crystals, i.e. the imported raw material for the manufacture of the Product under Consideration involving a substantial value addition and employment of labour and technology.

33. It may be recalled that in the Final Findings in the CESTAT REMAND POST-DECISIONAL FINDINGS dated 10th February, 2012, the Designated Authority held that :

“iii... 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.”

34. With regard to domestic industry being 100% EOU and therefore it is ineligible to be domestic industry, it is noted that EOU facility in itself does not adversely affect the status of the Petitioner as “domestic industry”. In fact, it is noted that the clearances made by the Petitioner to the Domestic Tariff Area are not restricted or contingent on the exports of the Product under Consideration and are treated as excise-paid domestic sales and not as imports. Thus, based on the Information available on records of the Designated Authority, the Petitioner accounts for all the production of the subject goods in India and thus constitutes domestic industry within the meaning of the Rules.

Issue of claim of confidentiality and Other claims by Domestic Industry

35. The following is the submissions of the domestic industry:
- a. The details of the global distribution Centre at Venlo as also the entity involved in Singapore have not been disclosed. The Exporter has clearly averred that the global distribution centre i.e “Venlo Global DC” is involved in sales of the subject goods and an entity in Singapore is also involved but the Exporter has claimed excessive confidentiality and has not provided a summary of this information. It is also pertinent to note that no questionnaire response or data has been filed by the entity in Singapore which is admittedly involved in the Exports of the Product under Consideration to India. Hence, the chain of exports to India is not complete and the data filed by the said Exporter is deficient and incomplete and does not merit individual treatment to be granted by the Hon'ble Designated Authority.

- b. No other exporters have responded to the questionnaire issued by the Authority. Exporters should therefore be considered non-cooperative as per Rule 6(8) and the Authority should proceed according to the best information available.
- c. Apart from the subject countries, subject goods are reported to have been exported to India from Singapore, Netherlands, Germany and UAE in the injury period, period of investigation and post-period of investigation, i.e. January-2012 to June-2012. The petitioner submits that the apart from India and China, only certain countries in the European Union, such as Germany have manufacturing set up of the product under consideration. Therefore the imports to India from other sources are clearly cases of transshipment because of the absence of manufacturing set up in these countries.
- d. There is no clarity as regards the cost of the global distribution center and other entities which are involved in the distribution or sales of the subject goods.
- e. The Exporter cannot selectively submit data to the Hon'ble Designated Authority, it is unknown whether all the sales of subject goods have been disclosed and the Exporter cannot be permitted to provide data for only those forms of the subject goods which has been exported to India.
- f. The Exporter has arbitrarily and conveniently provided information on exports to the EU only.
- g. The Exporter has categorized the documents as confidential without giving sufficient justification warranting confidentiality and has not given any reasonable summary for the same as per the applicable Rule 7 of the Anti-dumping Rules.
- h. The other entities in Europe or Singapore should have filed independent responses. Important data relating to the quantity of product supplied, the Product Code, Invoice number, date of Invoice, Net invoice Value, has been claimed as confidential by the Exporter.
- i. Appendix 3C requires information to be provided for All other Third Countries, the Exporter has arbitrarily and conveniently provided information on Exports to the EU only. The Exporter has not disclosed the selling price and the discounts/commissions, the total cost, and the Price at Ex-factory level.
- j. The Exporter has not provided the data in the mandated format and therefore it ought to be rejected.
- k. The Exporter had not disputed the fact that it has plants in other countries and has not disclosed whether they have plans to produce the PUC in these Plants
- l. The Exporter has continued to evade the answer, despite the practice of transshipment through other countries such as Singapore into India which has been clearly admitted by the Exporter
- m. The Hon'ble Designated Authority must thoroughly investigate the records of the Company to ensure that all the information is adequately verified and considered by the Hon'ble Designated Authority

- n. While the Consultant has filed the Importers questionnaire on behalf of K. Sevantilal & Co., the covering page reads the submissions to be made on behalf of “DSM Nutritional Products”.
- o. The non-confidential annexures are completely blank and there is not an iota of information except for the reason that “*the information if made public could be mis-used by competitors*”.
- p. Post Disclosure, the domestic industry has again raised the issues concerning excessive confidentiality claimed by the DNP and the Importer. It has also been submitted that the Hon'ble Designated Authority in its calculation of the dumping margin has failed to disclose critical issues involving the dumping margin worked out for the subject countries.

Issue of claim of confidentiality and Other claims by Exporter and Importer

36. The following is the claim on confidentiality and other claims by Exporter and Importer
- a. The global center named Venlo Global DC is not engaged in the production or sales of the subject goods in India or Switzerland or any other country. It is merely a distribution center. The shareholders have been correctly indicated in the response to this question.
 - b. DNP has not denied the role played by any other entity. The details of the transaction have been given in the confidential version of the response.
 - c. The information has been correctly provided. The statement made is that no other company is involved in the production of the goods.
 - d. The products sold in India are of the same quality as those sold in Switzerland. The information has been provided for the different types.
 - e. DNP has provided information relating to its exports to the EU, as EU is a comparable market for determination of normal value. DNP further submits that the authority had considered DNP a cooperative exporter and No challenge was made to the final findings by the domestic industry and, therefore, the issue cannot be re-agitated at this stage.
 - f. The invoices for domestic sales contain sensitive information such as customer name, price, etc., which if revealed would be harmful to the business interests of the company
 - g. The pricing information is market sensitive in nature. The pricing is CIP that is inclusive of Carriage and Insurance, which is liable to be deducted.
 - h. DNP has sold its products to multiple importers / distributors / end users. Payment terms vary from 30 days to 90 days. No duties are levied or refunded for the goods under consideration
 - i. Complete details with proper basis for computation have been provided. Overseas freight and insurance constitute the largest component of the total cost incurred.

- j. The costs of production are historically consistent. The production costs are confidential in nature. The cost of materials is the largest component of the overall cost. The sales are profitable
- k. DNP submits that although there has been an accident in one of the reactors, but the same did not lead to any closures, prolonged shutdowns or curtailment of production.
- l. DNP submits that the information regarding the type of contract, duration of contract, frequency of re-negotiation, release or meet provision of the contract, standard quantity requirements, price premium etc. are all confidential in nature as the same can be mis-used by competitors if brought in public domain.
- m. The details of the exports of PUC to representative countries other than India is not in public domain, and confidential in nature. In the response, DNP has stated that the said information is provided in Appendix of confidential version. This information is not capable of summarization.
- n. The information regarding the current level of production and demand of subject goods is provided by DNP on confidential basis. The exports to India declined in period of investigation as compared to the previous year
- o. Post Disclosure, it has been submitted that there is no legal basis for continuation of investigations. In this regard, it has been cited that The anti – dumping duties was imposed vide Notification No. 112/2007 –Cus under Section 9A(1) , were valid for a period of a period 5 years. Section 9A(5) provides that duties can “continue to remain in force” pending the outcome of a sunset review. The use of the word, “continue” suggests that the duties must be continually in force, without any gap. In the present case, the duties, expired on 28.03.2012, and were re-imposed only on 12.04.2012. Therefore, on the date of extension/re-imposition, the original duty was not in force, hence question of continuation of the duties does not arise. The notification for extension of duties for one year, during the review period is not legally sustainable. It has also been submitted that the extended duty also expired on 12.04.2013. The proposal for further extension of the period for 5 years, in the disclosure statement is contrary to law. Further, it has been submitted that there is no legal basis for Initiation of Review. . It has also been submitted that the Authority has failed to consider the arguments raised by DNP as regards, the excessive confidentiality being claimed by the petitioner.

