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F. No. 06/07/2024 – DGTR

Government of India

Ministry of Commerce & Industry

Department of Commerce,

Directorate General of Trade Remedies

4th Floor, Jeevan Tara Building, 5, Parliament Street, New Delhi – 110001

Date: 10th March, 2025

FINAL FINDINGS

Case No. AD (OI)-07/2024

Subject: Final findings in the anti-dumping investigation concerning imports of "Vitamin-A Palmitate" originating in or exported from China PR, European Union and Switzerland

F. No. 06/07/2024-DGTR — 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 Antidumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 thereof, as amended from time to time (hereinafter referred as the "Anti-Dumping Rules" or "the Rules").

A. BACKGROUND OF THE CASE

1. The Designated Authority (hereinafter referred to as "**the Authority**") received an application from Piramal Pharma Limited (hereinafter referred to as the "**applicant**" or the "**domestic industry**" or "**Petitioner**") seeking initiation of an anti-dumping investigation concerning imports of the Vitamin-A Palmitate (hereinafter also referred to as the "**product under consideration**" or the "**subject goods**" or "**VAP**") originating in or exported from China, European Union and Switzerland (hereinafter also referred to as the "**subject countries**").

2. On the basis of a duly substantiated application filed by the applicant, the Authority issued a public notice vide Notification No. 06/07/2024-DGTR dated 28th March 2024, published in the Gazette of India, initiating an anti-dumping investigation into imports of the product under consideration from China PR, European Union and Switzerland in accordance with Rule 5 of the Anti-Dumping Rules to determine the existence, degree and effect of any alleged dumping of the subject goods and to recommend the amount of anti-dumping duty, which if levied, would be adequate to remove the alleged injury to the domestic industry.

3. The PUC has been subject to anti-dumping investigations in the recent past. A brief history of the same is provided below.

Sr. No.	Original/MTR /SSR	DGTR Final Finding date	Whether the DGTR recommended duty (Yes/No)	Custom notification date	Whether duty levied by the Ministry of Finance (Yes/No)	Form of duty	Duty rate
1	Original	23-Jan-03	Yes	7-Mar-03	Yes	Reference price	113.95 USD/KG
2	Mid-term Review (MTR)	24-Jan-05	No	7-Mar-05	NA	NA	NA
3	Original	14-Sep-07	Yes	30-Oct-07	Yes	Fixed duty	313 to 941 INR/KG
4	Sunset Review (SSR)	21-Aug-13	Yes	13-Nov-13	Yes	Fixed duty	7.34 to 15.37 USD/KG
5	Original	9-Feb-24	No, Terminated	NA	NO	NA	NA

B. PROCEDURE

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

i. The Authority notified the embassies of the subject countries in India about the receipt of the present anti-dumping application before proceeding to initiate the investigation in accordance with sub-rule (5) of Rule 5 of the Anti-Dumping Rules.

ii. The Authority issued a public notice dated 28th March 2024, published in the Gazette of India, Extraordinary, initiating an anti-dumping investigation concerning the import of the subject goods from subject countries.

iii. The Authority sent a copy of the initiation notification to the Governments of the subject countries, through their embassies in India, known producers and exporters from the subject countries, known importers/users and the domestic industry as well as other interested parties, as per the addresses made available by the applicant and requested them to make their views known in writing within the prescribed time limit.

iv. The Authority provided a copy of the non-confidential version of the application to the known producers/exporters and to the Governments of the subject countries, through their embassies in India, in accordance with Rule 6(3) of the Anti-Dumping Rules. A copy of the non-confidential version of the application was provided to other interested parties, wherever requested.

v. The Authority also forwarded a copy of the notice to known producers/exporters from the

subject country, known importers/users in India, other Indian producers and the domestic industry as per the addresses made available by the applicant and requested them to make their views known in writing within 30 days from the date of receipt of the notice as per Rule 6(4) of the Anti-Dumping Rules. The Authority sent an Exporter's Questionnaire to the following known producers/exporters to elicit relevant information in accordance with Rule 6(4) of the Anti-Dumping Rules:

a) Zhejiang Medicine Co., Ltd.
b) Synchem International Co., Ltd
c) Xiamen Kingdomway Gr Co.
d) BASF SE
e) DSM Nutritional Products AG

vi. The embassies of the subject countries in India were requested to advise the exporters/producers from their country to respond to the questionnaire within the prescribed time limit.

vii. In response to the initiation of the subject investigation notification, the following producers/exporters from the subject countries have responded by filing a questionnaire response:

a) Synchem International Co., Ltd.
b) Zhejiang NHU Import & Export Company Ltd.
c) NHU (Hong Kong) Trading Company Limited
d) Shangyu NHU Bio-Chem Co., Ltd.
e) Zhejiang NHU Import & Export Co. Ltd
f) DSM Singapore Industrial Pte. Ltd. ("DSM Singapore")
g) DSM Nutritional Products Limited ("DNP AG")
h) DSM Nutritional Products Europe Ltd.

viii. The Authority sent questionnaire to the following known importers/users of the subject goods in India calling for necessary information in accordance with Rule 6(4) of the Rules.

a) BASF India Ltd.
b) Nandlal Bankatlal Pvt. Ltd.
c) Kantilal Manilal And Company Pvt. Ltd.
d) Sunrise Pharmaceutical
e) Provimi Animal Nutrition India Pvt. Ltd
f) DSM India Pvt. Ltd
g) Kalgov Labs Ltd.
h) Pulse Pharma
i) Ds Biovet Pharma Pvt. Ltd.
j) Venkyes Ltd
k) Pristine Organics Pvt. Ltd.
l) PD NAVKAR Bio-Chem Pvt. Ltd
m) Hexagon Nutrition Ltd.

n) Geltec Pvt. Ltd.
o) Softsule Pvt Ltd
p) Softgel Healthcare Pvt Ltd.
q) Madras Pharma
r) USV Pvt. Ltd.
s) Alkem Laboratories

ix. In response to the initiation of the subject investigation notification, the following importers/users from the subject countries have responded by filing a questionnaire response within stipulated time:
   a) DSM Nutritional Product India Private Limited ("DNP India")
   b) M/s K Sevantilal & Co.,

x. Further, K Sevantilal & Co., an importer filed its questionnaire response on 5th June 2024, i.e., after the prescribed deadline on 4th June 2024.

xi. The Authority issued an Economic Interest Questionnaire to all the known producers and exporters, importers, and the applicants. The economic interest questionnaire was also shared with the administrative ministry. Only the applicants and DNP India have filed the economic interest questionnaire. No other interested party has filed response to the economic interest questionnaire issued by the Authority.

xii. A copy of the initiation notification and non-confidential version of the application was sent to the following ministries. However, the Authority has not received any comments:
   a) Ministry of Chemicals and Fertilizers
   b) Ministry of Health and Family Welfare

xiii. The Authority made available the non-confidential version of the submissions made by the various interested parties. A list of all the interested parties was uploaded on the DGTR website along with the request to all of them to email the non-confidential version of their submissions to all the other interested parties.

xiv. A request was made to the DG System to provide the transaction-wise details of imports of the subject goods for the injury period and also the period of investigation. The Authority has relied upon the DG System data for computation of the volume of imports and required analysis after due examination of the transactions.

xv. The non-injurious price ("**NIP**") based on the optimum cost of production and cost to make & sell the subject goods in India based on the information furnished by the domestic industry on the basis of Generally Accepted Accounting Principles ("**GAAP**") and Annexure III to the Anti-Dumping Rules has been worked out so as to ascertain whether anti-dumping duty lower than the dumping margin would be sufficient to remove injury to the domestic industry.

xvi. The period of investigation ("**POI**") for the purpose of the present investigation is 1st October 2022 to 30th September 2023 (12 months). The examination of trends in the context of injury analysis covered the periods 2020-21, 2021-22, 2022-23 and the period of investigation.

xvii. On 30th April 2024, the Authority conducted a virtual meeting where all the interested parties were invited to give their comments on the scope of the product under consideration and product control number ("**PCN**") methodology.

xviii. The submissions made by the interested parties during the course of this investigation, to the extent supported with evidence and considered relevant to the present investigation, have been appropriately considered by the Authority.

xix. A list of all the interested parties was uploaded on the DGTR website along with the request therein to all of them to email the non-confidential version of their submissions to all the other interested parties.

xx. In accordance with Rule 6(6) of the Rules, the Authority provided an opportunity for the interested parties to present their views orally in a public hearing held on 18th October 2024 in hybrid mode. The parties who presented their views in the oral hearing were requested to file written submissions of the views expressed orally, followed by rejoinder submissions, if any.

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

xxii. Wherever an interested party has refused access to or has otherwise not provided necessary information during the course of the present investigation, or has significantly impeded the investigation, the Authority has considered such parties as non-cooperative and recorded the views/observations on the basis of the facts available.

xxiii. The Authority has considered all the arguments raised and information provided by all the interested parties up to this stage, to the extent the same is supported with evidence and considered relevant to the present investigation.

xxiv. In accordance with Rule 16 of the Anti-dumping Rules, the essential facts of the investigation were disclosed to the known interested parties vide disclosure statement dated February 10, 2025, and the interested parties were allowed time up to February 14, 2025, to comment on the same. The comments to disclosure statement received from the interested parties have been considered, to the extent found relevant and non-repetitive, in these findings.

xxv. '***' in this notification represents information furnished by an interested party on a confidential basis and so considered by the Authority under the Rules.

xxvi. The exchange rate adopted by the Authority for the subject investigation is 1 US$ = ₹ **83.25**.

C. PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE

5. At the stage of initiation, the product under consideration was defined as "Vitamin-A Palmitate".

> *"3. The product under consideration for the present investigation is "Vitamin-A Palmitate", covering both Vitamin A Palmitate 1.7 MIU/Gm and Vitamin A Palmitate 1.0 MIU/Gm in all its strengths and forms, with or without stabilization. Though*

differing only in concentration, Vitamin-A Palmitate 1.7 MIU/Gm and Vitamin-A Palmitate 1.0 MIU/Gm are product sub-types with the same end uses and are also technically and commercially substitutable.

4. The scope of the PUC does not cover Vitamin-A Palmitate 1.6 MIU/Gm which is used for animal consumption and has different end-uses compared to the PUC"

C.1. Submissions made by other interested parties

6. The following submissions have been made by other interested parties with respect to the product under consideration:

i. Vitamin-A Acetate and the PUC are technically and commercially substitutable.

a. Vitamin-A Acetate and the PUC are nothing but different esters of Vitamin A molecules.
b. Vitamin-A Acetate and the PUC are classifiable under CTH 2936 2100 of the First Schedule to the Customs Tariff Act, 1975.
c. Both have similar end uses and applications and possess similar properties.

ii. Vitamin-A Acetate, also known as Retinyl Acetate, appears as yellowish crystals or a crystalline powder, with a minimum Vitamin A activity of 2.76×10^6 IU/g. It can be stored for 12 months if kept under nitrogen and at a cool temperature.

iii. Retinyl Palmitate, which is the product under consideration, is a fat-like, light yellow solid or a yellow oily liquid, with a minimum Vitamin A activity of 1.64×10^6 IU/g.

iv. The basic molecule of Vitamin A is Retinol. Retinol, like any alcohol has an -OH group in its molecular structure and is by nature a very unstable compound. Because it is very unstable it exists inter alia, in the form of its esters. To increase its stability, Retinol is converted into its esters, such as Retinyl Acetate (Vitamin-A Acetate) and Retinyl Palmitate (Vitamin-A Palmitate).

v. Vitamin-A Acetate can be easily converted to the PUC. Due to the mere conversion process adopted by Petitioner, they are unable to compete with global manufacturers of the PUC who produce the PUC from the basic stage. The manufacturing process employed by DNP AG in Switzerland to produce PUC is not at all comparable to mere conversion process undertaken by the Petitioner, whereby the Petitioner cannot be regarded as a manufacturer of the PUC.

vi. Except for the addition of methyl palmitate, catalyst and solvent, there are no major inputs required for processing in conversion of Vitamin-A Acetate to Vitamin-A Palmitate.

vii. According to a legal precedent set in the Oswal Wollen Mills Ltd. case, if two products are easily convertible and recognized as such by exporters, they can be considered "like products."

viii. Hence, the DGTR must hold that Vitamin-A Acetate is a like article to the PUC and direct the Petitioner to provide the details of imports of Vitamin-A Acetate to enable the parties to comment on the Petitioner's standing.

ix. Vitamin-A Acetate and the PUC are esters of Vitamin-A (Retinol). Even the Patents Act, of 1970, which governs the patentability of new inventions, recognizes that esters of a compound are considered the same substance unless they differ significantly in properties.

x. Both Vitamin-A Acetate and the PUC are used interchangeably commercially and are often employed for the same purpose i.e. for fortification of foods like oil, milk, wheat flour (atta and maida) etc. and manufacture of cosmetics, tablets and drugs and dietary supplements.

xi. Technical evidence suggests that Vitamin A is present in foods as retinols and retinyl esters.

xii. 12 Indian entities import Vitamin-A Acetate for the purposes of preparation of premixes for food fortification, tablets, drugs and food products and dietary supplements. This is amply clear from the products /material data sheets and the websites of the above entities.

xiii. DSM Group also imports Vitamin-A Acetate for use in making food premixes and dietary supplements similar to Vitamin-A Palmitate. The relevant bills of entity and commercial invoices for import of Vitamin-A Acetate by DSM India and local tax invoices along with other connecting documents like certificate of analysis etc. for sale of Vitamin Mineral Premixes (VMP) for Cereals, Vitamin Mix - Base Complan, and Vitamin Mineral Premix for Rice (for fortification) made from such Vitamin-A Acetate.

xiv. Public domain information shows that BASF India imports Vitamin-A Acetate. Public domain information also clearly provides that it sells various types of Vitamin-A Palmitates and Acetates in oil as well as or powder forms for similar applications.

xv. The Petitioner themselves offer various types of Vitamin-A Acetate and Vitamin-A Palmitate in oil and powders forms.

xvi. Food Safety and Standards (Fortification of Foods) Regulations, 2018 ("FSSR, 2018") permits use of both Retinyl acetate or Retinyl palmitate interchangeably.

xvii. None of the big manufacturers of Vitamin A in the world undertake only the last leg conversion but are full-fledged manufacturers of Vitamin A from the basic stage since a mere conversion activity of one form of Vitamin A to another is not commercially viable business.

xviii. Vitamin-A Acetate and the PUC are classified as Vitamin A and their derivatives under CTH 2936 2100. As per explanatory notes to the Customs tariff harmonization, both these products are similar compounds – the only difference being the state of matter in the two compounds. Hence, they are technically substitutable.

xix. High-value addition may be on account of the inefficient operations and production process. The Petitioner is only engaged in the last stage conversion of the Vitamin-A Acetate to the PUC. Further, high-value addition may be due to very high depreciation. Other fixed costs in the POI are due to a manifold increase in value of net fixed assets on account of their upward revaluation pursuant to the demerger.

xx. The reason for the Petitioner's injury is due to the manufacturing process adopted by them, due to which they are unable to compete with global manufacturers who produce from the basic stage.

