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

NOTIFICATION

NEW DELHI, the 20<sup>th</sup> February 2006

**Preliminary Findings**

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

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

2. WHEREAS M/s. Nicholas Piramal India Ltd. (herein after referred to as the Applicant) has filed an application before the Designated Authority (hereinafter referred to as the Authority), in accordance with the Act, 1975 and Rules, alleging dumping of Vitamin A Palmitate (herein after referred to as subject good), originating in or exported from Switzerland and China PR (herein after referred to as subject countries) and requested for initiation of Anti Dumping investigations for levy of anti dumping duties on the subject goods.

3. AND WHEREAS, the Authority, on the basis of sufficient evidence submitted by the petitioner M/s. Nicholas Piramal India Ltd. on behalf of the domestic industry, issued a public notice dated 23<sup>rd</sup> March, 2006 published in the Gazette of India, Extraordinary, initiating Anti-Dumping investigations concerning imports of the subject goods, originating in or exported from the subject countries/territories, in accordance with the sub-Rule 5(5) of the Rules, to determine the existence, degree and effect of alleged dumping and to recommend the amount of antidumping duty, which if levied would be adequate to remove the injury to the domestic industry.

## **A. Procedure**

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

- (i) The Designated Authority sent copies of initiation notifications dated 23<sup>rd</sup> March, 2006 to the Embassies of the subject countries in India, known exporters from the subject countries/territories, importers and the domestic industry as per the information available with it and requested them to file questionnaire responses and make their views known in writing within 40 days of the initiation notification.
- (ii) Copies of the non-confidential version of the petition filed by the domestic industry were made available to the known exporters and the Embassies/High Commissions of the subject countries in accordance with Rules 6(3) supra.
- (iii) The Embassies of the subject countries/territories in New Delhi were informed about the initiation of the investigations in accordance with Rule 6(2) with a request to advise the exporters/producers from their countries to respond to the questionnaire within the prescribed time. A copy of the letter, petition and questionnaire sent to the exporter was also sent to the Embassies of the subject countries along with a list of known exporters/producers.
- iv) The Authority sent questionnaire, to elicit relevant information, to the known exporters from subject countries in accordance with the rule 6(4):-
- v) In response to the above notification the following exporters from the subject countries filed their questionnaire responses.
  - a) M/s DSM Nutritional Products, Switzerland;
  - b) M/s Zhejiang NHU Company Limited (NHU), China PR; and
  - c) M/s Synchem International Co. Ltd. (Synchem), China PR
- vi) Questionnaires were sent to known importers and Consumers of subject goods in India calling for necessary information in accordance with Rule 6(4). However, only M/s Hexagon Nutrition Pvt. Ltd., Mumbai has filed responses to the initiation of the investigation. The views of the above interested parties, to the extent they are relevant have been taken on record and examined by the Authority at appropriate places.
- vii) Request was made to the Directorate General of Commercial Intelligence and Statistics (DGCI&S) to arrange details of imports of subject goods for the past three years, and the period of investigation;

- viii) The Authority made available non-confidential version of the evidence presented by various interested parties in the form of a public file kept open for inspection by the interested parties;
- ix) Optimum cost of production and cost to make and sell the subject goods in India based on the information furnished by the petitioner on the basis of Generally Accepted Accounting Principles (GAAP) has been provisionally worked out so as to ascertain whether Anti-Dumping duty lower than the dumping margin would be sufficient to remove injury to Domestic Industry;
- x) \*\*\* in this Notification represents information furnished by the petitioner on confidential basis and so considered by the Authority under the Rules;
- (xi) Investigation was carried out for the period starting from 1<sup>st</sup> April 2004 to 30<sup>th</sup> September 2005 (POI).

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

5. The product involved in the current investigation is Vitamin A Palmitate. Vitamin A Palmitate is available in various strengths viz. Vitamin A Palmitate 1.7, and Vitamin A Palmitate 1.0. Vitamin A Palmitate 1.7 is being dumped in India from People's Republic of China and Switzerland. The production process, physical and chemical characteristics of both the products are similar and the products are substitutable and can be interchangeably used. Since Vitamin A Palmitates of various strengths have the same end use, the present investigations shall cover Vitamin A Palmitate 1.7, and Vitamin A Palmitate 1.0 (herein after termed as the "subject goods") in all its strengths and forms. The product is classified under heading No. 293621.00 in Chapter 29 of the First Schedule to the said Customs Tariff Act and ITC HS Classification. This classification however, is indicative only and in no way binding on the scope of the present investigation.

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

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

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

### **E.1 Domestic Industry**

7. The domestic industry has submitted that the dedicated customs heading for the subject goods is 293621.00 but there are other types of vitamins, which are not the subject goods under consideration. Since there are other types of vitamins, which are not within the purview of this investigation, petitioner has submitted import information compiled from transaction wise information on imports provided by International Business Information Service (IBIS), Mumbai. They have also submitted that dumping has intensified after initiation of the investigation and a preliminary determination and provisional duty is essential in view of continued injury suffered by them.