Examination by the Authority

37. (i) The Authority examined the confidentiality claims of the interested parties and on being satisfied with regard to claim on confidentiality, the same has been allowed in accordance with the practice of the Authority. With regard to the organisational structure of the producer and exporter, it is stated that the parent company of the *** in the Netherlands. It is a publically listed company at the Stock Exchange of Amsterdam. DSM Nutritional Products Holding Ltd is a wholly owned subsidiary of the Dutch

Company. DSM Nutritional Products Ltd (DNP), is a wholly owned subsidiary of ***. M/s DSM Nutritional Products Asia Pacific (DNPAP), now merged with DSM Singapore Industrial Pte Ltd (DSI) is another subsidiary of the parent company *** With regard to responses filed by the producer and exporter, it is noted that the responses were filed by the producer and exporter (i.e both M/s DNP , Switzerland and DSI, Singapore) and a non confidential copy of the same was put in the public file for information to all concerned. Further, a verification visit was carried out at the premises of the producer and exporter in Switzerland and a verification report was issued to the producer and exporter. The comments on the verification report have been taken into account by the Authority in this final findings. With regard to other issues, the Authority has examined the same under the appropriate headings in this findings.

(ii) On the issue of no legal basis for continuation of the investigation, it is noted that Section 9A(5) of the Customs Tariff Act as well as Rule 23(1)(B) of the Anti-dumping Rules address the operation and conducting of sunset reviews of anti-dumping duties upon the expiry of the 5 year levy. The above provisions empower the Hon'ble Designated Authority to initiate a sunset review investigation prior to expiry of duties and extend duties for up to one year while the SSR is conducted (2nd proviso to Section 9A(5)). Further, it is provided under Rule 23(2) that any review shall be conducted within a period not exceeding 12 months. Further, Rule 23(3) clearly states that the provisions of rules 6, 7, 8, 9/10, 11, 16, 17, 18, 19, and 20 shall be mutatis mutandis applicable in the case of review. In this behalf, it may be noted that the first proviso to Rule 17 clearly allows the Hon'ble Designated Authority to extend the 12 month period by another six months. Reading Rule 23(2) along with the proviso to Rule 17 clearly indicates that a similar extension may also be taken in case of a review as well. In this behalf, it is submitted that in the present review, the extension of time in order to complete the investigation is well within the provision of anti dumping rules and grant of extension of time has been duly granted by Central Government. It is therefore submitted that the present extension taken by the Hon'ble Designated Authority in order to complete the investigation is legal and within the rights granted to the DGAD under Rule 23, Rule 17 and Section 9A(5) and any Final Findings issued by the DGAD is legal and within the mandate of the letter and spirit of the law in this behalf.

CALCULATION OF DUMPING AND DUMPING MARGIN

DUMPING MARGIN

Views of Domestic Industry

38. (a) The domestic industry has submitted as under:
- i. Petitioner claims that China should be treated as non market economy for the purpose of determination of normal value. Further, there is no claim from a Chinese producer or exporter for market economy treatment. None of the Chinese exporters have filed

questionnaire response, nor claimed market economy treatment. Such being the case, question of applying para-8 of Annexure-I and considering whether the Chinese companies are entitled for market economy treatment does not arise.

- ii. In the original investigations, the Authority has not granted market economy treatment to any of the responding exporter from China PR.
- iii. Considerable efforts were made to get information on prices at which the subject goods are being sold by the producers in Switzerland in their domestic market in the ordinary course of trade. Efforts were also made to get evidence of price lists of the exporters/manufacturers or price evidence of their exports to other countries or any other information from any published sources. The Petitioner in this regard has been able to obtain sample invoices of domestic sales by a Producer made in the European Union.
- iv. The petitioner has treated Europe as an appropriate surrogate country for China in its petition. The Authority may consider treating Europe as an appropriate surrogate country for the purpose of determination of normal value
- v. Adjustments have been considered towards Ocean Freight, Marine Insurance, Handling charges at the port of origin, inland freight and Commission to arrive at the ex-factory export price.
- vi. DNP, the Exporter from Switzerland is mandated to disclose all the sales of subject goods sold in different forms in the home market and not merely as they consider to be alike. Further, the company is required to provide information for exports to all other third countries, whereas the company has arbitrarily and conveniently provided information on exports to the EU only.
The response filed by the Exporter DNP is deficient and incomplete and the Hon'ble Designated Authority is liable to ignore the information filed by the said Exporter and treat the Exporter as "non-co-operative". Hence, as per Rules 6(8) of the Anti-dumping Rules the Hon'ble Designated Authority apply the residual duty rate to all exports from Switzerland to all Exports including M/s DSM on the basis of the information provided by the Domestic Industry.
- vii. Post disclosure, on the issue of normal value determination for China PR, it has been submitted that the Authority ought to have taken sample invoice price in the EU as the basis of determination of normal value. They have requested the Authority to disclose as to how the export price has been calculated for China PR in view of non-disclosure of information. It has further stated that DNP had filed an incomplete and deficient response and its related entities have not filed the data within time. It has been submitted that the Hon'ble Designated Authority ought to have disregarded the belated and incomplete data filed by the exporters DNP, DSI, DNPAP. It has been further submitted that the related importer of DNP in India has not submitted the information and hence the export price of DNP to India should be rejected.

Views of Exporter and Producer

38(b) It has been submitted that the application filed was not supported by any evidence warranting review. The investigations have been initiated on the basis of a petition filed

by Piramal, wherein an invoice purported to have been issued by a DSM plant in Germany has been relied upon for alleging dumping.

B. CONTINUATION OF DUMPING

39. The Authority sent copies of the questionnaire to all the known exporters in the subject countries for the purpose of determination of normal value in accordance with Section 9A(1)(c). No response has been received from any of the producer/exporters from China PR. From Switzerland, one response has been received from M/s DNP. Thus, for determination of Normal value and dumping margin for all producers and exporters of subject goods from China PR, the Designated Authority, therefore, has no option but to proceed on the basis of best information available on record under Rule 6(8) of AD Rules for non-cooperative exporter which provides that:-

“In a case where an interested party refuses access to, or otherwise does not provide necessary information within a reasonable period, or significantly impedes the investigation, the designated authority may record its findings on the basis of the facts available to it and make such recommendations to the Central Government as it deems fit under such circumstances”.

NORMAL VALUE

40. Under section 9A (1) (c) normal value in relation to an article means:
- (i) The comparable price, in the ordinary course of trade, for the like article, when meant for consumption in the exporting country or territory as determined in accordance with the rules made under sub-section (6), or
 - (ii) when there are no sales of the like article in the ordinary course of trade in the domestic market of the exporting country or territory, or when because of the particular market situation or low volume of the sales in the domestic market of the exporting country or territory, such sales do not permit a proper comparison, the normal value shall be either
 - (a) comparable representative price of the like article when exported from the exporting country or territory or an appropriate third country as determined in accordance with the rules made under sub-section (6); or
 - (b) the cost of production of the said article in the country of origin along with reasonable addition for administrative, selling and general costs, and for profits, as determined in accordance with the rules made under sub-section (6);

The Authority notes that none of the Chinese producers has cooperated in the present investigation.