C.2. Submissions made on behalf of the domestic industry

7. The submissions of the domestic industry with regard to the product under consideration and like article are as follows:

i. The product under consideration in the present investigation is Vitamin-A Palmitate, covering two sub-types i.e. 1.7 MIU/Gm and 1.0 MIU/Gm in all its strengths and forms. These two sub-types have the same end uses and are also technically and commercially substitutable.

ii. The subject goods are used in pharmaceutical, cosmetic, and food supplement applications, meant for human consumption.

iii. The scope of the PUC does not include the sub-type of Vitamin-A Palmitate 1.6 MIU/Gm, which is used for animal consumption.

iv. The technical and physical properties of the PUC and Vitamin-A Acetate 2.8 MIU are distinct and dissimilar, whereby these products are not directly substituted with each other. Specifically, both the products have different (i) form and (ii) bioavailability and toxicity. The differences in chemical characteristics and toxicity are also supported by the European Commission's Scientific Committee on Consumer Safety.

v. Both these products have different uses commercially. Vitamin-A Acetate is used to produce the PUC. Whereas the PUC is used to produce certain downstream products.

vi. Moreover, the regulatory requirements relating to pharmaceuticals across the globe require registration of ingredients/composition (including the PUC) used to produce formulations – given the same, it not commercially or technically prudent for businesses to use Vitamin-A

Acetate instead of Vitamin-A Palmitate. Hence, both Vitamin-A Acetate and the PUC are not commercially or technically substitutable with each other.

vii. If Vitamin-A Acetate and the PUC are considered the same, then there would be direct imports of Vitamin-A Acetate, which is not the case. Other than Piramal Pharma Limited ("PPL"), there are no entities importing Vitamin-A Acetate into India.

viii. Single user has not participated in the investigation demonstrating actual use of Vitamin-A Acetate in applications where Vitamin-A Palmitate is typically utilized.

ix. To the best of the knowledge of the Petitioner, it remains the only importer of Vitamin-A Acetate in the country.

x. Vitamin-A Acetate and the PUC may be esters of Vitamin A molecules, but they are not like articles.

xi. The Authority has previously excluded Vitamin-A Palmitate 1.6 MIU/Gm from the scope of the PUC in the *Original and Sunset Review Anti-dumping investigations concerning imports of Vitamin-A Palmitate from Switzerland and China PR.* The Authority particularly observed that while the issue of circumvention may arise between Vitamin-A Palmitate1.0 MIU/Gm and Vitamin-A Palmitate1.7 MIU/Gm due to their similar end-uses, Vitamin-A Palmitate 1.6 MIU/Gm has completely different end uses i.e., for animal feed and therefore, should be excluded from the scope of the PUC.

xii. The citation of the Indian Patents Act, 1970 is being oversimplified by the DSM Group. This is because the objective and purpose of defining "like articles" under the Anti-dumping law differs from that under the Patent law. Similarly, the Food Safety and Standards (Fortification of Foods) regulations 2018 is irrelevant for the purposes of determining "like article" under the Anti-dumping laws. Indeed, the very fact that the interested parties are relying on external statutory definitions (rather than like article provisions and precedents) is an inadvertent admission that Vitamin-A Palmitate and Vitamin-A Acetate are not like articles.

xiii. The Authority in the past has examined if there is significant value addition between two products to determine likeness and whether such products should be included within the scope of the product under consideration. The Authority in the present investigation should also consider whether there is a significant value addition to Vitamin-A Acetate to produce the PUC. The Petitioner submits that indeed there is a significant value addition (of over 40%) undertaken on Vitamin-A Acetate to produce the PUC. Hence, both these products are not like articles.

C.3. Examination by the Authority

8. The Authority had granted an opportunity to all the interested parties to file their submissions on the scope of the PUC and PCNs. After assessing the post-initiation comments, vide notification F. No. 6/7/2024-DGTR dated 14th May 2024, the Authority notified that it has decided to proceed with the investigation without PCNs and that there is no change in the scope of the product under consideration as defined in the initiation notification.

9. The interested parties have averred that Vitamin-A Palmitate and Vitamin-A Acetate are like products. However, the Authority notes that none of the interested parties have been able to demonstrate that Vitamin A Acetate is directly being used for the same end-use and applications as Vitamin A Palmitate. Thus, the likeness or interchangeability of the two products has not been established. Additionally, the Authority notes from the domestic industry's submissions that there are differences in form, distributability, bioavailability and toxicity of both products. For substantiating the differences in chemical characteristics and toxicity, the domestic industry has placed on record the European Commissions Scientific Committee on Consumer Safety report. Further, the Authority has verified the production process of the domestic industry and the value addition made by the domestic industry while producing the product under consideration. The same has been found to be significant enough to confer the process of making Vitamin A Palmitate from Vitamin A Acetate to be in the nature of a manufacturing activity.

10. The Authority also referred to the final findings for the *Sunset Review of Anti-dumping investigation concerning imports of Vitamin-A Palmitate originating in or exported from China PR and Switzerland*,[1] where it was held that when an intermediate input i.e., Vitamin-A Acetate is converted into a final product i.e., the PUC through a chemical process, the said process constitutes manufacturing and the said two products cannot constitute like articles. Consequently, it was held that the applicant therein was eligible to constitute a domestic industry under Rule 2 (b) of the Anti-Dumping Rules, 1995. In view of its relevance to the matter under consideration, the same is reproduced below for reference:

> *"…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…*
>
> *32. …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.*

[1] *Sunset Review of Anti-dumping investigation concerning imports of Vitamin-A Palmitate originating in or exported from China PR and Switzerland*, Final Findings dated August 21, 2013, available at https://www.dgtr.gov.in/sites/default/files/adfin_SSR_Vitamin_A_Switzerland_ChinPR.pdf.

33. It may be recalled that in the Final Findings in the CESTAT REMAND POSTDECISIONAL 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. … 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."

11. No evidence to the contrary has been provided by the interested parties. In view of the same, the Authority finds that Vitamin A Acetate and Vitamin A Palmitate are not "like article". Accordingly, the PUC is as under –

The product under consideration for the present investigation is "Vitamin-A Palmitate", covering both Vitamin A Palmitate 1.7 MIU/Gm and Vitamin A Palmitate 1.0 MIU/Gm in all its strengths and forms, with or without stabilization. Though differing only in concentration, Vitamin-A Palmitate 1.7 MIU/Gm and Vitamin-A Palmitate 1.0 MIU/Gm are product sub-types with the same end uses and are also technically and commercially substitutable.

The scope of the PUC does not cover Vitamin-A Palmitate 1.6 MIU/Gm which is used for animal consumption and has different end-uses compared to the PUC.

12. The subject goods are generally imported into India under tariff item 29362100 of Schedule I of the Act. However, the subject goods have also been imported under tariff items 29362290, 29362800, 29369000, 29362690, and 29362990 of Schedule I of the Act. The customs classification of the product is indicative only and is not binding on the scope of the product.

13. The Authority notes that the subject goods produced by the Domestic Industry are like articles to the subject goods originating in or exported from the subject countries. There are no significant differences in the subject goods produced by the Domestic Industry and those exported from the subject countries. The subject goods produced by the Domestic Industry are comparable to the imported goods from the subject countries in terms of chemical characteristics, product specifications, technical specifications, manufacturing process and technology, functions and uses, pricing, distribution and marketing, and tariff classification of the goods. The two are technically and commercially interchangeable. Accordingly, the Authority holds that the subject goods produced by the Domestic Industry are 'like article' to the subject goods being imported from the subject country in terms of Rule 2(d) of the Anti-Dumping Rules, 1995.

D. SCOPE OF THE DOMESTIC INDUSTRY & STANDING

D.1. Submissions made by other interested parties

14. The other interested parties have averred as follows:

i. Vitamin-A Acetate can be easily converted to the PUC.
ii. Except for the addition of methyl palmitate, catalyst and solvent, there are no major inputs required for processing in conversion of Vitamin-A Acetate to Vitamin-A Palmitate.
iii. According to a legal precedent set in the Oswal Wollen Mills Ltd. case, if two products are easily convertible and recognized as such by exporters, they can be considered "like products."
iv. The Petitioner is only engaged in the last stage conversion of the Vitamin-A Acetate to the PUC. Further, high-value addition may be contributed due to very high depreciation. Other fixed costs in the POI may be due to a manifold increase in value of net fixed assets on account of their upward revaluation pursuant to the demerger.
v. The DGTR must hold that Vitamin-A Acetate is a like article to the PUC and direct the Petitioner to provide the details of imports of Vitamin-A Acetate to enable the parties to comment on the Petitioner's standing.
vi. Therefore, the Petitioner being an importer of Vitamin-A Acetate is not eligible to be a domestic industry.

D.2. Views of the domestic industry

15. The submissions of the domestic industry with regard to the scope of domestic industry and standing are as follows:

a. Piramal Pharma Limited is the sole producer of the PUC in India in the POI. However, in the period before the POI, the Petitioner's pharma business underwent corporate restructuring.
b. As of March 2020: The Petitioner was incorporated on 4 March 2020 and 80% owned by PEL. The pharma business (including *inter alia* Digwal and Mahad plants involved in the production of the PUC) was part of Piramal Enterprises Limited ("PEL").
c. As of October 2020: The Digwal plant was transferred to PPL in October 2020 and the pharma business including the Mahad plant continued to be a part of PEL.
d. As of April 2022: The pharma business and the Mahad plant were transferred from PEL to PPL on 1 April 2022. The Digwal plant continued to be a part of PPL.
e. As of September 2022: Prior to the demerger of the pharma business on 1 April 2022, PEL was owned 56% by shareholders and 44% by promoters. PPL was in turn 80% owned by PEL. Post-demerger, on 5 September 2022, the aforesaid 80% shareholding was cancelled and shareholders of PEL were allotted four (4) shares of PPL for every

one (1) share in PEL. The promoters of PEL became promoters of PPL as well. Consequently, PPL was listed on the BSE and NSE on 19 October 2022. Accordingly, the relationship between PEL and PPL is on account of having 80% common shareholders and promoters. In effect, the owners of PEL and PPL remained the same, and the same individuals/entities that own PEL also hold 80% of PPL post-demerger.

f. It is relevant to note that the modalities of the corporate restructuring/de-merger process were laid out through the Composite Scheme of Arrangement ("CSA") issued on 26 August 2022. PEL obtained its license as a Non-Banking Financial Institution in July 2022. During and around the same time, approvals for the demerger were obtained from the National Company Law Tribunal ("NCLT"), the Reserve Bank of India ("RBI"), the Securities and Exchange Board of India ("SEBI), creditors, and shareholders, among others. Particularly, the NCLT order dated 12 August 2022 categorically stated that the CSA is sanctioned with the Appointed Date as 1 April 2022.

g. Accordingly, except for the change in the legal structure of the pharma business from PEL to PPL, there is no other change concerning the scope of the PUC being manufactured, the process concerning the production of the PUC, personnel at the Mahad plant, shareholders, promoters, chairperson, CEO (Global Pharma), dumping, injury, and causal link to the producer of the PUC. The pharmaceutical business of the Piramal Group continued to suffer injury through the injury period, though the technical ownership of plants was restructured to service the broader group objectives. Therefore, the injury assessment for the purposes of the present Petition is based on both the plants involved in the production of the PUC i.e., Digwal and Mahad, as applicable.

h. Since PPL is the only producer of the PUC and has neither imported the PUC nor is related to (i) the producers/exporters from the subject countries or (ii) the importers of the PUC in India, it is an eligible domestic industry and has requisite standing under Rule 2 (b) read with Rule 5 (3) of the Anti-Dumping Rules.