8. The Domestic Industry has also submitted that the exporters have failed to fulfill their obligation under the applicable anti-dumping provisions by not providing the meaningful summary of the response to the exporter's questionnaire. The exporters have claimed excessive confidentiality without providing any reasons and some parts of the Questionnaire are incomplete and deficient. Further, Non-confidential version of the questionnaire response has not been given for all the information contained in the confidential version. It has been argued that it was obligatory for the exporter to give proper statement of reasons as to why confidentiality was claimed and why summarization was not possible for certain information. This has resulted in depriving the Domestic Industry of a legitimate right to make effective submissions as contemplated under the provisions relating to confidentiality.

9. The domestic industry has also submitted that China is a non-market economy and has been treated so by European Commission and USA in the past three years. In India, the Designated Authority has treated China as non-market economy practically in all the investigations initiated after the amendment dated 31.5.2002. Therefore, China is a non-market economy and market economy status treatment cannot be granted to the Chinese producers.

### **E.2 Importers**

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

11. They have further argued that cost effective availability of this product is essential as several charitable organizations are funding projects in India for vitamin supplements to fight wide spread vitamin deficiency. Imposition of ADD

would lead to monopolizing situation for NPIL and the consumers have to bear the burden of higher price due to antidumping duty.

### **E.3 Exporters**

12. M/s DSM Nutritional Products (DNP), in its preliminary submissions, has argued that DNP does not pursue a policy of dumping its products on the Indian market and the facts and figures provided in the response to the Questionnaire will prove that at the prices charged by DNP for export to India, no material injury is caused to the Petitioner that might justify the imposition of an anti-dumping duty. It has been argued that the purchasing powers and market structures, in Switzerland and in India, are entirely different, as are the volumes of products sold per transaction – an element which has a direct effect on sales price. Sales to the EU market more closely resemble the characteristics of the export sales to India than sales to the Swiss market, and the prices that can be achieved in that market are comparable as well. It has been submitted that DNP always sells the products concerned above the costs of production, regardless of the destination of the products and the Petitioner has grossly over-estimated DNP's sales prices in Switzerland and also significantly under-estimated ex-factory export prices.

13. It has been further submitted that imposition of an anti-dumping duty on imported products from Switzerland would not be justified under WTO rules due to the lack of material injury caused by DNP and would lead to recreating the monopoly in India that the Petitioner was able to establish for itself in 2003 and the first half of 2004 following the imposition of duties on imported products from Singapore, Georgia and the EU. This will inevitably result in higher sales prices to Indian customers and harm the Indian economy.

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

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

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

15. As per Paragraph 8, Annexure I to the Anti Dumping Rules as amended, the presumption of a non-market economy can be rebutted if the exporter(s) from China provide information and sufficient evidence on the basis of the criteria specified in sub paragraph (3) in Paragraph 8 and prove the contrary. The cooperating exporters/producers of the subject goods from People's Republic of China are required to furnish necessary information/sufficient evidence as mentioned in sub-paragraph (3) of paragraph 8 in response to the

Market Economy Treatment questionnaire to enable the Designated Authority to consider the following criteria as to whether:-

- a) the decisions of concerned firms in China PR regarding prices, costs and inputs, including raw materials, cost of technology and labour, output, sales and investment are made in response to market signals reflecting supply and demand and without significant State interference in this regard, and whether costs of major inputs substantially reflect market values;
- b) the production costs and financial situation of such firms are subject to significant distortions carried over from the former non-market economy system, in particular in relation to depreciation of assets, other write-offs, barter trade and payment via compensation of debts;
- c) such firms are subject to bankruptcy and property laws which guarantee legal certainty and stability for the operation of the firms and
- d) the exchange rate conversions are carried out at the market rate.

16. In this connection the Authority notes that two companies from China PR have filed their questionnaire response and Market Economy Questionnaire response in support of their market economy and individual treatment claims. The claims of the responding exporters have been examined as follows:

**F.1.1 M/s Zhejiang NHU Company Limited (NHU), China PR and M/s Synchem International Co. Ltd.**

17. M/s Zhejiang NHU Company Limited (NHU), China PR, alongwith M/s Synchem International Co. Ltd., has filed the exporter's questionnaire response and market economy questionnaire response. NHU is the producer of the subject goods in China and exports the same to India through its related company Synchem, which is a trading Company.