Para 7 of Annexure I of the AD Rules provides that

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

41. The applicant has claimed that normal value should be determined on the basis of the above provisions. The Authority invited comments from all interested parties in accordance with para 7 and 8 of Annexure I.
42. The Authority notes that China has been treated as a non-market economy country subject to rebuttal of the presumption by the exporting country or individual exporters in terms of the AD Rules. As per Paragraph 8 of Annexure I of the AD Rules, the presumption of a non-market economy can be rebutted, if the exporter(s) from China PR provide information and sufficient evidence on the basis of the criteria specified in sub paragraph (3) of Paragraph 8 and establish the facts to the contrary. However, none of exporters/producers of the subject goods in China have cooperated with the Authority nor provided any information and evidence as mentioned in sub-paragraph (3) of paragraph 8 to consider the following criteria as to whether-
 - a) the decisions of concerned firms in China PR regarding prices, costs and inputs, including raw materials, cost of technology and labour, output, sales and investment are made in response to market signals reflecting supply and demand and without significant State interference in this regard, and whether costs of major inputs substantially reflect market values;
 - b) the production costs and financial situation of such firms are subject to significant distortions carried over from the former non-market economy system, in particular in relation to depreciation of assets, other write-offs, barter trade and payment via compensation of debts;
 - c) such firms are subject to bankruptcy and property laws which guarantee legal certainty and stability for the operation of the firms and
 - d) the exchange rate conversions are carried out at the market rate.

43. The Authority notes that since none of the Chinese exporters have submitted questionnaire responses including the market economy questionnaire responses and sought to rebut the non-market economy presumption, the Authority cannot consider and grant market economy status to Chinese producers and exporters. The Authority is therefore constrained to proceed with para-7 of Annexure-I for determination of normal value in case of China.
44. The Authority notes that normal value can not be determined on the basis of price or constructed value in a market economy third country for the reason that the relevant information from a producer in that country is not available to the Authority.
45. In view of the above and in the absence of cooperation from Chinese producers, the Authority has considered it appropriate to determine normal value on “any other basis” and has constructed normal value in China on the basis of best estimates of cost of production. The normal value so arrived at is mentioned in the table showing dumping margin.

C. EXPORT PRICE AND DUMPING MARGIN FOR ALL PRODUCERS AND EXPORTERS FROM CHINA PR:

46. Under section 9A (1) (b) export price means:

“export price”, in relation to an article, means the price of the article exported from the exporting country or territory and in cases where there is not export price or where the export price is unreliable because of association or a compensatory arrangement between the exporter and the importer or a third party, the export price may be constructed on the basis of the price at which the imported articles are first resold to an independent buyer or if the article is not resold to an independent buyer, or not resold in the condition as imported, on such reasonable basis as may be determined in accordance with the rules made under sub-section (6);

47. The Authority sent questionnaires to all known exporters/producers for the purpose of determination of export price. None of the exporters/producers from subject country filed any information.
48. In view of the above, the Authority has determined export price after taking into account transaction wise DGCIS data. The adjustments to arrive at Net export price have been made as per facts available. The dumping margin in respect of exports of subject goods from China PR during the POI has been determined and is mentioned in the table showing dumping margin.

DETERMINATION OF NORMAL VALUE, EXPORT PRICE AND DUMPING MARGIN FOR SWITZERLAND.

DETERMINATION OF NORMAL VALUE, EXPORT PRICE AND DUMPING MARGIN FOR DSM Nutritional Products, Switzerland (DNP) (Producer) And M/S DSM Singapore Industrial Pte. Ltd. (DSI), Singapore

49. With regard to arguments of the producer and exporter M/s DNP about the fact that initiation of sunset review was not correct, it is noted that the sunset review has been initiated after the applicant provided sufficient positive information substantiating the need for a review. Thereafter, all the information submitted by the producer and exporter has been considered by the Authority for determining continuation of dumping from Switzerland. The Authority notes that M/s DNP produces the subject goods and sells the same in the domestic market as well as in the European market and Indian market. The exporter has submitted that their sales in the home market being less than *** of the total sale of the subject goods by the company are not representative sales for the purpose of Normal Value determination. It was also submitted by the exporter that more appropriate home market would be the EU, which represents around *** of sales during the POI. In this connection the Authority notes that footnote 2 of the Agreement provides that

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

50. The Authority notes that home market sales of the like product constituted less than 5% of the sales to India. As such home market sales are considered insufficient quantities as per the Agreement are therefore, not considered for the purpose of determination of Normal value and accordingly, the Authority has not considered the same for determination of normal value in the exporting country.
51. It is noted that transaction wise exports price to third countries have not been provided by the producer and exporter from Switzerland. On the basis of the fact that other relevant information required in the questionnaire response has been submitted by the responding producer and exporter, the Authority has constructed the normal value for the responding producer and exporter based on the cost of production and adding profit margin. The normal value thus arrived at is mentioned in the dumping margin table.

Export Price and Dumping Margins

DSM Nutritional products (DNP), Switzerland and M/s DSI, Singapore

52. It is noted that M/s DNP has reported *** of export sales of the subject goods to India during the POI.. The Authority notes that the products of DNP for sale to India either go from the Netherlands to Singapore before being sent on to India or have been exported

directly from Netherlands. 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.

53. It was noted that the Company had exported the subject goods to India to independent customers in India. It is also noted that the bulk of the sales were to *** There were also some sales to end users, such as *** In all the cases, the purchase order was placed by the customer on DSM Nutritional Products Asia Pacific (DNPAP), now merged with DSM Singapore Industrial Pte Ltd (DSI). A sales confirmation order is then issued. The payments were made by the customers to DNPAP/DSI, and further payment was made by DNPAP/DSI to DNP. It is also noted that the product was shipped from the factory at Sisseln, Switzerland, to Venlo, Netherlands, under customs bond. At Venlo, the Company has a customs bonded warehouse. From the Bills of Lading it was noted, that the goods were indirectly shipped via Singapore or directly to India from the port at Antwerp. Out of a total of *** exports, *** exports were made directly from the warehouse at Venlo to India, whereas in respect of *** consignments, the goods were transhipped via Singapore.
54. The exporter during the investigation proceedings 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 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 mentioned in the table of dumping margin.
55. 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 and is mentioned in the dumping margin table.

Other exporters from Switzerland

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

Dumping Margins:

Country	Producer /Exporter	Normal value	Net Export Price	Dumping margin	DM%	DM% range
		US\$/Kg	US\$/Kg	US\$/Kg		

Switzerland	DSM Nutritional products (DNP), Switzerland and DSM Nutritional Products Asia Pacific, a division of DSI Singapore Industrial Pte Ltd..	***	***	***	***	20-30
Switzerland	Others	***	***	***	***	20-30
China PR	All	***	***	***	***	40-50

METHODOLOGY FOR INJURY DETERMINATION AND EXAMINATION OF INJURY AND CAUSAL LINK

Views of the Domestic Industry

57. The domestic industry has submitted as under :
- i. The imports in the POI have increased as compared to 2010-11 and have continued to increase in the Post – POI causing continued injury to the Domestic Industry.
 - ii. The price of the imports from the subject countries has significantly declined which has severely affected the price of the Domestic Industry
 - iii. There has been significant under-cutting and under-selling suffered by the Domestic Industry due to the dumped imports from the subject countries. Further, the under-cutting and under-selling has continued even in the Post-POI.
 - iv. Although the demand in the country has increased substantially, the market share of the Domestic Industry has not increased commensurate with the increase in demand, whereas the share of the subject countries has increased significantly.
 - v. The information provided by the domestic industry clearly shows decline in production, sales, capacity utilization, market share and rise in inventories.
 - vi. the profitability of the domestic industry has suffered throughout the injury period as well as the Post-POI. In fact, the Petitioner has changed its manufacturing process and adopted technology to produce the product more cost-effectively which facilitates to compete with the continuously dumped imports of the subject goods. Consequently, with the improvements carried out by the domestic industry, the profitability in Period of review has improved marginally as compared to the earlier years. However, the improvement is not substantial to wipe out the injurious effects caused by dumped imports.