D.3. Examination by the Authority

16. Rule 2(b) of the Anti-Dumping Rules defines the domestic industry as under:

> *"(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".*

17. The present application has been filed by Piramal Pharma Limited, which is the sole producer of the PUC in India.

18. The applicant is neither an importer of the subject goods from the subject countries nor they are related to any exporter of the subject goods in the subject countries or importer of the subject

goods in India. As explained in the relevant section hereinabove, since Vitamin A Acetate and Vitamin, A Palmitate are not like article, the applicant is not an importer of the PUC. Further, the Authority has assessed the value addition made by the domestic industry while manufacturing Vitamin A Palmitate from Vitamin A Acetate, and notes that there is significant value addition made on the product. Consistent with this, in the final findings for the *Sunset Review of Anti-dumping investigation concerning imports of Vitamin-A Palmitate originating in or exported from China PR and Switzerland*,[2] it was held that when an intermediate input i.e., Vitamin-A Acetate is converted into a final product i.e., the PUC through a chemical process, the said process constitutes manufacturing.

19. Further, the applicant's production of the PUC accounts for the entirety of the total domestic production.

20. Thus, the applicant constitutes domestic industry as defined under Rule 2(b) of the Anti-Dumping Rules, and the application satisfies the requirement of standing in terms of Rule 5(3) of the Anti-Dumping Rules.

E. CONFIDENTIALITY

E.1. Submissions made by other interested parties

21. The following submissions are made by other interested parties with regard to confidentiality:

i. The Petitioner has claimed confidentiality regarding production process, non-injurious price calculation, normal value calculation period of shutdown.
ii. Information related to changes made to the structure of the company need not be mandatorily provided according to Trade Notice 10/2018.
iii. Contact details of offices and plants need not be mandatorily provided according to Trade Notice 10/2018.
iv. The details of rebates, discounts or commission, if any, provided by DSM India is provided in the questionnaire response of DSM India.
v. Data related to installed capacity cannot be provided due to intrinsic costing and accounting methods followed by the Respondents.
vi. Production process and names of major raw materials is a trade secret and covered by the relevant Trade Notice.
vii. Details including, cost of sales per unit-Domestic Sales, cost of Sales per Unit-Exports, PBIT per Unit, Total PBIT, Interest/Finance Cost, Depreciation and Amortisation expense, are not necessary to be provided.

[2] *Sunset Review of Anti-dumping investigation concerning imports of Vitamin-A Palmitate originating in or exported from China PR and Switzerland*, Final Findings dated August 21, 2013, available at https://www.dgtr.gov.in/sites/default/files/adfin_SSR_Vitamin_A_Switzerland_ChinPR.pdf.

E.2. Submissions made by the domestic industry

22. The domestic industry has made *inter alia* the following submissions with regard to the confidentiality claimed by the other interested parties.

i. The Domestic Industry submits that the Respondents have engaged in excessive confidentiality in contravention of the requirements set forth in the Trade Notice No. 10/2018 issued by the Authority, dated September 7, 2018.
ii. The Domestic Industry submits that the DSM Group have filed grossly deficient responses with unjustified claims of confidentiality.

    a. DNP AG has stated that its related entity, DSM Nutritional Products Europe AG ("DSM Europe") acts as a trading and invoicing entity for sales of PUC made by DNP AG in Switzerland. However, DNP Europe has failed to file a questionnaire response. The Authority is requested to kindly direct DNP Europe to submit an appropriate questionnaire response in order to assess the role of the company in the value chain of the DSM entities.
    b. Information on whether the company has undergone any structural changes in the last three years, including the POI. It is submitted that disclosure of such information can in no manner be detrimental to the interests of the Producer. Failure to disclose such information is deliberate and is reflective of the Producer's intention to not fully cooperate in the subject investigation.
    c. Excessive confidentiality has been claimed with respect to the contact details of relevant offices, factories and plants, despite such information being available in the public domain. It is submitted that disclosure of such information can in no manner be detrimental to the interests of the Producer. Failure to disclose such information is deliberate and is reflective of the Producer's intention to not fully cooperate in the subject investigation.
    d. The producer/trader must clarify whether the related importer provides any discounts or rebates to end customers, including the commission to dealers.
    e. DNP India has also failed to provide details regarding the impact anti-dumping duties would have on downstream products. Since the entirety of the impact has been made confidential, the Domestic Industry could not comment on the same.

iii. The Domestic Industry further submits that Shangyu NHU Bio-Chem Co. Ltd., Zhejiang NHU Import & Export Co. Ltd., Synchem International Co. Ltd and NHU (Hong Kong) Trading Company Limited, China PR (hereinafter collectively referred to as the **"NHU Group"**) have filed grossly deficient responses with unjustified claims of confidentiality.

    a. Information on its shareholding pattern has not been provided, even though such information is available in the public domain.

b. Excessive confidentiality has been claimed with respect to the contact details of relevant offices, factories, and plants, despite such information being available in the public domain.
c. Synchem has failed to provide information on whether the company has undergone any structural changes in the last three years, including the POI. In particular, the Domestic Industry notes from the questionnaire response filed by Synchem, that Synchem and I&E were related to each other.

iv. K. Sevantilal has submitted its questionnaire response to the Authority on June 5, 2024, which is past the deadline, i.e. June 4, 2024, stipulated by the Authority vide its notification dated May 28, 2024. The belated questionnaire response of K. Sevantilal ought to be rejected.

v. Without prejudice, K. Sevantilal & Co. has failed to provide the date of establishment of its firm and has also claimed excessive confidentiality on its financial statements without providing a non-confidential summary of the same. The disclosure of said information can, in no manner, be detrimental to the interests of these parties, and this non-disclosure reflects the parties' intention of non-cooperation.

vi. It is submitted that the responses filed by all of the aforementioned interested parties should be discarded based on the past practice of the Authority. In the *Anti-dumping Duty investigation concerning imports of "Low Density Polyethylene" originating or exported from Qatar, Saudi Arabia, Singapore, Thailand, UAE, and the USA,*[3] the Authority deemed it fit to reject the responses of a producer group due to their failure to discharge their responsibility of providing complete information. The Authority also stated that Para 7 of the Annex-II to WTO Antidumping Agreement states that if an interested party does not cooperate and thus relevant information is being withheld from the Authorities, this situation could lead to a result that is less favorable to the party than if the party did cooperate.

vii. The consistency of the abovementioned practice is further reflected in the *Anti-Dumping Duty investigation concerning imports of "New pneumatic radial tyres of rubber for buses and lorries with or without tubes and/or flaps" originating or exported from Thailand*,[4] as well as the *Anti-Dumping Duty investigation concerning imports of "Saccharin" originating in or exported from Indonesia.*[5] Thus, it is amply clear that when the Authority has previously rejected responses simply due to not providing the signed formats or providing incomplete and incorrect information, the grossly deficient responses supplied by the various interested parties deserve to be rejected.

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3 A*nti-dumping Duty investigation concerning imports of "Low Density Polyethylene" originating or exported from Qatar, Saudi Arabia, Singapore, Thailand, UAE, and the USA, Final Findings dated April 1, 2022, available at* https://www.dgtr.gov.in/sites/default/files/NCV_FF_LDPE_English.pdf.

4 *Anti-Dumping Duty investigation concerning imports of "New pneumatic radial tyres of rubber for buses and lorries with or without tubes and/or flaps" originating or exported from Thailand, Final Findings dated* November *27,* 2020, available at https://www.dgtr.gov.in/sites/default/files/Tyre%20FF%20NCV.pdf.

5 *Anti-Dumping Duty investigation concerning imports of "Saccharin" originating in or exported from Indonesia, Final Findings dated March 29,* 2019, available at https://www.dgtr.gov.in/sites/default/files/FF-NCV-29-3-2019.pdf.

viii. The non-confidential versions submitted by the interested parties are not in sufficient detail to permit a reasonable understanding of the substance of the information submitted. The parties have not only failed to provide a meaningful response, but have also failed to give any reasons for claiming such excessive confidentiality.

ix. The need for transparency and access to relevant information has also been emphasized on by the Hon'ble Supreme Court and the Hon'ble CESTAT, via the cases of *Reliance Industries v. Designated Authority*[6] and *Alkali Manufacturers Association of India v. Designated Authority*[7] respectively.

x. Thus, when a party to an investigation provides confidential information, it must also provide meaningful non-confidential summaries thereof in the exact replica of the confidential version, and in the event that the information cannot be summarized, the party in question is required to state the reasons for such non-summarization. However, the questionnaire responses filed by the interested parties do not provide sufficient reasons for claiming confidentiality and are grossly deficient.

xi. By virtue of Rule 6(8) of the Anti-Dumping Rules, 1995 responses filed by these parties must be rejected and they must be declared as non-cooperative.

E.3. Examination by Authority

23. The Authority made available the non-confidential version of the information provided by the various parties to all the other interested parties as per Rule 6(7) of the Anti-Dumping Rules.

24. With regard to confidentiality of information, Rule 7 of Anti-dumping Rules provides as follows:

> *"Confidential information: (1) Notwithstanding anything contained in sub-rules (2), (3) and (7)of rule 6, sub-rule(2) of rule12,sub-rule(4) of rule 15 and sub-rule (4) of rule 17, the copies of applications received under sub-rule (1) of rule 5, or any other information provided to the designated authority on a confidential basis by any party in the course of investigation, shall, upon the designated authority being satisfied as to its confidentiality, be treated as such by it and no such information shall be disclosed to any other party without specific authorization of the party providing such information.*
>
> *(2) The designated authority may require the parties providing information on a confidential basis to furnish a non- confidential summary thereof and if, in the opinion of a party providing such information, such information is not susceptible to summary, such party may submit to the designated authority a statement of reasons why summarization is not possible.*
>
> *(3) Notwithstanding anything contained in sub-rule (2), if the designated authority*

6 *Reliance Industries v. Designated Authority 2006 (202) ELT 23 (SC).*

7 *Alkali Manufacturers Association of India v. Designated Authority 2006 (194) E.L.T. 161 (Tri. - Del.).*

is satisfied that the request for confidentiality is not warranted or the supplier of the information is either unwilling to make the information public or to authorize its disclosure in a generalized or summary form, it may disregard such information."

25. The Domestic Industry has averred that the other interested parties have claimed excessive confidentiality in contravention of the relevant trade notice. The other interested parties have stated that disclosure of business sensitive information will cause irreparable damage to the business interest of the company and on being satisfied, the Authority has accepted the confidentiality claims, wherever warranted, and such information has been considered confidential and not disclosed to the other interested parties.

Determination of Normal Value, Export Price and Dumping Margin

F. NORMAL VALUE, EXPORT PRICE AND DUMPING MARGIN

F.1. Submissions made by other interested parties

26. The submissions of the other interested parties with regard to the normal value, export price and dumping margin are as follows:

i. The Petitioner's determination of dumping margin is incorrect since the normal value and export price for the European Union were grossly erroneous. The Authority is requested to consider the import prices of raw material in the European Union from World Trade Atlas, the best utilization ratio during the injury period for raw materials/utilities consumption ratio and the optimized costs for NIP for the other costs. Regarding export price, it submitted that information supplied by the cooperative producers / exporters for the calculation of the export price be considered.

ii. The normal value constructed for Switzerland in the Petition is factually incorrect. DSM produces PUC from a basic stage, whereas the Domestic Industry imports Acetate and produces the PUC. The DSM Group manufacture the PUC from the very basic stage in a highly technology intensive process. For this reason, the consumption norms of the Petitioner and the DSM Group are also not comparable. Hence, considering the raw material cost and consumption norms of the Petitioner for computation of normal value for Switzerland is grossly incorrect.

iii. The methodology adopted by the Petitioner to determine the dumping for Switzerland is illegal as law does not allow the normal value to be constructed based on the cost of production for a market economy country.

iv. Costs/consumption norms are not comparable with that of the Petitioner since the Petitioner is backward integrated and the costs of Petitioner include effect of depreciation due to upward revaluation of fixed assets.

v. China should be accorded market economy treatment in light of the expiration of Protocol on China's accession to the WTO since December 11, 2016. Additionally, the Authority should apply the data on costs and prices provided by the Company in this response for the determination of the normal value rather than applying analogue country data in this investigation.

vi. The applicant has claimed baseless adjustments for ocean freight, marine insurance, commission, etc. and the Authority is requested to consider the cooperative producers' calculation of export price.

vii. DSM averred that the overheads are different between the companies. Further, the Petitioner's conversion costs also include the effect of depreciation due to the heavy upward revaluation of fixed assets.

viii. Petitioner had shifted its operations from the Thane plant to the Digwal plant in 2010-11. Unlike the Digwal plant, Thane plant used to produce PUC from the first stage itself. This shift in manufacturing plant led to a change in cost structure of the production process and the same was recorded by the Authority in the Final Findings issued in the Sunset Review investigation on imports of Vitamin-A Palmitate originating in or exported from China PR and Switzerland.

ix. Normal value constructed based on the cost of the Petitioner is highly misleading and portrays the incorrect factual position vis-à-vis the cost of the DSM Group and consequently the dumping and injury margins projected for the DSM Group.

x. Rule 5(3)(b) of the AD Rules requires the authority to initiate an investigation only on examination of the accuracy and adequacy of evidence regarding dumping, injury and causal link between dumping and injury.

xi. BASF Group understands that all companies engaged in the sales channel in the domestic market are required to cooperate to get individual duty. Several group companies of BASF SE are engaged in the sales channel of the subject goods in the European market. BASF group companies were not comfortable in sharing their financial information as their business of the subject goods consists of a meagre share of their total business / sales. Therefore, BASF's failure to file Questionnaire Response is not an indication of its involvement in significant dumping.

xii. Para 3(iv) of Trade Notice No 11/ 2018 dated 10 September 2018, categorically mentions that an interested party which has registered itself with the Authority within the timelines prescribed but has not filed questionnaire response shall not be prevented from participating in other stages of the investigation by filing legal submissions, attending public hearing, filing disclosure comments etc.