18. NHU has claimed that it is a publicly listed company in China and major portion (\*\*\*\*\*) of its shares are held by a holding Company named, M/s Xinchang County Synthetic Chemicals Factory (Xinchang), and part of it is invested by public shareholders. The company has clarified that the expression 'county' appearing in the name of the company is only a geographical indicator of the county where the factory is located and has nothing to do with the county government. The company further claims that Xingchang is a private company limited by shares and is in the process of changing itself into a holding company. Major portion of the shares of this Company is held by 6 individuals. However, the exporter has not provided any information about the original status of various production units controlled by this company and the process of their transformation, if they were earlier held by local/state or provincial governments. The holding Company seems to have several production and trading units directly under it or through NHU. The name of this company, with the expression 'factory' and 'county', appears to suggest that Xinchang was a synthetic chemical

factory under the Xinchang County Government before it was transformed into a private entity through privatization process. Therefore, examination of the status of Xinchang and the nature of establishment of various production units and trading companies involved in the production and sales of the subject goods is essential before taking a final view on the market economy status of the company. The producer has also a large number of local raw material suppliers the status of which have been shown as private entities while the respondent does not have their addresses. In view of the above it is not possible to provisionally conclude that the decisions of the concerned firms regarding, prices, costs and inputs, including raw materials, etc. are free from significant state interference and the costs of major inputs substantially reflect market value. Similarly, it is also not possible to provisionally conclude that the production costs and financial situation of the firms involved are not subject to significant distortions carried over from the former non-market economy system.

19. M/s Synchem International Co. Ltd. has filed the questionnaire responses as the exporter of the subject goods manufactured by M/s Zhejiang NHU. This company is a trading company registered in Dalian Bonded Zone. The company has claimed that majority holding in the company is by M/s Xinchang synthetic Chemical factory and rest of the holdings is by an individual. The respondent has also claimed that it is not a state or local body nor a company in transformation from state or local bodies in the process of privatization. However, Xinchang is the common major shareholder of the producing company i.e Zhejiang NHU Company Ltd. Therefore, the producer and exporter of the subject goods are related. However, this company has no production and/or domestic sale of the subject goods in China.

20. Therefore, the Authority is of the view that market economy status cannot be extended to this producer for determination of its normal value, pending further investigation and verification of the information submitted by the exporter. In view of the above, for the purpose of preliminary determination, the Authority proceeds to determine the Normal value in China in terms of para 7 of Annex -1 to the Rules. However, pending further investigation and verification of the data of both the entities for the purpose of determination of market economy condition and normal value as well as export price, the data of this exporter has been used for provisional determination of export price for the producer-exporter combination.

**a) Normal Value**

21. As noted above normal value for the Chinese exporters has been determined in terms of para 7 of Annex 1 to the Rules which provides that

*In case of imports from non-market economy countries, normal value shall be determined on the basis of the price or constructed value in the market economy third country, or the price from such a third country to*

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

22. In this connection the Authority notes that in the initiation notification the interested parties were intimated that the domestic industry had suggested that in view of non-market economy situation in China the European Union should be considered as the appropriate market economy third country for the purpose of determination of normal value in China. The Authority notes that the selling prices of the subject goods in the European market are available for such a determination. The average selling price of Vitamin-A Palmitate 1.7 BHA/BHT in the European market during the POI was US\$ \*\*\*\*\*per KG at ex-factory level. The exports from China are of 1.7 MIU/Gms and a small quantity of 1.6 MIU/Gms. Therefore, pending further investigation and comments from the interested parties on the subject, for the purpose of preliminary determination normal value in China PR has been determined based on the price in the European market. Accordingly, Normal value has been provisionally determined as US\$\*\*\*\*\*per Kg of Vitamin A Palmitate 1.7 MIU/Gms.

**b) Export Prices**

**i) NHU-Synchem**

23. The Authority notes that NHU-Synchem has exported \*\*\*\*\* Kgs of the subject goods to India during the POI. The goods have been sold to Synchem on FOB basis at a net ex-works price of US\$\*\*\*\*\*per Kg. Synchem has further exported the goods to the customers in India on CIF terms. Adjustments towards all direct selling expenses incurred by Synchem and NHU i.e. inland and ocean freight and insurance, credit expenses have been applied as per the response filed by the exporter. The Authority notes that the exporter has paid VAT @ 17% of the invoice value and claimed refund @ 5% of the invoice value. Therefore, net EP has been determined after adjusting the VAT paid and refund obtained. Accordingly, net price realization for Synchem works out to US\$ \*\*\*\*\*per Kg of Vitamin A Palmitate 1.7 MIU/Gms. Therefore, the price realized by the producer at the ex-factory level has been provisionally adopted as the export price for the

purpose of determination of dumping margin for this exporter-producer combination. Accordingly, the net export price for the cooperating exporters has been determined as US\$\*\*\*\*\*per Kg.