- vii. In the absence of an anti-dumping duty on the imports of the subject goods from the subject countries, the dumping would further intensify and the profitability of the Petitioner would be severely affected due to dumped imports.
- viii. The Petitioner has made investments which have facilitated it to enhance their capacity to produce the product under consideration in their new facility. However the continued dumped imports of the subject goods from the subject countries have affected the return on the investments/capital employed which has not adequately improved to wipe out the injury suffered by the Domestic Industry.
- ix. The difference between non injurious price and net sales realization is immaterial in sunset review investigations as has been held by the Authority in a number of cases. Anti dumping duties have been extended in various SSR cases where non injurious price was lower than net sales realization.
- x. Reason for lower production is inability of the domestic industry to sell the goods in view of cheaper material available in the market from foreign suppliers.
- xi. Post Disclosure, on the issue of injury, the domestic industry has reiterated its earlier submissions. It has been submitted that the demand for the subject product in the country has increased in the period of investigation. Though there is some decline in the demand during the Post POI from the POI period, the demand has increased also in the post POI period from the base year. However, the imports of the subject goods from the subject countries have increased at a greater rate than the increase in the sales of the domestic industry. In fact, the imports from the subject countries have grown at a greater rate than even the growth in demand. There is significant price-undercutting due to imports from the subject countries and the ranges provided in the disclosure statement are significant. Further, there is a positive price underselling margin on account of import of subject goods from subject countries which is mentioned below and the underselling margin during the POI is significant. In fact, during the injury period, there has been price depression on account of import of subject goods from subject countries. The Selling prices of the Domestic Industry have remained low, despite the reduction in cost of production on account of the changed production technology and the profitability of the Domestic Industry has not shown any significant improvement and continues to show injury. It has been submitted that on the basis of the data provided to the Hon'ble Designated Authority, it can be clearly seen that there is a positive dumping margin as well as injury margin in respect of the said imports of subject goods from China PR and Switzerland during the Post POI period and these margins are significant. It has been stated that the import of the subject goods from subject countries continued to increase in the post-POI period over the base years at significantly low prices and clearly establish that the injury to the Domestic Industry will continue in case the anti-dumping duty is revoked. In the instant case, the Hon'ble Designated Authority has concluded that the dumping and injury has continued in the POI as well as the Post-POI, the profitability of the Domestic Industry continues to be volatile and the sales and market share of the Domestic Industry have not increased. In fact, the imports from the subject countries in the POI as well as the post POI have continued to increase. Hence, there is clearly a likelihood of continuation of dumping and injury in case of removal of the anti-dumping duty on the product under consideration. Therefore, the Hon'ble Designated Authority is liable to recommend the continuation of anti-dumping duties on imports of the subject goods from the subject countries.
- xii. On the issue regarding the determination of Non injurious price, it has been submitted that in the case of Packing, Consumables, Utilities, Direct labour, Manufacturing overheads, Administrative overheads, Research and Development,

Depreciation, Financial expenses the Hon'ble Designated Authority has adopted the cost as per the Application made by the Domestic Industry to the NPPA, which are presented for Financial Year 2011-12 and only the Raw material and Selling costs have been considered as per the books of the Domestic Industry. No reasoning has been provided by the Hon'ble Designated Authority in the said Disclosure Statement. With regard to ROCE, it has been submitted that the Net fixed assets have been considered as per the statement of the Domestic Industry, however, the allocation to the product under consideration has been done by the Hon'ble Designated Authority on the basis of depreciation, and not production value for Digwal and Sales Value for Mahad site. It has been submitted that the depreciation has been considered as per the depreciation reported in the NPPA application which is for the Financial year 2011-12 and not for the POI which is January 2010-December 2010. It has been submitted that the Working Capital has been calculated on the basis of the Working Capital reported in the Annual Reports, which is for the company as a whole, which is reported in Rs.Crores, whereas in the calculation provided by the Domestic Industry the same has been erroneously considered to be in terms of Rs.Lacs. The Net Working Capital, thus arrived has been allocated to the Product under Consideration on the basis of the sales value of the product under consideration as regards the total sales of the company, and not on a site-specific basis as submitted by the company. It has been submitted that the Hon'ble Designated Authority has of its own volition adopted a selective methodology and allocations, to arrive at the cost of production and capital employed for the Domestic Industry for the POI.

Views of Exporters, Importers and Other Interested Parties

- 58. The following is the submissions of the exporter on the issues relating to the injury and public interest.**
- a. It has been submitted that the claim of the petitioner with regard to injury is not justified as the exports to India from Switzerland have fallen by about 25% in the period of investigation as compared to the previous year They have disputed the claim of M/s Piramal that there is a 38% increase in the volume of imports from Switzerland during the Period of Investigation. It has been submitted that there is hence no adverse volume effect, from the imports.
 - b. It has also been submitted that the sales of the petitioner have also increased substantially from 14,485 in 2008-09 to 20,664 in the period of investigation and the petitioner's condition has improved dramatically from a loss-making unit in 2008-09, to highly profitable one during the period of investigation.
 - c. As regards the growth, it has been submitted that the petitioner has increased its production capacity from 110,000 in 2008-09 to 160,000 in POI, which itself shows that Piramal had adequate funds and resources, for making such an expansion. The growth

prospects of the petitioner are not affected by the exports by DNP, especially, as DNP's market share has declined from 17% in 2008-09 to 7% in 2011 (as given in petition).

- d. With regard to Likelihood of continuation or recurrence of injury, it has been submitted that M/s DNP is selling its products for export to India at prices, which are much above, its cost of production. The proportion of sales of DNP in the Indian market is very negligible as compared to its overall sales, that is almost 0.2%. It has further been submitted that M/s DNP does not have any surplus capacities, for diversion to India. The proportion of DNP's sales in India being negligible, the possibility of continuation or recurrence of dumping and injury, is remote.
- e. It has been submitted that the entire processing is being carried out in Digwal, Andhra Pradesh which is a 100% Export Oriented Unit (EOU) and these EOUs are set up principally with an objective to promote exports. Various tax and other benefits are extended to such units so that they can compete in the International market. The claim for protection, for its sales in the Indian market is totally unjustified.
- f. It has been submitted that Vitamin –A is used as a supplement in various government programmes including pulse polio, as also for supplementing foods given under various welfare schemes. The imposition of duties enhances the market price of these products to the detriment of the public exchequer and the consumer. The imposition of duties may, therefore, be counterproductive and would only increase the trading profit of the petitioner.
- g. Post disclosure, it has been submitted that the the claims of the petitioner with regard to injury are also not justified. The exports to India from Switzerland have fallen by about 25% in the period of investigation, as compared to the previous year and there is hence no adverse volume effect, from the imports. As regards the profitability of Piramal, it is submitted that the petitioner's condition has improved dramatically from a loss-making unit in 2008-09, to highly profitable one during the period of investigation. This may be attributed to the fact that it is now a trader / importer not a producer. It has also been submitted that there is No Likelihood of continuation or recurrence of injury as DNP is selling its products for export to India at prices, which are much above, its cost of production. The proportion of DNP's sales in India being negligible, the possibility of continuation or recurrence of dumping and injury, is remote. It has also been submitted that the calculation of the dumping margin for the post POI period is not correct since the adjustments in the export price made are not correct. . It has also been submitted that the

duties in the original investigations were in Rupees and, therefore, duty if any, can only be continued as a specific duty in Rupees.