F.2. Submissions made by the domestic industry

27. The submissions of the domestic industry with regard to the normal value, export price and

dumping margin are as follows:

i. BASF had every opportunity to file its questionnaire response, which would indubitably include relevant information and evidence for normal value. In the absence of BASF's questionnaire response on record, the Authority must not entertain any unverified submissions from BASF concerning the dumping margin or injury margin.
ii. The absence of BASF's questionnaire response can only be inferred as an admission that BASF is significantly dumping the PUC into India.
iii. The Petitioner was unable to obtain the prices of the PUC in Switzerland, and/or export sales prices from Switzerland from any reliable sources. The Petitioner was also not able to source the cost of production in Switzerland from the public domain. In view of the above and as per the practice of the Authority, the Petitioner constructed the normal value based on the cost of production in India.
iv. DNP Europe has failed to file a complete questionnaire response, whereby the responses of DNP AG and DSM Europe fail to meet the requirements set forth under the Trade Notice No. 06/20212.18 In addition, the questionnaire responses remain deficient in the following aspects: (a) seeking confidentiality of information that is available in the public domain; (b) excessive confidentiality despite the requirements set forth under the Trade Notice 10/2018.
v. The questionnaire responses filed by producers from Switzerland and their traders must be rejected by the Authority on account of the incomplete chain of exports.
vi. Sub-paragraph (2) of paragraph 8, Annexure I of the AD Rules, 1995 stipulates that a country shall be considered as a non-market economy ("NME") for the purpose of the anti-dumping investigation if the same has been treated as an NME in three (3) previous years preceding the investigation period unless the producers/exporters cooperating in the investigation produces sufficient evidence establishing that it operates under market economy principles.
vii. It is a consistent practice to regard China as a non-market economy not only in Indian trade remedial investigations, but also in trade remedial investigations conducted in all major jurisdictions. For example, jurisdictions such as the European Union and the United States of America continue to consider China to be a non-market economy.
viii. In view of the same, the Hon'ble Designated Authority must continue to treat producers/exporters operating in China PR as operating under NME principles unless established otherwise by the said producers/exporters filing the relevant information.
ix. The participating entities from China have not filed market economy treatment questionnaire, whereby they have not provided the relevant evidence to establish that they are operating under market economy conditions.
x. Accordingly, the Petitioner has constructed the normal value based on its own cost of production duly adjusted for selling, general, administrative expenses, and reasonable profit.
xi. The volumes from China have increased at an alarming pace. The principal reason is the opaque cost structure on the cost of production. The exporters/manufacturers from China should not be granted market economy status.

xii. The Petitioner has furnished ample evidence and submissions in its Petition concerning the dumping margins for China, Switzerland and EU, showing that dumping margins are above *de minimis* and significant.

xiii. The dumping margin for the subject countries is not only above the *de minimis* levels, but also significant.

F.3. Examination by the Authority

28. Under section 9A(1)(c), the 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);*
>
> *Provided that in the case of import of the article from a country other than the country of origin and where the article has been merely transshipped through the country of export or such article is not produced in the country of export or there is no comparable price in the country of export, the normal value shall be determined with reference to its price in the country of origin."*

29. The Authority notes that the following producers/exporters of the subject goods have filed exporter's questionnaire responses:

Chinese Producers and their Exporters/Traders

a. Synchem International Co., Ltd.
b. Zhejiang NHU Import & Export Company Ltd.
c. NHU (Hong Kong) Trading Company Limited
d. Shangyu NHU Bio-Chem Co., Ltd.

Switzerland Producers and their Exporters/Traders

e. DSM Singapore Industrial Pte. Ltd. ("DSM Singapore")

f. DSM Nutritional Products Limited ("DNP AG")
g. DSM Nutritional Products Europe Ltd

European Union Producers and their Exporters
None of the producers/exporters from the EU filed their questionnaire responses.

G.3 <u>Examination by the Authority</u>

<u>Normal Value for China PR</u>

30. Article 15 of China's Accession Protocol in WTO provides as follows:

> *"Article VI of the GATT 1994, the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ("Anti-Dumping Agreement") and the SCM Agreement shall apply in proceedings involving imports of Chinese origin into a WTO Member consistent with the following:*
>
> *(a) In determining price comparability under Article VI of the GATT 1994 and the Anti-Dumping Agreement, the importing WTO Member shall use either Chinese prices or costs for the industry under investigation or a methodology that is not based on a strict comparison with domestic prices or costs in China based on the following rules:*
> *(i) If the producers under investigation can clearly show that market economy conditions prevail in the industry producing the like product with regard to the manufacture, production and sale of that product, the importing WTO Member shall use Chinese prices or costs for the industry under investigation in determining price comparability;*
> *(ii) The importing WTO Member may use a methodology that is not based on a strict comparison with domestic prices or costs in China if the producers under investigation cannot clearly show that market economy conditions prevail in the industry producing the like product with regard to manufacture, production and sale of that product.*
>
> *(b) In proceedings under Parts II, III and V of the SCM Agreement, when addressing subsidies described in Articles 14(a), 14(b), 14(c) and 14(d), relevant provisions of the SCM Agreement shall apply; however, if there are special difficulties in that application, the importing WTO Member may then use methodologies for identifying and measuring the subsidy benefit which take into account the possibility that prevailing terms and conditions in China may not always be available as appropriate benchmarks. In applying such methodologies, where practicable, the importing WTO Member should adjust such prevailing terms and conditions before considering the use of terms and conditions prevailing outside China.*
>
> *(c) The importing WTO Member shall notify methodologies used in accordance with subparagraph (a) to the Committee on Anti-Dumping Practices and shall notify methodologies used in accordance with subparagraph (b) to the Committee on Subsidies and Countervailing Measures.*
>
> *(d) Once China has established, under the national law of the importing WTO Member,*

that it is a market economy, the provisions of subparagraph (a) shall be terminated provided that the importing Member's national law contains market economy criteria as of the date of accession. In any event, the provisions of subparagraph (a)(ii) shall expire 15 years after the date of accession. In addition, should China establish, pursuant to the national law of the importing WTO Member, that market economy conditions prevail in a particular industry or sector, the non-market economy provisions of subparagraph (a) shall no longer apply to that industry or sector."

31. It is noted that while the provision contained in Article 15 (a) (ii) have expired on December 11, 2016, the provision under Article 2.2.1.1 of the WTO Agreement on Anti-Dumping read with the obligation under 15 (a) (i) of the Accession Protocol require the criterion stipulated in Para 8 of Annexure I to the AD Rules, 1995 to be satisfied through the information/data to be provided in the supplementary questionnaire upon claiming market economy status.

32. Sub-paragraph (2) of paragraph 8, Annexure I of the Anti-Dumping Rules, 1995 stipulates that a country shall be considered as an NME for the purpose of the anti-dumping investigation if the same has been treated as an NME in three (3) previous years preceding the investigation period unless the producers/exporters cooperating in the investigation produces sufficient evidence establishing that it operates under market economy principles.

33. The Authority has treated China as NME for the purposes of anti-dumping investigation in three (3) previous years. As none of the producer from China PR have filed the supplementary questionnaire response, the normal value has been determined in accordance with Para 7 of Annexure I of the Rules. Para 7 lays down hierarchy for determination of normal value and provides that normal value i) determined on the basis of the price ii) or constructed value in a market economy third country, iii) or the price from such a third country to any other country including India or where it is not possible 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.

34. The interested parties have not provided any information on appropriate market economy countries. It is noted that there are no imports of PUC in India from other than subject countries in the injury period. Therefore, normal value for China PR could not be i) determined on the basis of the price ii) or constructed value in a market economy third country or the price from such third country to any other country, including India.

35. Therefore, the Authority has determined the normal value for the subject imports in China PR as "price actually payable in India" as stipulated in para 7 of Annexure – I to the AD Rules, 1995. It has been computed based on the cost of production of the domestic industry, with reasonable addition for selling, general and administrative expenses, and profits. The normal value so determined is given below in the dumping margin table.

Export Price for China
Shangyu NHU Bio-Chem Co., Ltd. (Producer)

36. Shangyu NHU Bio-Chem Co., Ltd. ("Shangyu"), is a limited liability company incorporated

under the Company Law of the PRC. During the POI, Shangyu NHU Bio-Chem Co., Ltd., China PR, has sold *** MT subject goods of invoice value *** RMB to India indirectly through two related exporters/traders namely, Nhu (Hong Kong) Trading Company Limited and Zhejiang Nhu Import & Export Company Ltd.

37. It is further noted that Zhejiang Nhu Import & Export Company Ltd., has further sold (*** MT) to India indirectly through another unrelated exporter/trader namely, Synchem International Co., Ltd. The producer/exporter has claimed adjustments inland transportation and packing expense to arrive at export price at ex-factory level, so determined is as shown in the Dumping Margin Table below.

Normal Value and Export price for Switzerland
DSM Nutritional Products Ltd

38. DSM Nutritional Products Ltd, has sold [***] KG of the subject goods in the domestic market during the period of investigation, whereas it has exported [***] KG of the subject goods to India. The Authority notes that the domestic sales are in insufficient volumes when compared with exports to India. Accordingly, the Authority has not considered the same for determination of normal value in the exporting country.

39. It is noted that transaction wise exports price to third countries have not been provided by the producer and exporter from Switzerland as part of the questionnaire response. 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 of the subject goods in the originating country with reasonable addition of selling and administration expenses and adding profit margin. The normal value thus arrived at is mentioned in the dumping margin table.

Export Price

40. DSM Nutritional Products Ltd, the producer of the PUC in Switzerland, has exported [***] Kgs of the subject goods to India, through its related trader DSM Singapore. DSM Singapore has subsequently resold the subject goods to either its related entity DNP India or to unrelated Indian customers. The PUC produced by DNP AG has been shipped to India either from warehouse in Venlo or from Singapore. All the related expenses incurred in the process of export namely ocean freight, insurance, inland freight, port /warehouse and other expenses, credit cost etc. either incurred by DNP AG or DSM Singapore as applicable based on channel of export, has been adjusted to arrive at the NEP mentioned in the dumping margin table below.

Normal Value and Export Price for European Union

41. The Authority notes that no exporter/producer from the EU has filed its questionnaire response in present investigation. In view of the same, the Authority determines the normal value and export price on the basis of facts available. The normal value and the export price so determined is given in the dumping margin table below.

Dumping Margin

42. The normal value, export price and dumping margin determined in the present investigation are as follows:

Dumping Margin Table

Sr. No.	Name of the Producer	Normal Value (USD/KG)	Export Price (USD/KG)	Dumping Margin (USD/KG)	Dumping Margin (%)	Dumping Margin (Range %)
A	**China PR**					
1	Shangyu NHU Bio-Chem Co., Ltd.	***	***	***	***	30-40%
2	Others Producers	***	***	***	***	50-60%
B	**Switzerland**					
3	DSM Nutritional Products Limited	***	***	***	***	30-40%
4	Others Producers	***	***	***	***	40-50%
C	**European Union**					
5	Any producer	***	***	***	***	10-20%

METHODOLOGY FOR INJURY DETERMINATION AND EXAMINATION OF INJURY, AND CAUSAL LINK

G. ASSESSMENT OF MATERIAL INJURY AND CAUSAL LINK

G.1 Submissions made by other interested parties

43. The other interested parties have made the following submissions with regard to injury and causal link:

i. The Authority has considered a POI that overlaps with the injury period of 2022-23. This overlap renders any comparisons between these periods misleading and inaccurate.

ii. The application filed in 2022 was withdrawn by the applicant and that the applicant indicated that it intended to file a fresh application to seek remedy for full extent of dumping and injury for a more recent period. The reason claimed for withdrawal is misleading on account of a comparison of margins in the previous and the ongoing investigation.

iii. The applicant filed incorrect information to prove the existence of dumping, injury and causal link.

iv. Rule 12 of the AD Rules provides that the Authority shall issue the preliminary findings only in "appropriate cases". This makes it clear that the Preliminary Findings cannot be issued in "any" or "all" cases but only in those cases where the Authority finds it appropriate.

v. The DSM Group submits that PPL submissions requesting imposition of provisional antidumping duties do not meet the conditions required under Article 7 of the AD

Agreement. The pre-condition envisaged in the said Article requires an analysis and prudent examination of the necessity for implementing the provisional measures to prevent injury while the investigation is still on-going.

vi. In the ATMA case, the Hon'ble Supreme Court observed that Rule 12 of the AD Rules explicitly provides that preliminary findings shall contain sufficiently detailed information for the preliminary determinations. Hence, the Authority must undertake a meticulous examination of the necessity for provisional measures.

vii. Even while recommending the provisional duties, Rule 12 of the AD Rules requires the Authority to record sufficiently detailed information on aspects of dumping and injury including the arguments of interested parties being accepted or rejected. In particular, the Authority is obligated to examine all "considerations relevant to the injury determination".

viii. The Authority's reasoning that no evidence was provided by the interested parties was incorrect because the DSM Group had submitted relevant technical documents and information in DSM Group PUC submissions. For these reasons, we submit that the Authority must examine whether the Petitioner can even be considered as a "domestic industry" under Rule 2(b) before issuing any preliminary findings in the present case.