**ii) Others**

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

**c) Dumping Margins**

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

Exporter	NV	EP	DM	DM %
China	US\$/Kg	US\$/Kg	US\$/Kg	
NHU/Synchem	*****	*****	*****	42%
All others	*****	*****	*****	55%

**F.2 Switzerland**

26. The Authority notes that only one exporter from Switzerland i.e., M/s. DSM Nutritional Products (DNP), has filed the questionnaire response in respect of this product. Based on their response and deficiencies therein certain additional information were also called for. On the basis of the questionnaire response filed by the exporter the dumping margins for the exporters in Switzerland have been provisionally determined as follows:

**a) Normal Value**

27. The Authority notes that this exporter produces the subject goods and sells the same in the domestic market as well as in the European market and Indian market. However, during the POI only Vitamin-A Palmitate 1.7 BHA/BHT and 1.7 TOCO has been exported to India. It was noticed that their home market sales of \*\*\*\*\* Kg during the POI is less than 2% of the total sale of the subject goods by the company. Therefore, the home market sales are not representative sales for the purpose of dumping margin determination. The exporter has provided its sales of the subject goods in the European market for determination of normal value in terms of Section 9A(c)(ii)(a) of the ACT. The exporter has claimed that they have sold \*\*\*\*\*Kg of Vitamin A Palmitate 1.7 BHA/BHT and 1.7 TOCO in the European market during the POI, and \*\*\*\*\* Kg of the same products have been sold in the Indian market during the same period. The products sold in both the markets being same they have been treated as like products for

provisional determination of normal value subject to verification and reconciliation of data.

28. The exporter has also produced certain information on the cost of production of the subject goods. Pending verification of the cost of production and ordinary course of trade examination of the European sales transactions, the European sales price have been accepted provisionally for determination of normal value. The applicant has claimed certain adjustments towards inland and export transport expenses, insurance expenses, storage and handling expenses and shipping charges against their sales in the European market to work out the normal value at ex-factory level. Pending verification, the adjustments claimed have been accepted by the Authority provisionally for the purpose of working out the normal value at the ex-works level. Based on this, the normal value for the exporters in Switzerland has been determined as follows:

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

**b) Export Price and Dumping Margins**

**i) DSM Nutritional products**

29. DNP has reported \*\*\*\*\* Kgs of export sales of the subject goods to India during the POI covering Vitamin A Palmitate 1.7 BHA/BHT and 1.7 TOCO. It has been submitted by the exporter that the products concerned go through Singapore and are handled by the DSM Nutritional Products regional office for Asia Pacific in Singapore. It is a trading organization with a warehouse and invoices and re-exports the products to India and other Asia pacific countries. The exporter has claimed that as DSM Switzerland and DSM Singapore are related companies, and the pricing mechanism between them is not relevant for this investigation and this issue can be examined at the time of the verification. Therefore, pending verification of the issues and the assessment of SAG expenses by the trading arm in Singapore, export price of this exporter has been determined on the basis of the data submitted by the exporter as follows:

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

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

	<b>NV US\$/Kg</b>	<b>Qty Kg</b>	<b>EP US\$/Kg</b>	<b>Qty Kg</b>	<b>DM US\$/Kg</b>	<b>DM value</b>
VIT A PALM 1.7 BHA/BHT	*****	*****	*****	*****	*****	*****
VIT A PALM 1.7 TOCO	*****	*****	*****	*****	*****	*****
Weighted Average	*****	*****	*****	*****	*****	*****
					9%	

**ii) Other exporters**

31. 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 provisionally determined for Switzerland. Accordingly, export price dumping margin for all other exporters from Switzerland works out as US\$\*\*\*\*\*per Kg (30%).

**F.4 Dumping Margins: Summary**

Product	Country	Exporter	Dumping Margin	Dumping Margin %
			US\$/KG	
Vitamin-A Palmitate	Switzerland	M/s DSM Nutritional Products	*****	9%
	Switzerland	All Others	*****	30%
	China	NHU with Synchem	*****	42%
		All Others	*****	55%

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

**G. INJURY DETERMINATION**

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

33. DSM Nutritional Products, in its preliminary submissions, has inter alia argued that

- The current loss of market share and fall in profitability suffered by the Petitioner, as alleged by the petitioners, is caused by a large number of other factors, including the government policies and economic parameters, as well as the inefficiency of the Petitioner's production, and not by DNP's imports of the products.
- That the reason prices rose in 2003 was due to the Petitioner exploiting a monopolistic situation when anti-dumping duty was imposed on the subject goods imported from the EU. Whilst the said anti-dumping duties were in place, the Petitioner was able, as the only domestic manufacturer of the products concerned, to re-establish its monopoly, and so increase its sales.
- That it was a logical result that domestic prices would fall once other sources of imported material became available in 2004. The Petitioner's production volumes went up even during the period of investigation. While the Petitioner attributes this to an increase in demand (while being unable to maintain its market share), DNP submits that in reality, the increase in production was the Petitioner's monopolistic situation in 2003-2004, which made it inevitable that the Petitioner would lose market share once other suppliers were able to enter the market.
- That the duties imposed on imported Vitamin-A Palmitate have been more than halved (i.e., falling from 35% to 15%) during the last five years which has clearly made imported material progressively more competitive, despite the fact that DNP has not reduced its CIF price during this period, and is no indicator for either dumping, or material injury caused thereby.
- The Rupee has also appreciated from approximately Rs 48 to less than 44 against the US dollar from 2001 until 2005. Both of these changes occurred as a result of Government policy and help to explain the preference for imported material.
- That the low level of profitability of the Petitioner may in part be caused by the increase in the costs of the main input for the production of the Petitioner's Vitamin-A Palmitate, namely lemon grass oil, and is otherwise a result of the inefficiency of its production. If the Petitioner is unable to produce profitably, even though it doubles the output of its factory with the same installed capacity, the factory must be inefficiently operated.
- That the Petitioner is exporting its Vitamin A products at prices up to 20% lower than DNP's Indian CIF price which would clearly constitute self-inflicted injury of the Petitioner, that cannot be attributed to any sales by DNP for export to India.