Examination by the Authority

59. The injury analysis made by the authority hereunder *ipso facto* addresses the various submissions made by the interested parties.
60. The Authority has considered import data as per DGCIS data. Information provided by interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. On being satisfied, the authority has granted confidentiality, wherever warranted and such information has been considered 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. With regard to other arguments made by the interested parties in respect to continuation or recurrence of injury in the event of revocation of anti dumping duty, the same has been dealt in the appropriate headings. With regard to comments made by various interested parties post disclosure, the same has been analysed in the succeeding paragraphs and a conclusion of the examination of injury has been given in the appropriate headings. With regard to disclosure of information and calculation of NIP of domestic industry for the subject goods, it is stated that the same has been determined strictly in accordance with Annexure III of the antidumping rules. Further, with regard to disclosure of the information relating to determination of NIP to the domestic industry, it is stated that following disclosure, Annexure IV containing detailed calculations of the NIP including its methodology has been given to the domestic industry. It is further stated that the authority has adopted the Cost Records consistently maintained by the company for determination of NIP. In this regard, the information submitted by the company to another statutory authority i.e., National Pharmaceutical Pricing Authority (NPPA) was also considered by the Authority as the petitioner company expressed its inability to furnish the requisite information for the POI in view of changes in its systems.

ASSESSMENT OF DEMAND AND MARKET SHARE

61. The designated authority has determined the demand for the subject goods as the sum of domestic sales of the domestic industry and imports of the subject goods into India from all sources. The demand so assessed is shown in the following table. It is seen that the demand for the subject product in the country has increased in the period of investigation. Though there is some decline in the demand during the Post POI from the POI period, the demand has increased also in the post POI period from the base year. While determining the demand of the subject goods, the imports from Switzerland has been taken from exporter's information which show a higher volume than given by the DGCIS data.

Assessed Demand	2008-09	2009-10	2010-11	POI - January'11 - December'11	January'12- June'12 (post POI - Actual)	January'12- June'12 (post POI - Annualised)
Domestic sales (kg)	14,483	18,917	16,289	20,563	8,183	16,366
Imports from Subject countries(kg)	21,183	20,107	20,517	34,464	12,342	24,684
China(kg)	16,650	15,113	12,204	28,059	6,240	12,480
Switzerland(kg)	4,533	4,994	8,313	6,405	6,102	12,204
Imports from Other countries(kg)	12,832	16,015	14,402	13,637	5,201	10,402
Total Demand(kg)	48,498	55,039	51,208	68,664	25,726	51,452

The Authority notes that the demand for the subject goods has gone up from 48,498 kg in the base year of the injury period to 68644 kg in the period of investigation.

VOLUME EFFECT OF DUMPED IMPORTS

IMPORT VOLUME

62. 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. Based on the available data, the trends in the volume of imports of the subject goods from the subject countries are as under:

(Unit in Kgs)

Sl. No.		2008-09	2009-10	2010-11	POI	January 12- June' 12(post POI – Actual)	January' 12 June' 12 (post POI- Annualised)
1	China	16,650	15,113	12,204	28,059	6,240	12,480
2	Switzerland	4,533	4,994	8,313	6,405	6,102	12,204
3	Subject countries	21,183	20,107	20,517	34,464	12,342	24,684
4	Other countries	12,832	16,015	14,402	13,637	5,201	10,402
5	Total Imports	34,015	36,122	34,919	48,101	17,543	35,086

63. The Authority notes that the import from subject countries has increased significantly during the POI as compared to the base year. The Authority further notes that there is increase in volume of imports in spite of antidumping duty in force during the period.
64. Based on the imports of subject goods and the actual sales of the domestic industry, the respective share of imports from the subject countries, the share of imports from other countries and the share of domestic industry in the total demand is summarised, as under:

Particulars	Unit	2008-09	2009-10	2010-11	POI	January'12- June'12 (post POI - Actual)
Domestic industry	%	30	34	32	31	32
Subject countries	%	44	37	40	49	48
China	%	34	27	24	42	24
Switzerland	%	9	9	16	7	24
Other countries	%	26	29	28	20	20
Total		100	100	100	100	100

The Authority notes from the above that share of imports from the subject countries has increased from 44% in the base year to 49% in the POI. There is no significant change in the market share of the domestic industry while the share of imports from other countries has declined during the POI over the base year.

PRICE EFFECT

65. With regard to the effect of the dumped imports on prices, Annexure II(ii) of the rules lays down as follows:
- "With regard to the effect of the dumped imports on prices as referred to in sub-rule (2) of rule 18 the designated authority shall consider whether there has been a significant price undercutting by the dumped imports as compared with the price of like product in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increase which otherwise would have occurred to a significant degree."*
66. In a review investigation, the Authority is required to examine whether there has been a significant price effect by the dumped imports as compared with the price of the like product in India, or whether there is likelihood of recurrence of price effect in case duty is revoked.
67. With regard to the effect of the dumped imports on prices, the designated authority is required to consider whether there has been a significant price undercutting by the dumped imports as compared with the price of the like product in India, or whether the

effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree. In order to assess the effect of imports on the domestic market, the authority analyzed import prices over the injury period. The authority determined the net sales realization of the domestic industry considering selling price, excluding taxes & duties, rebates, discounts and freight & transportation. Landed price of imports has been determined considering weighted average CIF import price, with 1% landing charges and applicable basic customs duty and cess thereon.

68. **Price undercutting:** In order to assess whether imports from subject countries were undercutting the prices of the domestic industry, the authority has compared the net sales realization (at ex-factory level) of the domestic industry with the landed price of imports over the injury period in the table below:

Particulars	2008-09	2009-10	2010-11	POI
Landed value of imports in Rs. Per Kg.				
China PR	***	***	***	***
Switzerland	***	***	***	***
Net Selling Price of Domestic Industry in Rs.per Kg.				
NSR	***	***	***	***
Price UnderCutting in Rs./KG				
China PR	***	***	***	***
Switzerland	***	***	***	***
Price Undercutting %				
China PR	***	***	***	***
Switzerland	***	***	***	***
Price Undercutting Range				
China PR	20-30%	15-25%	15-25%	20-30%
Switzerland	15-25%	15-25%	20-30%	10-20%

69. The Authority notes that the price undercutting by the imports from subject countries without the anti dumping duties is significant.

Price underselling, price depression and price suppression

70. It is noted that there is a positive price underselling margin on account of import of subject goods from subject countries which is mentioned below. The price underselling margin during the POI is considered significant. During the injury period, there has been price depression on account of import of subject goods from subject countries. With regard price suppression, no conclusion can be drawn in this case as domestic industry's cost of production and manufacturing process has undergone a significant change and the data for the POI for cost of production and NSR are strictly not comparable.

• Price Underselling	
Particulars	POI
Landed value imports in Rs. Per Kg.	
China PR	***
Switzerland	***
NIP of Domestic Industry in Rs.per Kg.	
NIP of Domestic Industry in Rs.per Kg.	***
Price underselling in Rs./KG	
China PR	***
Switzerland	***
Price under selling %	
China PR	***
Switzerland	***
China PR	15-25%
Switzerland	6-16%

ECONOMIC PARAMETERS RELATING TO THE DOMESTIC INDUSTRY

71. Annexure II to the AD rules requires that the determination of injury shall involve an objective examination of the consequent impact of the dumped imports on domestic producers of the subject goods. Further Annexure II (iv) of the rules lays down as follows:

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

72. In this regard, the Authority has undertaken analysis of the performance of the domestic industry during the injury period and the period of investigation. The requisite analysis on the relevant para-metres for the post period of investigation has also been undertaken by the Authority. The authority notes that the domestic industry in the injury period was manufacturing the subject goods from the basic stage. The requisite facilities for manufacture of subject goods were located at its plant at Thane, Maharashtra. The manufacturing facilities at Thane, Maharashtra were operated by the company till ***. Subsequently, the shifted the production of subject goods to Digwal (Andhra Pradesh). While at the Thane Unit, the company was manufacturing the subject goods from the

basic stage, at its new facilities at Digwal, Vitamin A Palmitate was manufactured by the Company from an intermediate stage. Accordingly, at the new unit at Digwal, the Vitamin A Palmitate was manufactured from the stage of Vitamin A Acetate. The POI was the first year of commercial production of subject goods at the Unit at Digwal. In view of change in the process of manufacture of the subject goods during the injury period and the POI, the authority noted significant changes in the cost structure for manufacture of the subject. In view of the same, the trends on some of the injury parameters are not comparable as the same were noted by the Authority to be not on a like to like basis.