ix. The Petitioner has not suffered any material injury and injury, if any, was due to the following:

a. Petitioner's manufacturing process and technology leads to abnormally high cost of production as compared to cost of production of PUC in subject countries;

b. Petitioner's increased depreciation and other expenses leads to increased cost of production on account of revaluation of assets during its corporate restructuring/demerger process.

x. These factors need to be analyzed in detail by the Authority after taking the input from all interested parties including all participating producers / exporters before any provisional measures are recommended in the present case. An examination of these factors requires detailed verification of data and evidence on record of the case.

xi. Worldwide all major companies manufacturing the PUC including the DSM Group are backward integrated and manufacture the PUC from the basic stage rather than the last step of converting Acetate into the PUC. The injury to the Petitioner is due to the process adopted by the Petitioner.

xii. The Petitioner during the oral hearing of the previous investigation had stated that the value addition of the Petitioner from Vitamin-A Acetate to Palmitate is 40%. This value addition percentage is also extremely high as compared to the value addition over the Acetate cost for the DSM Group.

xiii. The raw material cost of the Petitioner is very high, putting them in a position of disadvantage as compared to the exporters, including the DSM Group. A comparison of the cost of PUC for the Petitioner and DSM Group reveals that Petitioner's cost of production for PUC is extremely high as compared to the DSM Group – the differential goes up to as high as [40 - 50%]. The Petitioner's exports of PUC during the POI also reveals that the Petitioner is only able to fetch a much lower price in the international market as compared to its high cost of production.

xiv. Therefore, the injury to the Petitioner is not due to subject imports but a self-inflicted injury on account of use of mere last step conversion method adopted by the Petitioner

to produce the PUC. This puts the Petitioner at a significant disadvantage as compared to the other major producers of PUC in the world, including the DSM Group.

xv. The increase in the capital employed, net fixed assets and working capital, depreciation and cost of sales is both on account of revaluation of assets in the previous year and purchase of new assets, if any. An increase in working capital is either incorrect or misleading, whereby the Petitioner has abnormally increased the NIP, and the normal value constructed.

i. The demerger has been accounted basis the "acquisition method" whereby the assets and liabilities are recorded in the books of accounts at their fair values. This is clear from Clause 21.2 of the scheme of arrangement.

ii. In Page-24 of the latest annual report of PEL for the financial year 2022-23, it is specifically mentioned that the book value of pharma business worth Rs. 5,368 crores have been fair valued at 13,742 crores and recorded in the books of PEL. The net assets of the pharma business after such revaluation at fair values got transferred to the Petitioner

iii. Assets and liabilities which were a part of the pharma business were already revalued to their fair values in the books of PEL and were transferred to the Petitioner at their fair values as per INDAS-103, pursuant to demerger of the pharma business. From the annual reports of PEL, it is clear that such fair valuation has resulted in an increase of assets by 160%.

iv. The increase in value of fixed assets and working capital may be attributed to such revaluation of assets and recording the assets at their fair values in the books of the Petitioner.

v. It is submitted that reasonable levels of working capital ought to be considered without the effect of revaluation due to a demerger. Further, the revaluation of fixed assets due to the demerger ought to be disregarded. Accordingly, capital employed shall be calculated without the effect of revaluation of both the fixed assets and working capital.

vi. While there was no revaluation in the books of the Petitioner, the revaluation in the books of PEL shall be excluded while evaluating the injury parameters and calculating the NIP.

vii. The Authority must verify the revaluation of assets and liabilities in the books of PEL. Since the assets are transferred at fair values from PEL to the Petitioner, the revaluation of assets and liabilities of the pharma business will not be visible in the Petitioner's books. It is submitted that the Authority ought to verify the same by calling for the relevant records from PEL.

xvi. An increase in imports has taken place in order to cater to the expanded market for the PUC owing to the increase in demand of the PUC in the domestic market.

xvii. It is a settled law that mere endpoint to end point comparison is not relevant to analyze the injury. The intermittent trend needs to be equally seen and a look at the intermittent trend shows that the Petitioner gained market share, and imports have lost market share in the last three years, including the POI.

xviii. The Petitioner is not impacted negatively by the imports as there is a continuous increase in production and sales parameters.

xix. The reason for price undercutting is not the low value of imports but the high cost of

manufacturing of PPL.

xx. PPL on one side claims that the capacity utilization is below the potential of the domestic market and on the other hand has itself increased the total capacity during POI. Any prudent business organization will increase its capacity only if it is expecting further increase in demand for the products manufactured by it.

xxi. The reason for decline in financial performance indicators such as PBIT, cash profits, and return on capital employed is not attributable to imports but is due to high costs incurred by PPL in manufacturing the PUC which is evident from the increasing trend of cost of sales.

xxii. The Petitioner has significantly increased its installed capacity and workforce, and despite the same, the profitability declined indicating inefficiencies. The Petitioner has undergone continuous restructuring which has affected its profits. Further, the rise in cost for self-inflicted reasons including low utilization, import dependency for the raw material, mismanagement and poor managerial decisions have been the cause of losses in the POI.

xxiii. There is a substantial increase in depreciation on year-to-year basis which has played an important role in increasing the cost of sales and thereby reduction in financial performance indicators.

xxiv. The claim made by PPL for imposition of provisional duty is unreasonable when no injury is being caused to the Petitioner due to imports. Also, it is pertinent to note that the quantum of imports has reduced during the POI in comparison to the injury period, this fact further supports that no provisional duty is required to be imposed in the present case as the purpose of said levy is to prevent injury being caused during the investigation.

xxv. PPL has not substantiated the grounds taken to claim threat of material injury in the petition. From the data filed in the questionnaire response of DSM Switzerland, it is clear that the capacity has remained constant in the last 4 years and the capacity utilization is also very high. Further, the DSM Group have no plans to expand the capacity in the near future. Therefore, there is no threat of injury on account of exports by the DSM Group.

xxvi. It is visible that the imports during the POI have declined as compared to the injury period. The said fact confirms that the requirement of massive imports during a short period of time for recommending duties on a retrospective basis is not fulfilled in the present case.

xxvii. The information regarding the previous investigation being in public domain did not impact the imports as there has been a decline in imports of PUC during the POI.

xxviii. Imports from the EU have significantly declined, i.e. from 33,782 kg in FY 2022-2023 to 26,906 kg in the POI.

xxix. Demand of the subject goods in India increased in the POI as compared to the immediately preceding year by 11%.

xxx. With regard to the volume effect, the imports from the EU declined despite an increase in demand. The Petitioner can cater to only 65% of the demand, whereby China's market share increased by 361% the market share of imports from the EU has declined by 40%. DSM Group has submitted that the imports have increased during the relevant period but also demand for the PUC has also increased in the domestic market. It further submitted that in FY 2022-23, the increase in imports was lower compared to the rise in demand.

xxxi. Domestic sales of the Applicant increased by 56% during the POI as compared to the base year. Productivity per day of the Applicant increased by 74% during the POI as

compared to the immediately preceding injury period. Inventory of the Applicant declined significantly by 43% during the POI as compared to the base year.

xxxii. The Petitioner's claims of price effect are misleading. An increase in costs in the POI has led to losses, whereby the price injury claimed by the Petitioner is actually on account of costs.

xxxiii. The sales increased in the POI in comparison to the immediately preceding years. Production increased in the injury period. Productivity, employment and wages have increased in the POI in comparison to the base year.

xxxiv. Capacity utilization has decreased primarily due to the increase in capacity. The Petitioner's import dependency (on raw materials) has caused below par capacity utilization.

xxxv. DSM's capacity has remained constant in the last 4 years and capacity utilisation is also very high. Further, the DSM Group has no plans to expand its capacity in the near future.

xxxvi. The applicant is misusing the trade remedy measures for their own motive. Initial application was withdrawn and the applicant claimed that it intends to file afresh application seeking an appropriate remedy to the full extent of dumping and injury for a more recent period as the volumes from China have grown significantly and prices continue to drop.

xxxvii. Similarly, the NHU Group has argued that the Petitioner appears to be leveraging the anti-dumping measures to mask the effects of their own restructuring, which may have disrupted production or operational efficiency.

xxxviii. Further, BASF Group has alleged that in the earlier investigation the applicant claimed dumping margin and injury margin in the range of 100%- 120% and 60%-80% respectively while in the ongoing investigation dumping margin and injury margin has been claimed in the range of 100%-120% and 80%-100% respectively.

xxxix. It is amply clear from a comparison of the dumping and injury margin claimed in the earlier investigation and ongoing investigation that the reason claimed for the withdrawal of the application was misleading

xl. The Authority is requested to analyse the reason for the withdrawal of the application.

xli. The Petitioner has filed incorrect injury data. The Petitioner has claimed constant capacity during the entire period of injury in its application. On the contrary, the applicant claimed that its net fixed assets increased by 135% in the POI as compared to the base year. The applicant has wrongly reported the value of assets to claim abnormally high NIP.

xlii. The reason for the significant increase in the capital employed despite constant capacity during the entire period of injury is revaluation (increase in value) of assets during corporate restructuring i.e., transfer of assets from PEL to the applicant.

xliii. The domestic sales have increased by 54% (value terms) during the POI as compared to the base year while the exports sales (value terms) increased by 18% during the same period. However, the working capital increased significantly by 139% during the same period, which prima facie seems incorrect and misleading. It will abnormally increase the NIP and CNV.

xliv. There has been no increase in the capacity of the Petitioner during the period FY 2020-21 to 2022-23. It is submitted that a deeper investigation by the Authority into the reason for the increase in capital employed without a corresponding increase in capacity is warranted.

xlv. Annual Report of Piramal Enterprises Limited shows that such fair valuation resulted in an increase of assets by 160%.

xlvi. The effect of any increase in depreciation and cost of sales on account of revaluation of assets must be removed from all parameters of injury impacted due to revaluation.

xlvii. Reasonable levels of working capital ought to be considered without the effect of revaluation due to a demerger.

xlviii. The Authority must verify the revaluation of assets and liabilities in the books of PEL as the assets are transferred at fair values from PEL to the Petitioner.

xlix. The Authority should verify if the Petitioner was required to provide the PUC prices to DPCO in order to enable it to determine prices under DPCO for downstream products using the PUC. The NIP of the Petitioner shall be restricted to such price to the extent the PUC is used in the manufacture of the products covered under the DPCO.

l. BASF argued that there was an accident at its plant in July 2024 in Germany. It has also been averred that the applicant has exploited the market (as there is a shortage of supply) and increased the prices of the PUC in the domestic market – the Authority may call for sales records of the applicant to verify the same. It has further averred that this demonstrates the necessity to have multiple sources of supply.

li. The Petitioner does not have the capacity to produce the PUC stabilized with Tocopherol.

lii. The Authority should adopt ROCE earned by the industry when there was no allegation of dumping (as a reasonable profit margin) and not 22% ROCE.

liii. BASF Group has submitted that the Preliminary Findings cannot be issued at a belated stage, i.e. 211 days.

liv. It has further argued that anti-dumping duty may be imposed retrospectively only in cases there is a history of dumping or the exporter practices dumping and the injury is caused by massive dumping of an article imported in a relatively short time which in the light of the timing and the volume of imported article dumped and other circumstances is likely to seriously under-mine the remedial effect of the antidumping duty liable to be levied. It may be noted that in this present case, the imports from EU in POI declined drastically as compared to the previous year.

lv. As per Global WITS Trade Information System, the import data considered by the Petitioner is deficient. The figures from the said third party source indicate that the quantity imported by India from China during the POI should be recorded as 39.5 tons. However, the petitioner claims an import volume of 69 tons, which is approximately 30 tons more than our data suggests. This discrepancy raises serious questions about the accuracy and reliability of the petitioner's data, particularly given that the petitioner relied on import data from private sources.

lvi. Inaccurate data provided by the Petitioner undermines the credibility of the ratios related to import data and the petitioner's production or market demand. The petitioner has not supplied data on the number of local sales, making it impossible for us to accurately assess whether the decline in its market share is real and justified.

lvii. The data shows that the price of raw materials imported by the petitioner has decreased while sales volume has increased. This implies that the petitioner's profits from the sale of the product in question should not be declining.

lviii. The NHU Group has further argued that the Petitioner's production capacity trend over the previous three years has been notably stable. The decrease in production quantity observed during the investigation period cannot be definitively linked to imports of the

products in question. Instead, this decline may be attributed to the company's own acquisition and merger plans, which could have led to adjustments in production strategies, as mentioned in Para 15- 17 of the written submissions filed by the Petitioner.

lix. Additionally, external factors such as local adverse weather conditions, including flooding during the investigation period as referenced in Para 77 of the written submissions filed by the petitioner, may have further contributed to the reduction in production**.**

lx. Furthermore, the assertion that profit margins have declined due to aggressive pricing from imports is unreasonable.

lxi. Data shows that while prices of Indian imports have declined in recent years, the decreases are not particularly large. Additionally, when we compare Piramal's imported raw material prices, we observe a more significant decline, approximately by half, contrasting with the relatively minor reductions in the prices of the end products sold by the applicant.

lxii. Given this disparity, the assertion that profit margins have declined due to aggressive pricing from imports is unreasonable. The substantial drop in raw material prices should have positively impacted the applicant's profitability, contradicting the claims of declining financial performance indicators.