- That the Petitioner was able to increase its relative market share compared with the 2001/2002 figures and cannot claim that it should have been allowed to keep the higher market share that it was able to achieve as a consequence of locking out other imports. In a growing market, where consumption increases, normal competition would lead to all participants in the market taking the same share that they had before.
- That imports from China were done at prices that were always at least around 10% lower than those of imports from Switzerland. DNP submits that the consequences thereof cannot be attributed to the Swiss sales.
- That as regards inventories/stocks, DNP submits that the absurdly high variations of stocks do not show any clear and consistent picture and thus cannot be attributed to any dumped imports, but have been caused by the Petitioner's own way of running its business.
- That DNP's data would show that its opening and closing stocks are healthily balanced and there is no evidence that DNP is seeking to flood the Indian market with its products. This would not be warranted by the demand on the Indian market, which is by no means as high as represented by the Petitioner.

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

34. The Authority has noted the views expressed by the interested parties in respect of the injury claims of the domestic industry and has provisionally examined the mandatory factors for the purpose of provisional injury determination and causal link analysis in these findings.

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

35. The Annexure II (iii) of the Anti Dumping Rules requires that where imports of a product from more than one country are being simultaneously subjected to anti dumping investigations, the designated authority will cumulatively assess the effect of such imports, in case it determines that

- I) the imports from individual countries are above de minimis or cumulatively account for more than 7% of imports;
- II) the dumping margin against individual countries are above 2%; and
- III) cumulative assessment of the effect of imports is appropriate in light of the conditions of competition between the imported article and the like domestic articles.

36. The Authority notes that the dumped imports of the subject goods are entering the Indian market simultaneously from the subject countries. Therefore, the issue of cumulative assessment of the injury caused to the domestic industry

due to dumped imports from these sources has been examined with respect to the above parameters and it was observed that:

- i) The margins of dumping of subject goods from each of the subject countries are more than the de minimis limit;
- ii) The volume of imports of individual products from each of the subject countries/territories is more than the limits prescribed;
- iii) The domestic products and products supplied by producers in the subject countries are like articles;
- iv) Imported products and domestically produced subject goods are interchangeable and are being interchangeably used. Transaction wise information on imports from various countries shows that the imports are being made by actual users in the Pharmaceutical industry as well as traders who have purchased the material for reselling. Goods supplied by the countries involved are entering the Indian markets through the same channels of distributions and directly competing in the same market;
- v) Products supplied from the subject countries are being marketed in India during the same period through comparable sales channels and under similar commercial conditions;
- vi) Imports of subject goods from the subject countries have increased;
- vii) The domestic producer and exporters in the subject countries are selling the product to the same category of consumers;
- viii) Imports from the subject countries are significantly undercutting and underselling the prices of the domestic industry in the market;

37. The Authority notes the argument of DSM Nutritional product that the subject goods exported from China is at a much lower price compared to the export price from Switzerland and therefore, absence of *inter se* competition in the Indian market. However, for the purpose of the provisional determination, pending further examination of this issue, the injury to the domestic industry has been examined cumulatively.

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

38. Rule 11 of Antidumping Rules read with Annexure –II provides that an injury determination shall involve examination of factors that may indicate injury to the domestic industry, “... taking into account all relevant facts, including the volume of dumped imports, their effect on prices in the domestic market for like articles and the consequent effect of such imports on domestic producers of such articles....” In considering the effect the dumped imports on prices, it is

considered necessary to examine whether there has been a significant price undercutting by the dumped imports as compared with the price of the like article in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree.

39. The Authority notes that since Vitamin A Palmitate of various strengths have the same end use, the present investigations shall cover the subject goods in all its strengths and forms. Accordingly, overall condition of the industry and effects of the imports on the Vitamin-A business of domestic industry has also been examined to the extent relevant.

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

41. For the purpose of provisional injury examination data for the years 2001-2002, 2002-2003, 2003-2004, April 2004 – Sept., 2005 (POI) has been considered. The Authority also notes that the domestic industry is found to be having significant export activities. However, for the purpose of the injury analysis the performance of the domestic industry has been assessed only in respect of domestic market.

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

#### **a) Import Volumes**

42. 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.

43. The applicant has submitted the import data compiled from IBIS data source, which shows that Imports have taken place from several sources including the subject countries during the injury investigation period. However, for the purpose of provisional injury examination the Authority has relied upon the DGCIS import data, which shows significant increase in the imports of the subject goods for the injury analysis period. It has also been noticed that imports of Vitamin-A Palmitate has been reported under different strength i.e. 1.0 and 1.7 MIU/g. Since both the strengths have been covered under the product under consideration for the purpose of provisional injury analysis both the product types/strengths have been taken into account.