The trend analysis in respect of all the relevant parameters, as required by the Anti Dumping Rules, are detailed below:

PRODUCTION, CAPACITY AND CAPACITY UTILIZATION, COST OF SALES ETC.

73. Information on capacity, production, capacity utilization and cost of sales realisation and profitability of the domestic industry has been as under:

Sl.No.	Particulars	Unit	2008-09	2009-10	2010-11	POI
1.	Capacity for product concerned	Kg	1,10,000	1,10,000	85,000	1,20,000
2.	Total Production	Kg	35,367	39,977	37,895	75,051
3.	Capacity Utilization	%	32%	36%	45%	63%
4.	Cost of Sales	Rs./Kg	***	***	***	***
5.		Index	100	97	133	91
6.	Net Selling Price	Rs./Kg	***	***	***	***
7.		Indexed	100	102	98	102
8.	Profits/(Loss)	Rs.Lacs	***	***	***	***
9.		Index	(100)	(79)	(444)	(6)
10.	Interest cost	Rs lakh	***	***	***	***
11.			100	1134	48	6620
12.	Depreciation	Rs.Lacs	***	***	***	***
13.	Profit before interest	Rs. Lacs	***	***	***	***
14.		Indexed	(100)	(61)	(451)	99
15.	Cash Profit	Rs.Lacs	***	***	***	***
16.			(100)	(61)	(453)	197
17.	Capital Employed	Rs. Lacs	***	***	***	***
18.		Indexed	100	144	79	115
19.	Returns of capital employed %		***	***	***	***
20.		Indexed	(100)	(43)	(586)	86

74. As stated in these findings, during the year 2010-11, the company manufactured the subject goods at its plant at Thane, Maharashtra. This plant was operated by the company for till ***. The changes in the cost of production the profitability and returns on capital employed have been noted by the authority to, inter-alia, be on account of change in the process of manufacture of goods from the basic stage to the intermediated

stage. It is noted from the above that there is an adverse impact on the domestic industry in terms of its operating performance during the injury period.

EMPLOYMENT AND WAGES

75. It is noted that the domestic industry is a multi product multi location company. There may not be direct effect of dumping on employment levels of the domestic industry. Status of employment levels of the domestic industry has been as under:

Particulars	Unit	2008-09	2009-10	2010-11	POI
Employment (Manpower Strength)	Nos	***	***	***	***
	Index	100	71	61	24

76. The authority notes that the employment level of the domestic industry shows a negative trend during the injury period.

PRODUCTIVITY

The productivity of the domestic industry is given in the following table:

Particulars	Unit	2008-09	2009-10	2010-11	POI
Productivity per Employee	Kg	***	***	***	***
	Index	100	183	185	585
Productivity per Day	Kg	***	***	***	***
	Index	100	113	46	212

77. The authority notes that productivity of the domestic industry has increased during POI in line with the increase in production.

INVENTORIES

78. The authority has examined the inventory level of the domestic industry, which is given in the following table:-

Particulars	Unit	2008-09	2009-10	2010-11	POI
Opening Stock-	Kg	***	***	***	***
Closing Stock -	Kg	***	***	***	***
Averages Stocks	Kg	***	***	***	***
	Index	100	355	322	87

79. A significant amount of variance have been noted by the authority in the holding of stocks by the Company. In anticipation of shifting of its production facilitates from Thane to Mahad, the Company had maintained sufficient stock holdings. These variances have been noted by the Authority to be on account of shifting of the production from one plant to another as well as on account of changes in the requirements of Domestic Industry for captive use.

GROWTH

80. On examination of various economic parameters of the domestic industry, the authority notes that the volume parameters such as production and sales have shown positive growth. However, market share of the domestic industry showed negative trend on overall basis. Most of the operating parameters show negative growth during the injury period.

ABILITY TO RAISE CAPITAL

81. The domestic industry is a multi product company. Their ability to raise further investment has not been considered a significant factor showing injury. However, the domestic industry contended that should the dumping from the present sources persist, ability of the domestic industry to raise capital would suffer severely.

FACTORS AFFECTING DOMESTIC PRICES

82. Change in cost structure, geographical conditions, competition in the domestic industry have been examined for analyzing the factors other than dumped imports that might affecting the prices in the domestic market. It is noted apart from the landed prices of subject goods from subject countries, there appears to be no external factors affecting the prices of the domestic industry during the injury period of this review investigation.

MAGNITUDE OF DUMPING

83. It is noted that there is significant dumping of subject goods during the POI from subject countries and the dumping margin determined for each of the subject countries is more than de minimums.

OTHER KNOWN FACTORS

84. During the POI, imports have been reported from subject countries of present investigation. However, imports from third countries are also significant. The CIF import prices from other countries are higher.

CONTRACTION IN DEMAND AND/OR CHANGE IN PATTERN OF CONSUMPTION

85. Overall demand for subject goods has shown significant positive growth during the injury period. It is also noted that no significant change in the pattern of consumption has come to the knowledge of the authority, nor any interested party has made any submission in this regard.

TRADE RESTRICTIVE PRACTICES OF AND COMPETITION BETWEEN THE FOREIGN AND DOMESTIC PRODUCERS

86. The subject goods are freely importable and there are no trade restrictive practices in the domestic market. The domestic industry competes with the landed price of the subject goods. The price of the domestic industry is determined by the landed price of subject goods. Further, imports from other sources have sizable presence in the Indian market.

DEVELOPMENT OF TECHNOLOGY AND EXPORT PERFORMANCE

87. The investigation has not brought out any evidence to show that there was any significant change in technology which could have caused injury to the domestic industry.

EXPORTS BY THE DOMESTIC INDUSTRY

88. Exports of the domestic industry are quite low in volume. Further, the price and profitability in the domestic and export market has been segregated by the authority for the purpose of present injury assessment. Therefore, export performance would not have affected the injury analysis made by the Authority in this statement.

MAGNITUDE OF INJURY AND INJURY MARGIN

89. The selling prices of the subject goods of the Petitioner are governed by the Drugs (Prices Control) Order, 1995. The National Pharmaceutical Pricing Authority (NPPA), the government organization formed under the aegis of the Ministry of Chemicals and Fertilizers Vide the order No. S-O124(E) dated 20th January, 2010 notified a price of Rs. 2610 per 1000 MIU for Vitamin A Palmitate. Accordingly, the notified price for Vitamin A Palmitate 1.7M MIU works out to Rs. 4437 per kg. During the course of verification, the company informed that it has since submitted an application to NPPA for revision of the prices notified by the Government. This was stated to be based on its actual cost for the year 2011-12. However, the matter was stated to be still pending with