G.2 Submissions made by the domestic industry

44. The following submissions have been made by the domestic industry with regard to the injury and causal link as well as the need for provisional duties on a retrospective basis:

i. The Domestic Industry has submitted in its application as well as communication filed on June 17, 2024, and July 12, 2024 that it has been suffering an increased and continuing injury due to dumped imports of the PUC from China PR, the European Union, and Switzerland. Given the same, on October 31, 2022, the Domestic Industry filed an application before the Hon'ble Designated Authority seeking anti-dumping duties on imports of the PUC from the subject countries. Upon a prima facie assessment of the same and being satisfied with the information provided, the Hon'ble Designated Authority initiated the anti-dumping investigation on December 29, 2022 ("Previous Investigation").

ii. However, during the said investigation's pendency, the import volumes from China PR grew significantly, and the prices continued to drop. This, in combination with relentless dumping from other countries, cumulatively injured the Domestic Industry more egregiously.

iii. To seek an appropriate remedy to the full extent of dumping and injury for a more recent period of investigation ("**POI**") i.e., October 2022 to September 2023, the Domestic industry, on January 17, 2024, filed a request to terminate the Previous Investigation. Subsequently, on January 31, 2024, the Domestic Industry filed a fresh petition to seek an appropriate remedy against the full extent of dumping and injury. In the interim, on February 9, 2024, the Hon'ble Designated Authority issued a termination notice based on the Domestic Industry's request dated January 17, 2024. Subsequently, upon being

satisfied *prima facie* with the evidence on record in the application dated January 31, 2024, the Hon'ble Designated Authority initiated the Subject Investigation.

iv. There is significant dumping. The Domestic Industry has suffered material injury due to dumped imports in the injury period.

v. The injury analysis is undertaken on a cumulative basis, and therefore arguments of the aforesaid producers concerning the imports/market share separately from each subject country ought to be rejected.

vi. The volume of imports from the subject countries has increased in absolute terms in the injury period. The volume of imports from the subject countries in relation to the production of the Petitioner and demand have increased. The Petitioner has also lost orders from several customers in India on account of cheap prices offered by foreign exporters and/or importers of the PUC.

vii. The gap between demand and supply is irrelevant in an anti-dumping investigation as held by the Hon'ble Gujarat High Court in the matter of Nocil Limited vs. Union of India & Ors.

viii. The imports from the subject countries come at prices below the domestic selling price of the Petitioner, thus, heavily undercutting the selling price and injuring the Petitioner. These declining prices led to an increase in losses suffered which are directly attributable to low-priced imports from the subject countries.

ix. The Petitioner continues to suffer injury on account price suppression in most of the injury period including the POI.

x. It is an established legal principle that an existence of material injury does not require negative trends with respect to every economic parameter. Therefore, the fact that some injury parameters may not show a negative trend does not ipso facto mean an absence of material injury.

xi. The sales and production remain far below the potential of the Petitioner since significant capacities remain idle on account of dumped imports from the subject countries.

xii. It is pertinent to note that an increase in productivity implies that injury suffered by the Petitioner cannot be considered self-inflicted on account of inefficiencies. That said, despite the Petitioner's productivity and efficiency, the Petitioner is suffering an injury on account of dumped and injurious imports. The number of employees remained far below the potential.

xiii. Capacity utilization has decreased on account of dumped imports. In addition, the capacity utilization remains far below the potential of Domestic Industry. Further, there were no constraints (such as raw material shortages) on the operations of the Petitioner

concerning the PUC, whereby import dependency on raw materials has no correlation to the Petitioner's capacity utilization.

xiv. The Petitioner would like to clarify that the NFA and working capital report are basis the allocation for the PUC made on production value. Hence, there is no abnormality in the reporting or the increasing trend of these figures. Further, none of the claimed figures pertaining to net fixed assets, working capital, or depreciation have been affected in the injury period due to the revaluation or demerger.

xv. The Domestic Industry has made losses in terms of both PBIT and cash profits throughout the injury period. The losses in terms of PBIT increased from (100) in the base year to (196) in the POI. Additionally, the cash losses increased from (100) in the base year to (195) in the POI.

xvi. Besides material injury being suffered by the Domestic Industry, there is a threat of material injury to the Domestic Industry.

xvii. Given the above, a recommendation of provisional duties is warranted in the Subject Investigation. Indeed, the Hon'ble Designated Authority in the recent preliminary findings has recommended provisional duties wherein the cash losses suffered by the domestic industries in those respective investigations was not nearly as egregious as the Domestic Industry's losses in the present investigation. Thus, this is an appropriate case for interim duties.

xviii. The present investigation also warrants imposition of duties on a retrospective basis under Rule 20 (2) of the AD Rules.

G.3 Examination by the Authority

45. Rule 11 of Anti-dumping 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 the domestic producers of such articles*…". In considering the effect of the dumped imports on prices, it is considered necessary to examine whether there has been a significant price undercutting by the dumped imports as compared with the price of the like article in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree. 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, inventory, profitability, net sales realization, the magnitude, and margin of dumping, etc. have been considered in accordance with Annexure II of the Anti-Dumping Rules.

46. The Authority has examined the arguments and counterarguments of the interested parties with regard to injury to the domestic industry. The injury analysis made by the Authority hereunder addresses the various submissions made by the interested parties.

Cumulative assessment of injury

47. Article 3.3 of the WTO agreement and para (iii) of Annexure II of the Rules provides that in case where imports of a product from more than one country are being simultaneously subjected to anti-dumping investigations, the Authority will cumulatively assess the effect of such imports, in case it determines that:

    i. The margin of dumping established in relation to the imports from each country is more than two per cent expressed as a percentage of export price and the volume of the imports from each country is three per cent (or more) of the import of like article or where the export of individual countries is less than three per cent, the imports collectively account for more than seven per cent of the import of like article, and
    ii. 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.

48. The Authority notes that both the volume of imports and dumping margins from the subject countries are above the *de minimis* limits prescribed under the AD Rules.

49. In order to ascertain whether 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, the following parameters have been examined:

    i. Products supplied by different parties are like articles and are comparable in properties.
    ii. Consumers are using imported products interchangeably.
    iii. Cumulative assessment of the effects of import is appropriate as the imports from the subject countries not only directly compete with the like articles offered by each of them but also the like articles offered by the domestic industry in the Indian market.

50. In view of the above, the Authority considers it appropriate to cumulatively assess the effect of dumped imports of the subject goods from China PR, Switzerland and EU on the domestic industry.

51. With regard to the averment that overlap in the POI and the previous year renders any comparisons between these periods misleading and inaccurate, it is well settled that there can be an overlap between the POI and the previous year. The Domestic Industry has provided data to the Authority for the POI and three previous financial years in consonance with requirements laid down in Trade Notice No. 02/2004.

52. Additionally, with regard to the other interested parties' submission that "as a result of an accident at its plant on July 29, 2024 in Germany, the applicant has exploited the market (as there was a shortage of supply) and increased the prices of the PUC in the domestic market – and the Authority may call for sales records of the applicant to verify the same", the Authority does not consider it appropriate in the circumstances of the case to assess the volume effect, price effect or impact on economic parameters in post POI period.

53. As regards injury and causal link, the Authority has examined the effect of dumped imports on the state of the domestic industry in the paragraphs below.

G.3.1 Assessment of demand / apparent consumption

54. The Authority has defined, for the purpose of the present investigation, demand or apparent consumption of the product concerned in India as the sum of the domestic sales of the domestic industry and other Indian producers and imports from all sources. The demand so assessed is given in the table below.

Particulars	Unit	2020-21	2021-22	2022-23	POI
Sales of applicant	KGS	***	***	***	***
Trend	Indexed	100	94	122	156
Subject imports	KGS	***	***	***	***
Trend	Indexed	100	209	248	227
Other imports	KGS	-	-	-	-
Trend	Indexed	-	-	-	-
Demand	KGS	***	***	***	***
Trend	Indexed	100	147	180	189

55. It is noted that total demand in the POI has increased in comparison to the previous years.

G.3.2 Volume effect of imports from subject countries

56. With regard to the volume of the 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. For the purpose of injury analysis, the Authority has relied on the transaction-wise import data procured from DG Systems.

a) Absolute increase in the imports

57. The import volumes of the subject goods from the subject country during the injury period and in relation to the production of the domestic industry and demand of the subject goods are as follows:

Particulars	Unit	2020-21	2021-22	2022-23	POI
Subject imports	KGS	39,581	82,783	98,060	89,717
China	KGS	7,480	9,000	33,505	39,500
European Union	KGS	16,805	11,573	17,634	27,706
Switzerland	KGS	15,296	62,210	46,921	22,511
Other Countries	KGS	-	-	-	-
Total imports	KGS	39,581	82,783	98,060	89,717
Production	KGS	***	***	***	***
Production – Trend	Indexed	100	116	146	174

Subject import in relation to:					
Total imports	%	100	100	100	100
Production	%	***	***	***	***
Trend	Indexed	100	181	170	131
Consumption	%	***	***	***	***
Trend	Indexed	100	142	137	120

58. It is seen that –

i. The imports from subject countries in relation to production of the Domestic Industry has increased in the POI from the base year.

ii. The imports from the subject countries in relation to consumption have increased in the POI from the base year.

iii. The imports from the subject countries in absolute terms have also increased during the same period. It is also noted that the subject imports have grown at faster pace than the growth in demand as well as domestic industry's sales during the injury investigation period.

G.3.3 Price effect of the dumped imports

59. In terms of Annexure II (ii) of the Anti-Dumping Rules, with regard to the effect of the dumped imports on prices, it is required to be analysed whether there has been a significant price undercutting by the alleged imports as compared to the price of the like products in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree.

a) Price undercutting

60. Price undercutting has been determined by comparing the net sales realization of the domestic industry with the landed price of the imports for the period of investigation. It is seen that the price undercutting is positive and significant during the period of investigation.

Particulars	Unit	POI
Net selling price	₹/KG	***
Landed Price	₹/KG	***
Price undercutting	₹/KG	***
Price undercutting	%	***
Range	Range	10-20%

61. It is noted that during the period of investigation, the subject imports were undercutting the prices of the domestic industry. Further, the price undercutting was significant.

b) Price suppression/depression

62. In order to determine whether the dumped imports are depressing the domestic prices and whether the effect of such imports is to suppress prices to a significant degree or prevent price increases which otherwise would have occurred in the normal course, the Authority has examined the changes in the costs and prices of the domestic industry over the injury period, as below.

Particulars	Unit	2020-21	2021-22	2022-23	POI
Cost of Sales	₹/KG	***	***	***	***
Trend	Indexed	100	123	122	119
Selling Price	₹/KG	***	***	***	***
Trend	Indexed	100	108	102	98
Landed Price	₹/KG	6,102	5,863	5,390	5,230
Trend	Indexed	100	96	88	86

63. It is noted that except base year, the landed value of the imports was below the selling price of the domestic industry in the injury period including the POI.

64. The prices of imports have also reduced and were much below the cost of sales of the domestic industry in the injury period (except base year). This prevented the domestic industry from increasing its price in line with the increase in cost. It is, therefore, noted that the imports have prevented price increases, which otherwise would have increased.

G.3.4 Economic Parameters of the domestic industry

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

i) **Production, capacity, capacity utilization and sales volumes**

66. The performance of the domestic industry with regard to capacity, production, sales and capacity utilization of the domestic industry over the injury period were as below:

Particulars	Unit	2020-21	2021-22	2022-23	POI
Installed Capacity – PUC +		***	***	***	***

NPUC	KGS				
Trend	Indexed	100	100	100	128
Production – PUC + NPUC	KGS	***	***	***	***
Trend	Indexed	100	94	92	78
Capacity Utilization – PUC + NPUC	%	***	***	***	***
Trend	Indexed	100	94	92	61
Production – PUC	KGS	***	***	***	***
Trend	Indexed	100	116	146	174
Domestic Sales – PUC	KGS	***	***	***	***
Trend	Indexed	100	94	122	156
Export Sales – PUC	KGS	***	***	***	***
Trend	Indexed	100	73	86	158

67. The Authority notes that the: -

i. The interested parties have averred that there has been an increase in capacity of the Domestic Industry. The Authority notes that the capacity indicated in the table above can be utilized for producing both the PUC and non-PUC.
ii. Capacity utilization has decreased during the injury period.
iii. As regards domestic sales and production, the same have increased. However, the same remains far below the growth of demand, imports and the potential of the Petitioner.

ii) **Market share**

68. Market share of the domestic industry and of imports have been examined in the table below:

Market share	Unit	2020-21	2021-22	2022-23	POI
Domestic industry	%	***	***	***	***
Domestic industry	%-Indexed	100	64	68	83
Subject imports	%	***	***	***	***
Subject imports	%-Indexed	100	142	137	120
Other Imports	%-Indexed	-	-	-	-

69. The Authority notes that despite being the sole producer of the subject goods in India and having the capacity, the share of the domestic industry in the Indian market is only ***%. The imports from the subject countries have continued to dominate the Indian market throughout the injury period with a ***% share during the period of investigation.

iii) **Inventories**

70. Inventory position of the domestic industry over the injury period is given in the table below:

Particulars	Unit	2020-21	2021-22	2022-23	POI
Opening Inventories	KGS	***	***	***	***

Closing Inventories	KGS	***	***	***	***
Average Inventories	KGS	***	***	***	***
Trend	Indexed	100	98	287	57

71. It is noted that the average inventories have decreased in the POI in comparison to the base year.

iv) **Profitability, cash profits and return on capital employed**

72. Profitability, return on investment and cash profits of the domestic industry over the injury period are given in the table below:

Particulars	**Unit**	**2020-21**	**2021-22**	**2022-23**	**POI**
Cost of sales (domestic)	₹/KGS	***	***	***	***
Trend	Indexed	100	123	122	119
Selling price	₹/ KGS	***	***	***	***
Trend	Indexed	100	108	102	98
Profit/ (loss)	₹/ KGS	***	(***)	(***)	(***)
Trend	Indexed	100	-278	-390	-408
Profit/ (loss)	₹ Lacs	***	(***)	(***)	(***)
Trend	Indexed	100	-262	-477	-638
Cash Profit	₹ Lacs	***	(***)	(***)	(***)
Trend	Indexed	100	-151	-299	-402
Cash Profit	₹/ KGS	***	(***)	(***)	(***)
Trend	Indexed	100	-161	-244	-257
ROCE	%	***	(***)	(***)	(***)
Trend	Indexed	100	-281	-264	-263

73. It is noted that that:

i. Except base year, the domestic industry has incurred losses throughout the injury period.
ii. More specifically, except base year the applicant has incurred cash losses as well as negative return on capital employed during the injury period including period of investigation.