COUNTRY	2001-02	2002-03	2003-04	2004-05	POI	POI Annualized
SWITZERLAND	2197	2370	1200	1560	3205	2137
Trend	100	108	55	71	146	97
CHINA	0	0	2005	1750	7799	5199
Trend	0	0	100	87	389	259
Total Subject Countries	2197	2370	3205	3310	11004	7336
Trend	100	108	146	151	501	334
OTHERS	8096	1549	458	25	1315	877
Trend	100	19	6	0	16	11
TOTAL	10293	3919	3663	3335	12319	8213
Trend	100	38	36	32	120	80

DGCIS Data

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

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

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

46. The domestic industry has indicated that their total installed capacity for the liquid plant, where the subject goods is manufactured, is 110 MT per annum, on single shift basis. However, it is noted that this installed capacity is not dedicated for the product under consideration and in this plant the company manufacture about 35 different products. Production of individual product varies from year to year depending upon the demand.

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

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

48. The above examination shows that annualized production and capacity utilization during the period of investigation is the highest in the last four years including the period of investigation. Therefore, capacity utilization does not appear to indicate any deterioration of the performance of the domestic industry.

49. Production of Vitamin A Palmitate by the domestic industry has been examined as follows:

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

50. The data shows that while total production of the subject goods by the domestic industry shows a steady growth the production for the domestic market has dropped significantly after showing a healthy growth till 2003-04.

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

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

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

52. The above data shows that domestic sales and total sales of the domestic industry, after increasing significantly upto 2003-04, has declined significantly.

<b>Deamnd Vitamin A</b>	<b>2001-02</b>	<b>2002-03</b>	<b>2003-04</b>	<b>2004-05</b>	<b>POI Annualized</b>
DI Sales including Captive consumptions	*****	*****	*****	*****	*****
Trend	100	128	164	97	127
TOTAL Imports	10293	3919	3663	3335	8213
Trend	100	38	36	32	80
Total Domestic Demand	*****	*****	*****	*****	*****
Trend	100	96	119	74	110

53. The above data shows that while the demand for the subject goods show a steady increase, the sales of the domestic industry, after significant increase upto 2003-04, declined significantly. The market share of the domestic industry also shows a similar trend.

#### **Indexed**

<b>Market shares</b>	<b>2001-02</b>	<b>2002-03</b>	<b>2003-04</b>	<b>2004-05</b>	<b>POI Annualized</b>
Domestic Industry	100	133	138	131	115
Switzerland	100	112	46	96	88
China	-	-	100	149	250
Other countries	100	20	5	0	10

54. The Authority notes that antidumping duty was in force on the subject goods imported from the European Union upto 2003-04. The Authority also notes that dumped imports from China PR have started entering the Indian market in significant quantities from 2004-05. Therefore, drop in sales and market share of the domestic industry after 2003-04 is linked to the dumped imports from these sources.

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

### **G.3.2 Price effect of dumped imports**

56. With regard to the effect of the dumped imports on prices, the Authority is required to consider whether there has been a significant price undercutting by the dumped imports as compared with the price of the like product in India, or whether the effect of such imports is otherwise to depress prices to a significant

degree or prevent price increases, which otherwise would have occurred, to a significant degree. In this connection the Authority has determined net sales realization of the domestic industry considering selling price, excluding taxes & duties, rebates, discounts & commissions and freight & transportation. Landed price of imports has been determined considering weighted average CIF import price, with 1% landing charges and applicable basic customs duty. Accordingly, the price effects of the dumped imports have been analyzed as follows:

**a) Price undercutting and Price underselling**

57. The Authority has provisionally determined net sales realization of the domestic industry considering selling price, excluding taxes & duties, rebates, discounts & commissions and freight & transportation. Landed price of imports has been determined considering weighted average CIF import price, with 1% landing charges and applicable basic customs duty. Net sales realization of the domestic industry declined significantly over the injury period.

58. The net sales realization of the domestic industry was compared with the landed value of the dumped imports to examine whether the dumped imports have significant price undercutting effect on the domestic industry. The landed value of dumped imports was also compared with the non-injurious prices of the subject goods to determine the price underselling effect of the dumped imports as follows:

	2001-02	2002-03	2003-04	2004-05	POI Annualized
Cost to Make and Sale	*****	*****	*****	*****	*****
Trend	100	83	78	101	89
Net Sales Realization	*****	*****	*****	*****	*****
Trend	100	104	92	85	85
Landed values					
SWITZERLAND	4014.15	3982.98	3889.60	3842.42	3801.63
CHINA	0.00	0.00	3402.25	3284.27	3462.21
Subject countries	4014.15	3982.98	3584.72	3547.32	3561.07
<b>Price Undercutting</b>					
SWITZERLAND	*****	*****	*****	*****	5-15%
CHINA	*****	*****	*****	*****	15-25%
Subject countries	*****	*****	*****	*****	10-20%
NIP	*****	*****	*****	*****	*****
<b>Price Underselling</b>					
SWITZERLAND					5-15%
CHINA					15-25%
Subject countries					10-20%

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

**b) Price suppression and depression**

60. To examine the price suppression effect of the dumped imports on the domestic prices the trend of net sale realization of the domestic industry has been compared with the cost of production. The data indicates that though there is a decline in the cost of production of the subject goods during the injury investigation period, the fall in sales realization has been significantly higher than the decline in cost of production. It therefore, appears that the price effect of the dumped imports have forced the domestic industry to keep its prices lower in order to retain its market share.