NPPA. Pending a revision of the prices of subject goods under DPCO 1995, the company was required to follow the prices as notified by the Government. The prices, as notified by the Govt. under DPCO, represents the maximum sales price which a manufacturer can charge to the consumers. In case of applicant, the actual sales realisation was noted to be below the prices, as notified by the Govt. Based on the analysis of the cost data submitted by the company, for the POI, the authority has also determined the Non Injurious Price (NIP) for the domestic industry in accordance with the provisions of the Anti Dumping Rules. This non-injurious price of Rs. *** per kg. has also been noted by the authority to be lower than the present prices, as notified by NPPA. Since, the NIP, as determined by the Authority in accordance with provision of Anti Dumping rules has been noted to be lower than the prices, as per DPCO order 1995, no injury has been noted to be caused to be company on account of the prices of subject good being under control by the Govt. The NIP, as determined by the Authority, as per Anti Dumping Rules has been compared with the landed value of imports of subject goods from the subject countries for determination of injury margin. Accordingly, the injury margin in the present case works out as follows:

Details	Units	China PR	Switzerland
NIP for Domestic Industry	Rs. in Kg	***	***
Landed value of Imports	Rs. in Kg	***	***
Price under selling	Rs. in Kg	***	***
Underselling %	%	***	***
Price underselling range		15-25	6-16

LIKELIHOOD OF RECURRENCE OF DUMPING AND INJURY IN THE EVENT OF REVOCATION OF EXISITING ANTI-DUMPING DUTY

Views of Domestic Industry

90. The domestic industry has submitted as under:-
 - i. The Domestic Industry has also been able to obtain sample invoices of domestic sales by a Producer made in the European Union in the post-Period of Investigation period of January-2012 to June-2012. On the basis of the same, it can be clearly seen from that the dumping of the Product under Consideration from the subject countries in to India has continued even in Post-Period of Investigation. Hence, the likelihood of continuation or recurrence of dumping has been adequately established.
 - ii. There are exports during the injury period, period of investigation as well as post-period of investigation. The Petitioner has determined dumping margin in respect of these exports for period of investigation as well as post-period of investigation and has claimed that these exports were at significant dumped prices.

- iii. In the event of cessation of anti dumping duties, the landed price of imports from China PR are likely to be substantially lower than the selling price of the domestic industry, if the current anti dumping duties are not considered.
- iv. The Exporters in Switzerland and China PR have built huge capacities, far in excess of their domestic demand. This is established by significant exports from Switzerland and China PR, which have continued unabated even in the post-POI period.
- v. The producers/exporters in the subject countries have excessive production capacities and have continued to expand their capacities. This is clearly illustrated from the increasing imports of the subject goods from the subject countries.
- vi. In case the anti-dumping duties on the subject goods from the subject countries are discontinued, the excessive capacities held by the foreign producers/exporters in the subject countries shall be attuned towards the Indian market.
- vii. Prices at which the product under consideration is being exported by the producers/exporters in the subject countries is substantially lower than the prices of Domestic Industry. Hence, in case of the expiry of the anti-dumping duties applicable to the subject goods from the subject countries, the Indian market would consequently become a preferred market for the producers/exporters to continue to export the subject goods at the low prices.
- viii. The Domestic Industry has suffered injury on account of the imports from the subject countries, and has made large investments and switched to advanced production process and adopted technology to cater to domestic user industry in a cost-efficient manner to compete with the dumped imports from the subject countries.
- ix. Further, the expiry of the anti-dumping duty the imports of the subject goods from the subject countries shall result in flooding of the domestic market with the subject goods from the subject countries. However, in case the dumped imports from the subject countries are permitted to continue unabated, in the absence of any anti-dumping duty on the same, there is likelihood of recurrence of the injury to the Domestic Industry.
- x. There is significant price undercutting and price underselling by the import of the subject goods from the subject countries in the Post-POI period.

Views of Exporters, Importers and Other Interested Parties

91. With regard to Likelihood of continuation or recurrence of dumping and injury, it has been submitted that M/s DNP is selling its products for export to India at prices, which are much above, its cost of production. The proportion of sales of DNP in the Indian market is very negligible as compared to its overall sales, that is almost 0.2%. It has further been submitted that M/s DNP does not have any surplus capacities, for diversion

to India. The proportion of DNP's sales in India being negligible, the possibility of continuation or recurrence of dumping and injury, is remote.

Examination by the Authority

92. The authority in a sunset review investigation, besides determining whether the subject goods are continuing to enter the Indian market at dumped prices, has to determine whether the subject goods are likely to be exported at dumped prices from the subject countries in the event of withdrawal of anti dumping duties. The Authority is further required to examine whether injury to the domestic industry is likely to continue or recur due to the dumped imports if the duty is removed or varied.
93. The Authority has examined the likelihood of recurrence of dumping and injury to the domestic industry on the basis of information and evidence presented by various interested parties during the course of the investigations. The Authority has examined the contention of various interested parties. In addition, the authority has examined the likelihood of injury and dumping by conducting an analysis of the post POI information. The Post POI data regarding imports have been taken from the information submitted by the cooperating producers and exporters from subject countries, information submitted by the domestic industry from various sources including the DGCIS data.

VOLUME OF EXPORTS POST POI

94. In order to examine the likelihood of dumping and injury to the domestic industry due to dumping of subject goods from the subject countries, the authority has undertaken an analysis of the volume of exports of subject goods to India from the subject countries in the post-POI period. The import of the subject goods from subject countries continued to increase in the post-POI period over the base years. The analysis is as under,

(Units in Kgs)

	2008-09	2009-10	2010-11	POI - January'11 - December'11	January'12-June'12 (post POI - Actual)	January'12-June'12 (post POI - Annualised)
Imports from Subject countries(kg)	21,183	20,107	20,517	34,464	12,342	24,684
China(kg)	16,650	15,113	12,204	28,059	6,240	12,480
Switzerland(kg)	4,533	4,994	8,313	6,405	6,102	12,204

Imports from Other countries(kg)	12,832	16,015	14,402	13,637	5,201	10,402
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DUMPING MARGIN POST POI

95. In order to examine the likelihood of dumping and injury to the domestic industry due to dumping of subject goods from the subject countries, the authority has undertaken an analysis of the price of exports of subject goods to India from the subject countries in the post-POI period. It was noted that there is a positive dumping margin as well as injury margin in respect of the said imports of subject goods from China and Switzerland during the Post POI period and these margins are considered significant. . Following the issuance of the disclosure statement, it has been submitted that data with regard to adjustments in export price are not correct. Following the comments to the disclosure statement, it is noted that the net export price and the dumping margin for Post POI has been determined from the information submitted by M/s DNP, Switzerland.

Dumping margin for post POI period

Country	Producer /Exporter	Normal value	Net Export Price	Dumping margin	DM%	DM% range
		US\$/Kg	US\$/Kg	US\$/Kg		
Switzerland	DSM Nutritional Products	***	***	***	***	20-30
Switzerland	All Others	***	***	***	***	20-30
China PR	All	***	***	***	***	10-20

PROFITABILITY OF DOMESTIC INDUSTRY

96. In order to examine the likelihood of injury to the domestic industry due to dumped imports, in the post investigation period i.e. January-2012 to June 2012, the authority has also undertaken an analysis of the cost of production, net sales realization and the profitability of the domestic industry for the POI and the Post POI period. The trends in this regard, are noted, as under:

	Unit	2010-11	POI	January'12- June'12 (post POI - Actual)	January'12- June'12 (post POI - Annualised)
Production		37895	75051	18540	37080
Cost of Sales	Rs./Kg	***	***	***	***
	Index	100	68	73	73
Net Selling Price	Rs./Kg	***	***	***	***
	Index	100	105	103	103
Profit/(Loss) (Rs./Kg)		***	***	***	***
		(100)	(2)	(19)	(19)

97. The Authority notes that in the Post POI period, the production of the Domestic Industry has declined. However, it is noted that for *** month in the Post POI period, there was no production of the subject goods. The reasons for the same were stated by the Domestic Industry that there was no requirement of the subject goods for its captive use. However, the sales volume of the Domestic Industry has declined marginally in the Post POI period on an annualized basis. Further, while the cost of production of Domestic Industry has increased, the sales realization has declined. It is also noted that the domestic industry has incurred a loss on sale of the subject goods during the Post POI period.