74. The other interested parties have averred that the increase in the capital employed, net fixed assets and working capital, depreciation and cost of sales is on account of revaluation of assets and purchase of new assets, if any. The Authority has verified the figures reported by the Domestic Industry and has eliminated the impact of revaluation as per rules, on the injury parameters assessed in these findings.

75. The interested parties have also averred that an increase in working capital is either incorrect or misleading, whereby the Petitioner has abnormally increased the NIP, and the normal value constructed. The Authority notes that pursuant to an on-site verification of the petitioner and examination of the claim of the domestic industry as per rules, the Authority has eliminated the

impact of revaluation as per rules. The NIP and Normal Values have thus been determined based on the principles prescribed under the Anti-dumping Rules.

v) **Employment, productivity, and wages**

76. The Authority has examined the information relating to employment, wages and productivity, as given below:

Particulars	Unit	2020-21	2021-22	2022-23	POI
No. of employees	Nos.	***	***	***	***
Trend	Indexed	100	108	112	112
Salaries & Wages	₹ Lacs	***	***	***	***
Trend	Indexed	100	125	168	206
Productivity per day	MT/Days	***	***	***	***
Trend	Indexed	100	116	146	174
Productivity per employee	MT/Nos	***	***	***	***
Trend	Indexed	100	107	130	154

77. It can be seen that:
    i. The productivity per day increased in the POI in comparison to the base year.
    ii. The number of employees remained in the same range during most of the injury period.

vi) **Growth**

Particulars	UOM	2020-21	2021-22	2022-23	POI
Sales Price	INR/KGS	***	***	***	***
	Y/Y		***	(***)	(***)
Profit/(Loss)	INR/KG	***	(***)	(***)	(***)
	Y/Y		(***)	(***)	(***)
Market Share (%)	%	***	***	***	***
	Y/Y		(***)	***	***
Cash Profit (INR/KG)	INR/KG	***	(***)	(***)	(***)
	Y/Y		(***)	(***)	(***)
ROI	%	***	(***)	(***)	(***)
	Y/Y		(***)	***	***

78. It is seen that the growth of the domestic industry continues to be either negative or negligible in terms of profits, market share and ROI.

vii) **Impact on the ability to raise capital investment**

79. The applicant has submitted that it has incurred steep losses and is facing negative returns. The Earnings Before Interest, Taxes, Depreciation, and Amortization (EBIDTA) has continuously deteriorated over the injury period and remained negative. The applicant has further submitted that the negative EBIDTA shows that the domestic industry is not earning enough to even meet its

present obligations and there is a negative impact on the ability to raise capital investment.

viii) **The magnitude of dumping**

80. The margin of dumping may be an indicator of the extent to which the dumped imports can cause injury to the domestic industry. The dumping margin is positive for all countries

81. In addition to material injury, it is seen that there is a threat of material injury to the Domestic Industry. The imports of the PUC from the subject countries have increased throughout the injury period. As per the questionnaire responses placed on record by the producers from the subject countries, it is noted that the rate at which such producers' exports are increasing is significantly higher than their domestic sales. Domestic industry has submitted that the producer from the EU, BASF increased its capacity by ***% to produce Vitamin A. Lastly, there is substantial price suppression on account of the dumped and injurious imports from the subject countries.

H. CAUSAL LINK AND NON-ATTRIBUTION ANALYSIS

H.1 Submissions made by other interested parties

82. Various interested parties have made following submissions:

i. The Petitioner was using inherently inefficient machinery and equipment and that the same is evident from the decline in the production of NPUC in the POI in comparison to the previous years.

ii. Disruption in the supply chain and volatility in raw material costs are the cause of injury – and the applicant itself has stated that several governments have restricted the export of pharmaceutical products or inputs essential for manufacturing sales during the pandemic. The interested parties also averred that the high import dependency has led to below par capacity utilization, high cost and losses. The interested parties further averred that FY 2020-21 and FY 2021-22 experienced lockdowns and significant market disruptions which has further skewed the data.

iii. Since PPL imported Vitamin-A Acetate from suppliers of the subject goods itself, it is reasonable to believe that such suppliers of subject goods will have some material advantages over the applicant, which cannot be seen as a case of price discrimination by way of alleged dumping of subject goods.

iv. Injury to the Petitioner is due to the manufacturing process adopted by the Petitioner i.e., producing the PUC from an intermediate stage and not from a basic stage.

v. PPL uses the subject goods (to the tune of ***-***%) produced by it in its other downstream products including in its plant at Hyderabad which is an EOU, and the claims of injury must be examined keeping in view the intercompany transfers/captive uses of the subject goods. They have further argued that, if the Petitioner prioritizes captive consumption, the shortage

and consequent impact of the PUC will be catastrophic.

vi. Applicant's significant capacities remain idle in the POI. Accordingly, it is clear that the applicant is suffering on account of its mismanagement and over capacity

H.2 Submissions made by the domestic industry

83. The domestic industry has made following submissions:

i. Several products including the PUC are produced at Digwal and Mahad plants, and the production of the NPUC is contingent on the demand and supply of the same.

ii. During the POI, there were no such constraints (such as raw material shortages, power shortages, tax, capacity/investment constraints, etc.) on the operations of the Petitioner concerning the PUC. PPL sources the raw material Vitamin-A Acetate from BASF at a price agreed upon under a contract, which has been in place since the injury period, and thus far, there has been no disruption in the supply of raw materials to PPL. Consequently, there is no question of high costs or low-capacity utilization for producing the PUC on account of high import dependency – the low-capacity utilization as elaborated in relevant sections herein is on account of dumped imports. It is surprising that BASF is making claims of disruption in raw material supply when it is itself the sole supplier of the raw material i.e., Vitamin-A Acetate to PPL.

iii. While the producers from the subject countries may be backward integrated, the facts remains that they are engaging in dumping in India.

iv. PPL is required to be seen as it exists (i.e., PPL is suffering an injury due to dumped imports irrespective of whether it is engaged in backward integration or producing the PUC from the intermediate stage) and hence, the other parties' submissions should be rejected.

v. Regarding the demand for the PUC, the Petitioner submits that it has gone up. However, the Petitioner despite having the capacity to produce has not been able to get the benefit of the increase in demand, which has been completely subsumed by dumped imports of PUC from the subject countries.

vi. Capacity utilization has decreased on account of dumped imports. Particularly, the capacity utilization remains far below the potential of Domestic Industry.

H.3 Examination by the Authority

84. As per the Rules, the Authority, *inter alia*, is required to examine any known factors other than dumped imports which are injuring to the domestic industry, so that the injury caused by these other factors may not be attributed to the dumped imports.

85. **Volume and value of imports from third countries:** The Authority notes that there are no imports of the product under consideration from non-subject countries in the injury period.

86. **Contraction in demand:** It is noted that the demand for the PUC has gone up. Thus, contraction in demand is not the source of injury.

87. **Pattern of consumption:** It is noted that there has been no material change in the pattern of consumption of the product under consideration, which could have caused injury to the domestic industry.

88. **Conditions of competition and trade restrictive practices**: The Authority notes that there is no evidence of conditions of competition or trade restrictive practices that are responsible for the claimed injury to the domestic industry.

89. **Development of technology:** The Authority notes that there has been no change in technology for the production of the subject goods that could have caused injury to the domestic industry. No submission regarding technological differences have been properly substantiated by the interested parties.

90. **Productivity:** The Authority notes that the productivity of the domestic industry has increased over the injury period. Therefore, the domestic industry has not suffered injury on this account.

91. **Export performance of the domestic industry:** The injury information examined hereinabove relates only to the performance of the domestic industry in terms of its domestic market. Thus, the injury suffered cannot be attributed to the export performance of the domestic industry.

92. **Performance of other products:** The Authority has only considered data relating only to the performance of the subject goods. Therefore, the performance of other products produced and sold is not a possible cause of injury to the domestic industry.

93. **High conversion costs due to manufacturing process:** With regard to the contention that the injury to the Domestic Industry is due to the manufacturing process adopted by the Domestic Industry i.e., producing the PUC from an intermediate stage and not from a basic stage, the Authority notes that a domestic industry is required to be seen as it exists i.e., it is suffering injury irrespective of whether such industry is engaged in backward integration or not.

94. The Hon'ble CESTAT in *Nippon Zeon Co. Ltd. v. Designated Authority,* has held that "[t] *the question of injury to domestic industry cannot be decided by assuming ideal conditions, but has to be decided on prevailing conditions though giving reasonable adjustments."*[8]

95. The other interested parties have averred that the increase in the capital employed, net fixed assets and working capital, depreciation and cost of sales is on account of revaluation of assets and purchase of new assets, if any. They also averred that an increase in working capital is either incorrect or misleading, whereby the Petitioner has abnormally increased the NIP and the normal value constructed and also, effect of revaluation must be excluded in evaluating the injury parameters. Pursuant to an on-site verification of the petitioner, the impact of revaluation on

8 Nippon Zeon Co. Ltd. v. Designated Authority, 1996 (88) ELT 569 Tri Del.

depreciation has been eliminated. The Authority also notes that the revaluation has not affected the claimed figures of working capital and NFA. Accordingly, there is no impact of revaluation on other economic parameters of the Domestic Industry. The NIP has also been determined based on the principles prescribed under the Anti-dumping Rules.

I. MAGNITUDE OF INJURY MARGIN

96. The Authority has determined non-injurious price for the domestic industry on the basis of principles laid down in the Anti-Dumping Rules read with Annexure III. The non-injurious price has been determined by adopting the information/data relating to the cost of production provided by the domestic industry. The non-injurious price has been considered for comparing the landed price from the subject countries for calculating the injury margin. For determining the non-injurious price, the best utilisation of the raw materials by the domestic industry over the injury period has been considered. The same treatment has been carried out with the utilities. The best utilisation of production capacity over the injury period has been considered. It is ensured that no extraordinary or non-recurring expenses are charged to the cost of production. A reasonable return (pre-tax @ 22%) on average capital employed (i.e. average net fixed assets plus average working capital) for the product under consideration was allowed as pre-tax profit to arrive at the non-injurious price as prescribed in Annexure III of the Anti-Dumping Rules. The NIP so determined has been considered for calculating injury margin.

97. The landed price for the cooperative exporters has been determined on the basis of the data furnished by the exporters. For all the non-cooperative producers/exporters from the subject countries, the Authority has determined the landed price based on the facts available.

98. Based on the landed price and non-injurious price determined as above, the injury margin for producers/exporters has been determined by the Authority and the same is provided in the table below:

Injury margin

Sr. No.	Name of the Producer	NIP (USD/KG)	Landed Price (USD/KG)	Injury Margin (USD/KG)	Injury Margin (%)	Injury Margin (Range %)
A	**China**					
1	Shangyu NHU Bio-Chem Co., Ltd.	***	***	***	***	20-30%
2	Others	***	***	***	***	35-45%
B	**Switzerland**					
3	DSM Nutritional Products Limited	***	***	***	***	0-10%
4	Others	***	***	***	***	5-15%
C	**European Union**					
5	Any producer	***	***	***	***	15-25%

J. INDIAN INDUSTRY'S INTEREST & OTHER ISSUES

J.1 Submissions made by other interested parties

i. The other interested parties made the following submissions with regard to the Indian industry's interest.

ii. Any imposition of the duty will increase our costs and that of the downstream users who use vitamin A in their foods and beverages. The fortification of rice, milk etc. not being compulsory under the present regulations will impact the overall use of Vitamin A which can lead to nutritional deficiencies in foods and beverages. Hence, any potential ADD can have a major impact on the operations of DNP Indian and downstream users of premixes.

iii. The petitioner imports Vitamin A in Acetate form and merely converts it into Palmitate form. Unlike DSM group, the petitioner is not a producer of the PUC from the basic stage but just a processor who converts vitamin A from one form to another. The Indian market cannot be dependent on a processor of PUC especially in a product which has wide application in nutritional industry.

iv. The import of the Vitamin-A Palmitate already suffers a basic customs duty of 7.5% along with the social welfare surcharge of 10% thereon. The imposition of the ADD on top of the existing basic customs duty will considerably impact DNP India's competitiveness and make the PUC market anti-competitive & monopolistic in nature as the market shall become dependent on the petitioner who is merely a processor of PUC

v. In case the Petitioner decides to prioritize captive consumption over the requirements of the downstream users, the shortage and consequent impact of the PUC will be catastrophic. This likelihood gets worse in case the market turns monopolistic due to the imposition of the ADD.

vi. In addition, we understand that Petitioner's Digwal unit is an Export Oriented Unit (EOU) which exports the PUC / other downstream products which will also constrain the availability of PUC to users in India given that Petitioner is the sole processor of PUC in India.

vii. DNP India is not earning any profits on the sales of premixes. Any increase in the cost of the PUC shall put further strain on the finances of premix business leading to cost increases on downstream users.

viii. India is the largest exporter of the generic pharmaceuticals. Many of these pharmaceutical products use the PUC as an input. Any imposition of the ADD shall make their products costly and render them uncompetitive in the international markets.

ix. The Petitioner is the sole producer of the PUC and does not have sufficient capacities. The imposition of duty will create a monopolistic situation as well as create scarcity for the PUC, thereby directly affecting the health of the public at large.

x. Any increase in the costs of the PUC due to the imposition of the duties shall invariably affect the overall costs of not only the premixes which DSM India manufactures but also of the products that are manufactured by end users of premixes. Any increase in the costs of premixes will drive away the users from voluntary fortification of the foods and beverages thereby impacting the nutritional needs of the common public.

xi. The PUC is widely used in the pharmaceuticals, cosmetics, health supplements and personal care segments and the levy of duties will render the players in these segments uncompetitive or even push them to suffer losses.

xii. Some of the products using the PUC as input are subject to DPCO and the imposition of duties will affect the downstream industries adversely since they will not be in a position to increase the prices correspondingly.

xiii. The Authority must take into consideration the country-wide effects of duties on the PUC.

xiv. The NHU Group has claimed that the imposition of anti-dumping measures will adversely affect the public interest in India. The Petitioner's assertion that the cost increase for intermediate products will be less than 0.5% does not adequately reflect the complexities of market dynamics. In reality, an additional duty of 10% on the product in question is likely to result in a more significant increase in costs for downstream products than the percentage claimed by the Petitioner.