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

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

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

- a) Production of the domestic industry has decreased over the injury period after showing significant increase upto 2003-04. In spite of the increase in the demand of the subject goods in the domestic market, there is a decrease in production. In other words, the domestic industry has been prevented from increasing the production to the extent it could, in spite of good demand in the domestic market.
- b) While the Domestic Industry has the capacity to produce and sell the subject goods in the domestic market, the domestic industry has not been able to utilize the capacities adequately.
- c) Sales of the domestic industry decreased substantially after healthy growth upto 2003-04, which also resulted in declining the market share of the domestic industry. Thus, it is seen that while the domestic industry was not able to increase its sales in response to increase in demand, such decrease in sales was not proportionate to the increase in demand.

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

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

**Indexed**

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

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

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

65. As far as Employment and wages are concerned there is no significant drop in employment level as indicator of injury to the domestic industry. However, the Authority notes that the domestic industry produces several products in the same plant and there is no dedicated employee strength for the product under consideration. Overall employment and wage scenario of the company shows that number of employees has declined whereas the expenses on wages have significantly increased.

**Indexed**

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

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

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

**Indexed**

Year	Total Production (All liquids) KG	No of employees	Productivity Indexed
2001-02	100	100	100
2002-03	72	100	145
2003-04	104	99	168
2004-05	119	95	178
POI Annualized	122	93	216

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

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

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

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

**e) Inventories**

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

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

f) **Growth**

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

g) **Ability to raise fresh Investment**

71. The Authority notes that the domestic industry has not made fresh investments in the subject goods in the period of investigation due to dumped imports of the subject goods from subject countries. However, it is found that the financial performance of the domestic industry is significantly eroding, which may have adverse impact on its future ability to raise fresh investments

h) **Degree of dumping margin**

72. Provisional dumping margins from the subject countries, as an indicator of injury, are found to be significant and above de minimis.

**G.3.4 Overall assessment**

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

**G.4. Causal link**

74. Having examined the existence of material injury and volume and price effects of dumped imports on the prices of the domestic in terms of its price undercutting, price underselling and price suppression, and depression effects the Authority has also examined whether other indicative parameters listed under

the Indian Rules and Agreement on Anti Dumping could have contributed to injury to the domestic industry. Therefore, the following parameters have been examined:

- a) **Imports from Third Countries:** - Imports from countries not under investigation are either insignificant as some of the them appear to be sample sales and not commercial sales or at prices higher than the import prices from the subject countries and therefore, do not affect the prices in the domestic industry;
- b) **Contraction in Demand:** - Demand for the subject goods have increased substantially during the injury examination period. Therefore, possible contraction in demand cannot be attributed to the injury to the domestic industry.
- c) **Pattern of consumption:** - No significant change in the pattern of consumption has been alleged by any interested party.
- d) **Conditions of competition:** - The goods are freely importable. The petitioner is the major producer of the subject goods as the other viable producers have either stopped significant production or turned traders of the subject goods. Therefore, domestic competition could not be attributed to the injury to the domestic industry. No other evidence of conditions of competition or trade restrictive practices has been brought to the knowledge of the Authority.
- e) **Developments in technology:-** There is no allegation of significant changes in technology which could have caused injury to the domestic industry. However, no cost disadvantage to the domestic industry due to technological difference has been claimed.
- f) **Export performance of the domestic industry:-**

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

The export sale of the domestic industry is substantial and shows significant growth. But the profitability from the export has been negative. However, for the injury analysis the price and profitability in the domestic and export markets have been segregated. And injury if any caused due to the company's export performance has not been attributed to the dumped imports.

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

75. The Authority notes that other interested parties have argued that the injury caused to the domestic industry is on account of the Government's pricing and tax policies and has nothing to do with the dumped imports. However, the above examination shows that the import prices of the subject goods are significantly below the price fixed by the price regulatory authority.

76. The non-attribution analysis as above shows that no other factor other than the dumped imports has affected the domestic industry. The dumped imports from the subject countries, through volume and price effects, have caused material injury to the domestic industry.