LANDED VALUES OF IMPORTS, NET SALES REALIZATION AND NON INJURIOUS PRICE

98. In the post POI period, the authority has also undertaken an analysis of the landed values of imports from the subject countries, vis-à-vis, NSR and the NIP of the domestic industry. It is noted that the landed price of imports have remained significantly lower than the net selling price in respect of imports from China PR and Switzerland showing significant positive price undercutting. The price underselling margin in respect of imports from China PR and Switzerland is also significant.

Price under cutting in Post POI

Particulars	Unit	January'12-June'12 (post POI - Actual)
Net Selling Price	Rs./Kg	***
Landed Price -China PR	Rs./Kg	***
Landed Price -Switzerland	Rs./Kg	***
Price undercutting China	Rs./Kg	***
Price undercutting - Switzerland	Rs./Kg	***
China PR	%	***
Switzerland	%	***
China PR	Range	5-15%
Switzerland	Range	5-15%

Injury margin in Post POI period

Particulars	Unit	January'12-June'12 (post POI - Actual)
NIP	Rs./Kg	***
Landed Price -China PR	Rs./Kg	***
Landed Price -Switzerland	Rs./Kg	***
Price undeselling China	Rs./Kg	***
Price underselling - Switzerland	Rs./Kg	***
China PR	%	***
Switzerland	%	***
China PR	Range	5 to15%
Switzerland	Range	10 to 20%

**COUNCLUSIONS ON LIKELIHOOD OF CONTINUANCE OR RECURRENCE OF
INJURY TO THE DOMESTIC INDUSTRY IN THE EVENT OF REVOCATION**

99. It is noted that the dumping margin of the subject goods imported from China PR and Switzerland is positive, both during the POI and the post-POI. Thus, there is a likely hood of continuation of dumping of subject goods from subject countries should the

present anti dumping duties are revoked. With regard to likely hood of injury to the domestic industry on account of dumping of subject goods from subject countries, it is noted that the price effect i.e price undercutting and price underselling on account of dumped imports of subject goods from subject countries is positive and significant both during the POI and post POI period. With regard to the impact of the dumped subject goods from subject countries on the domestic industry, it is noted that the domestic industry market share remains fragile during the review POI period as well as during the post POI period while the market share of the imports from subject countries have increased during the same period. Further, the operating performance of the domestic industry continues to be dismal during the POI and the domestic industry has incurred loss during the post POI period. Further, the injury margin during the POI as well as during the post POI is significantly positive for both subject countries. Thus, it is established that injury to the domestic industry is likely to continue in the event of withdrawal of anti dumping duty from the subject countries. Further, even though the domestic industry has marginally improved its performance during the POI, the situation of domestic industry continues to be fragile especially after POI and therefore should the present anti dumping duties from the subject countries be withdrawn, injury to the domestic industry is likely to recur.

Indian Industry interest.

100. Post disclosure, it has been submitted by exporter that imposition of anti dumping duty in this case is against Public Interest. In this regard, they have cited their partnerships with the United Nation's World Food Programme, vitamin Angels and many Indian NGOs. In this regard, it is noted that the purpose of anti dumping duties in general is to eliminate dumping which is causing injury to the domestic industry and to reestablish a situation of open and fair competition in the Indian market, which is in the general interest of the country.
101. The Authority recognizes that the imposition of anti dumping duties might affect the price levels of the products manufactured using subject goods and consequently might have some influence on relative competitiveness of these products. However, fair competition on the Indian market will not be reduced by the anti dumping measures. On the contrary, imposition of anti dumping measures would remove the unfair advantages gained by dumping practices, would prevent the decline of the domestic industry and help maintain availability of wider choice to the consumers of subject goods.
102. The Authority notes that the imposition of anti dumping measures would not restrict imports from subject countries in any way, and therefore, would not affect the availability of the product to the consumers. The consumers could still maintain two or even more sources of supply.

Final provisions

CONCLUSIONS:

103. Having regard to contentions raised, information provided and submissions made by interested parties and facts available before the Authority as recorded in the above findings and on the basis of above analysis of the state of continuation of dumping and consequent injury to domestic industry and likely hood of continuation of dumping and injury, the Authority concludes that

- (i) The subject goods from subject countries are entering the Indian market at dumped prices and dumping margin is significant. It is also seen that the subject goods continue to be exported to Indian at dumped prices despite the existing anti dumping duties and there is a likely hood of its continuation should the existing antidumping duties are allowed to expire.
- (ii) It is noted that without the anti dumping duties, the price undercutting and price underselling are significant from subject countries. It is also concluded that injury to the domestic industry is likely to continue in the event of withdrawal of anti dumping duty from the subject countries. Further, even though the domestic industry has marginally improved its performance during the POI, the situation of domestic industry continues to be fragile especially after POI and therefore should the present anti dumping duties from the subject countries be withdrawn, injury to the domestic industry is likely to recur.
- (iii) Thus, the anti dumping duties are required to be extended and modified.

104. The Authority considers it necessary to impose definitive anti dumping duty on all imports of subject goods from subject countries in order to remove the injury to the domestic industry. The margin of dumping determined by the Authority is indicated in the paragraphs above. The Authority recommends the amount of anti dumping duty equal to the margin of dumping or less, which if levied, would remove the injury to the domestic industry. For the purpose of determining injury margin, the landed value of imports has been compared with the non-injurious price of the domestic industry determined for the period of investigation.

105. With regard to duty structure, keeping into account factual matrix of the case and having regard to contentions raised, information provided and submissions made by interested parties, it is deemed appropriate to recommend fixed duty structure in this case. Accordingly, the Authority considers it appropriate to recommend to the Central government for continued imposition of anti dumping duties as modified in the duty table below on subject goods originating in or exported from subject countries. Landed value of imports for the purpose shall be the assessable value as determined by the Customs under the Customs Act, 1962 and all duties of customs except duties under sections 3, 3A, 8B, 9 and 9A of the Customs Tariff Act, 1975. The Anti-

Dumping duty shall be the amount mentioned in column 9 for the subject goods originating in or exported from the countries mentioned below: -

Sl. No	Sub-heading	Description of goods	Specifi-cation	Country of origin	Country of Export	Producer	Exporter	Amount	Unit of Measurement	Currency
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
1.	293621	Vitamin-A Palmitate	Any	Switzerland	Any	DSM Nutritional Products, AG Switzerland	DSM Nutritional Products Asia Pacific, a division of DSI Singapore Industrial Pte Ltd.	7.34	Kg	US\$
2	-Do-	-Do-	Any	Switzerland	Any other than China PR	Any other than above	Any	8.92	KG	US\$
3	-Do-	-Do-	Any	Any other than China PR	Switzerland	Any	Any	8.92	KG	US\$
4	-Do-	-Do-	Any	China PR	Any	Any	Any	15.37	KG	US\$
5	-Do-	-Do-	Any	Any	China PR	Any	Any	15.37	KG	US\$

106. An appeal against the order of the Central government shall lie before the Customs Excise and Service Tax Appellate tribunal, in accordance with the Act.
107. The Authority may review the need for continuation, modification or termination of the definitive measures, as recommended herein, from time to time, as per the relevant provisions of the Act, and public notices issued in this respect from time to time. No request for such a review shall be entertained by the Authority unless the same is filed by an interested party within the time limit stipulated for this purpose.

(J S Deepak)
Designated Authority