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

77. Provisional examination of the performance of the domestic industry over the injury period shows that the performance of the domestic industry has materially deteriorated due to dumped imports from subject countries. Therefore, the causal links between dumped imports and the injury to the domestic industry is established on the following grounds:

1. The dumped import prices and consequently the landed price of imports from the subject countries resulted in price undercutting. As a direct consequence, the domestic industry was forced to reduce the prices.
2. Reduction in the selling prices by the domestic industry adversely affected the sales volume, net sales realization, production, profits, cash flow and return on capital employed of the company.
3. Even though the domestic industry responded to decline in import prices, significant positive price undercutting resulted in increase in market share of imports from the subject countries. As a direct consequence, market share of the domestic industry declined.
4. Existence of significant price undercutting and consequent decline in market share of the domestic industry resulted in capacity utilization not reaching the earlier levels.
5. In spite of increase in demand and reduction in selling prices by the domestic industry, market share of the domestic industry declined due to significant reduction in landed price of imports. This retarded the growth of the domestic industry.

78. Therefore, the Authority provisionally concludes that the domestic industry suffers material injury and the injury has been caused by the dumped imports from the subject countries/territories.

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

79. The non-injurious price determined by the Authority has been compared with the landed value of the exports for determination of injury margin. The weighted average landed price of the exports from the subject countries and the injury margins have been worked out as follows:

Country/ Territory	Exporter	Injury Margin %
Switzerland	DSM Nutritional Products	5-15%
Switzerland	All Others	5-15%
China PR	NHU with Synchem	15-25%
China PR	All others	55-65%

**G. Conclusions**

80. After examining the issues raised and submissions made by the interested parties and facts made available before the Authority as recorded in this finding the authority provisionally concludes that:

- i) The subject goods have entered the Indian market from the subject countries at prices less than their normal values in the domestic markets of the exporting countries;
- ii) The dumping margins of the subject goods imported from the subject countries/territories are substantial and above de minimis;
- iii) The domestic industry suffers material injury;
- iv) And the injury has been caused to the domestic industry both by volume and price effect of dumped imports of the subject goods originating in or exported from the subject countries.

**I. Indian industry’s interest & other issues**

81. The Authority notes that the purpose of anti-dumping duties, in general, is to eliminate injury caused to the Domestic Industry by the unfair trade practices of dumping so as to re-establish a situation of open and fair competition in the Indian market, which is in the general interest of the country. Imposition of anti-dumping measures would not restrict imports from the subject country in any way, and, therefore, would not affect the availability of the products to the consumers.

## **J. Recommendations**

82. The Authority notes that the investigation was initiated and notified to all interested parties and adequate opportunity was given to the exporters, importers and other interested parties to provide positive information on the aspect of dumping, injury and causal links. Having initiated and conducted a preliminary investigation into dumping, injury and causal links between dumping and injury to the domestic industry in terms of the Rules laid down and having provisionally established positive dumping margin against the subject countries, and having concluded that the domestic industry suffers material injury due to such dumped imports, the Authority is of the opinion that provisional measure is required to prevent injury being caused to the domestic industry during the investigation period.

83. Therefore, Authority considers it necessary and recommends provisional anti-dumping duty on imports of subject goods from the subject countries/territories in the form and manner described hereunder.

84. Having regard to the lesser duty rule followed by the authority, the Authority recommends imposition of provisional anti-dumping duty equal to the lesser of margin of dumping and margin of injury, so as to remove the injury to the domestic industry. Accordingly, provisional antidumping duty, equal to the amount indicated in Col 9 of the duty table annexed herewith, is recommended to be imposed from the date of notification to be issued in this regard by the Central Government, on all imports of subject goods originating in or exported from the subject countries.

## **K. Further Procedures**

85. The following procedure would be followed subsequent to notifying the preliminary findings:-

- (a) The Authority invites comments on these findings from all interested parties and the same would be considered in the final finding;
- (b) Exporters, importers, petitioner and other interested parties known to be concerned are being addressed separately by the Authority, who may make known their views, within forty days from the date of the dispatch of the letter. Any other interested party may also make known its views within forty days from the date of publication of these findings;
- (c) The Authority would conduct further verification to the extent deemed necessary;
- (d) The Authority would disclose essential facts before announcing final findings.

**Duty Table**

Sl. No	Sub-heading	Description of goods	Specification	Country of origin	Country of Export	Producer	Exporter	Amount	Unit of Measurement	Currency
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
1.	293621	Vitamin-A Palmitate	Any	Switzerland	Any	DSM Nutritional Products, AG Switzerland	DSM Nutritional Products Asia Pacific Pts Ltd, Singapore	6.574	KG	US\$
2	-Do-	-Do-	Any	Switzerland	Any other than China	Any other than above	Any	8.75	KG	US\$
3	-Do-	-Do-	Any	Any other than China	Switzerland	Any	Any	8.75	KG	US\$
4	-Do-	-Do-	Any	China PR	Any	Zhejiang NHU Company Ltd	Synchem International Company Ltd.	14.94	KG	US\$
5	-Do-	-Do-	Any	China PR	Any	Any other than above	Any	26.5	KG	US\$
6	-Do-	-Do-	Any	Any	China PR	Any	Any	26.5	KG	US\$

**Christy L. Fernandez  
Designated Authority**