J.2. Submissions by the domestic industry

99. The domestic industry has made the following submissions with regard to the Indian industry's interest:

i. The PUC is used in a wide variety of intermediate products falling under various sectors, including food, cosmetics, and pharmaceutical industries.

ii. It is submitted that the contribution of the PUC in the intermediate products differs depending on the consuming sector.

iii. The capacity to produce the PUC and the low-capacity utilization in the injury period is due to dumped imports.

iv. If PPL is the sole producer of the PUC, it does not imply that PPL intends to or will create a monopoly. Even assuming that there is a monopoly, it is not a concern under the Indian competition laws, unless there is an abuse of monopoly, which PPL is not engaged in. That said, PPL is not barred from seeking an anti-dumping duty. The Petitioner submits that the purpose of anti-dumping duty is to neutralize the adverse effects of unfair trade practice of dumping. The imports of the PUC would not be prohibited through anti-dumping duties, rather the Petitioner and the imports would compete on a level playing field.

v. Based on the information available with the Petitioner, the imposition of the anti-dumping

duty on the PUC will not significantly affect the cost of the downstream product and the costs and prices of the final end product. The imposition of about ***% duties on the PUC has less than ***% impact on the cost of the end product i.e., premixes.

vi. The levy of anti-dumping duty on the PUC has only a minuscule impact on the costs of the end products. That said, customers sell end products (produced using the PUC) under the Rx (prescription-based) route or under the OTC/FSSAI/nutraceutical route. There is no price cap should the end products be sold under the OTC/FSSAI/nutraceutical routes, whereas there is a price cap on a product to be sold under the Rx route. As per PPL's market intelligence, the end products sold under the DPCO are very insignificant.

vii. There are no users (other than a related importer cum user i.e., DSM India) on record.

J.3. Examination by the Authority

100. The Authority notes that the primary objective of anti-dumping duties is to rectify the injury inflicted upon the domestic industry by the unjust trade practices of dumping, thereby fostering an environment of open and equitable competition in the Indian market. The imposition of anti-dumping measures is not designed to curtail imports from the subject countries arbitrarily. Rather, it is a mechanism to ensure a level playing field. The Authority acknowledges that the persistence of anti-dumping duties may influence the price levels of the product in India. However, it is crucial to note that the essence of fair competition in the Indian market will remain unscathed by the continuation of these measures. Far from diminishing competition, the imposition of anti-dumping measures serves to prevent the accrual of unfair advantages through dumping practices. It safeguards the consumers' access to a broad selection of subject goods. Thus, anti-dumping duties are not a hindrance but a facilitator of fair-trade practices.

101. The Authority issued the initiation notification, inviting views from all interested parties including importers, users and consumers. An Economic Interest Questionnaire was also prescribed to allow various stakeholders, including the domestic industry, producers/exporters and importers/users/consumers to provide relevant information concerning the present investigation, including the possible effect of anti-dumping duty on their operations. The Authority notes that no user of the subject goods has stepped forward to participate before the Authority or furnished a response to the Economic Interest Questionnaire. Furthermore, no party has presented any evidence to indicate the adverse effect of the duties in force. With regard to DNP India i.e., a related importer of DNP AG, the Authority notes that it has filed an economic interest questionnaire, wherein it has stated the impact of the duties on its costs. The Domestic Industry has presented detailed calculations to show that the imposition of an anti-dumping duty would have a negligible (under ***% on a ***% duty) impact on the user industry including the costs of end products i.e., premixes.

K. <u>POST-DISCLOSURE COMMENTS</u>

K.1 Views of the other interested parties

102. The following submissions have been made by other interested parties:

i. The Authority is requested to provide a specific finding on actual value addition from Vitamin-A Acetate to produce the PUC since the applicant talked about 40% value addition.

ii. K. Sevantilal requested that the delay of one day be condoned as it occurred inadvertently and due to judgement error in noting the deadline set by the Authority.

iii. The indexed trend of the profit before tax at paragraph 71 of the disclosure statement shows that it has moved from (278) in 2021-22 to (408) in the POI, which is a sharp decline. However, the return on capital employed in the same period has increased 18% from (281) to (263). There appears to be a mismatch in the trend of profit before tax and the return on capital employed and it may be checked.

iv. Injury parameters show that injury claimed is only in price parameters and not in term of volume parameters, including the employment level.

v. The Applicant's margin concerns are due to their dependence on imports for raw materials, whereas exporters have the advantage of being integrated from the raw material stage. Thus, the cause of injury cannot be the alleged dumping of the PUC, but the incompetent business model dependent on imports of raw material from the subject countries.

vi. The dumping and injury margin determined by the Authority appear excessive. If such high percentages are converted into anti-dumping duties, then the users, even though users are not before the Authority, will suffer, leading to distress. Therefore, a reference form of duty may only be considered as that will help address a shortage in supply of the raw material by the applicant fairly and not require users to pay a fixed quantum of duty even when there is short supply of the material in India.

vii. The non-confidential summaries of the essential data concerning prices and their evolution, calculations of normal value, alleged dumping calculations provided by the Authority are insufficient. The Authority has not even provided normal value in the form of indexes. Further, no explanation is provided as to why it was not possible to summarize or present the data in an indexed form, for example.

viii. The Applicant makes excessive use of confidentiality, thus depriving the parties of their rights of defence. The investigating authority should correct this irregularity and provide meaningful non-confidential summaries of the information provided in confidence to the parties.

ix. Data provided in the application and disclosure statement shows that total imports from the countries concerned appear to have increased in absolute terms. However, this has not been analyzed in light of the fact that no imports of the PUC from any other country have entered into India since 2020, and the applicant only covers 65% of the growing demand. The accuracy of the application is questionable as there is a discrepancy between the import data provided by the applicant and the data provided by the Authority. The Applicant grossly

overestimates volume of imports from EU by up to 54% and the total imports entering the Indian market by up to 25%.

x. The application and the disclosure statement only allege significant price undercutting in the range of 10 to 20 % during the injury period. No further information, like undercutting per country of origin, is provided.

xi. Other factors could be analyzed for the affect of unfavorable developments for the applicant in the POI, particularly the increase in the costs in the POI.

xii. The Applicant has increased production of the PUC but is unable to meet the increasing demand. Therefore, this inability to fulfil domestic demand resulted in increase of imports to fill the gap.

xiii. The Applicant continuously restructured its 'pharma business' operations, and the associated restructuring costs impacted net income, which explains the negative developments in profitability.

xiv. It does not matter if the ester is an Acetate or Palmitate or Propionate as Acetate/Palmitate is ultimately chopped off and it is only Vitamin A (Retinol) which is absorbed in the body. The chain of carbon in ester does not make any change to the functionality of the main molecule Retinol.

xv. Production of Vitamin A Acetate from its basic raw materials involves a complex and technology driven twenty steps process starting from the basic ingredients. On the other hand, conversion of Retinyl Acetate to Retinyl Palmitate is a mere change of one form (or ester) of Vitamin A to another form (or ester) of Vitamin A through a simple process of transesterification wherein the Acetate ester of Retinol is replaced by the Palmitate ester forming the PUC.

xvi. The Hon'ble CESTAT in ***Oswal Wollen Mills Ltd. vs. Designated Authority***, (2000) 118 ELT 275 decided that if a product is easily convertible and such a fact is also recognized by exporters, then the products are "like products".

xvii. The Authority has completely ignored considering the evidence and material provided that there is no direct import or use of Vitamin A Acetate in applications similar to Vitamin A Palmitate.

xviii. There are indeed actual imports of Vitamin A Acetate by many importers in India including the DSM Group, BASF India Limited and several others including but not limited to Divis Laboratories Ltd, DSM Nutritional Products India Private Limited, Hexagon Nutrition Exports Pvt Ltd etc. These companies/entities are importing the Vitamin A Acetate and using it for the purposes of preparation of premixes for food fortification, tablets, drugs and food products and dietary supplements.

xix. It has been widely recognized that both Vitamin A Acetate and the PUC are used technically

and commercially interchangeably and are often employed for the same purpose i.e. for fortification of foods like oil, milk, wheat flour (atta and maida) etc. and manufacture of cosmetics, tablets and drugs and dietary supplements. This is even recognized by the Government of India in terms of its Food Safety Regulations which were entirely ignored by the Authority in arriving at its observations.

xx. From the product/safety data sheets of BASF, it can be inferred that various compositions of Vitamin A Palmitate and Vitamin A Acetate are used in similar applications relating to fortification and dietary supplements.

xxi. The Food Safety and Standards (Health Supplements, Nutraceuticals, Food for Special Dietary Use, Food for Special Medical Purpose, and Prebiotic and Probiotic Food) Regulations, 2022 under Schedule I dealing with "Nutrients (vitamins, minerals, amino acids and other nutrients)" at serial no 1 clearly provides that Retinyl acetate and Retinyl Palmitate are permitted forms of Vitamin A under the regulations.

xxii. Petitioner is an importer of a like product, Vitamin A Acetate, which is another form of Vitamin A with same end uses and technically and commercially substitutable to the Vitamin A Palmitate. Petitioner is merely converting the imported Vitamin A Acetate to PUC. Both Vitamin A Acetate and the PUC are nothing but different esters of Vitamin A molecule and are therefore "like articles" to each other. Hence, the Petitioner is ineligible to be regarded as 'domestic industry' under Rule 2(b) of the AD Rules.

xxiii. Mere high value addition in Petitioner's books for the conversion (of the Vitamin - A Acetate to PUC) is not a criteria to judge the likeness of the articles under the AD law.

xxiv. The high cost of value addition by the Petitioner may be contributed due to its own internal inefficiencies in the manufacturing process employed by the Petitioner.

xxv. It cannot be accepted as a general rule that the value addition from Vitamin A Acetate to the PUC is very high only on the basis of the Petitioner's cost who is a mere converter of Vitamin A from one form to another.

xxvi. Authority must provide in a non-confidential manner as to how much impact the Authority removed on account of revaluation for us to provide any comments in this regard. Without prejudice, any impact of revaluation of assets on the cost structure must be removed for calculating the NIP as well for injury analysis.

xxvii. Authority has disregarded DSM group submission dated 3 February 2025 ("Additional Submission") for determination of Normal Value. DSM group had explained in Additional Submissions that they had already placed on record country wise quantity and value of PUC sold by DSM group to third party external customers or used as part of the premix sold to third party external customers in all the third countries during the POI. The Authority is requested to consider the principles highlighted in Additional Submission and facts while selecting the appropriate third country (Indonesia or Bangladesh based on comparable volumes and markets) as the normal value may be constructed on the basis of comparable

representative export price of the like article produced and sold by DNP AG for sales to an appropriate third country. Once the Authority selects the appropriate third country, DSM group will provide the details of other adjustments on a transaction wise basis for determining the normal value.

xxviii. The Authority disclosed the cost of production (COP) as Euros ***/kg whereas in the EQR that was submitted by DSM group cost of production at ex-factory level is Euros ***/kg. If any adjustments have been made to the COP, the Authority is requested to share the details of those adjustments.

xxix. The Authority must recompute the profitability by taking the revised and adjusted COP as calculated by the Authority and then arrive at the profitability percentage for calculating the normal value. Otherwise, there will be double jeopardy and prejudice to the Respondent if the COP taken for normal value calculations is revised (increased) but the profitability taken for the same normal value calculations is based on original/old COP.

xxx. The increase in imports has taken place in order to cater to the expanded market for the PUC owing to the increase in demand of the PUC in the domestic market. The reason for an increase in imports of PUC in the FY 2021-22 was the higher intake of Vitamin A by public for boosting the immunity to fight against the onslaught of COVID-19 pandemic.

xxxi. The import with respect to demand in the market had declined from 146 index points to 142 index points in FY 2022-23. For POI, the imports have declined in POI as compared to the previous year FY 2022-23 whereas the demand in the market continued to increase even in the POI from the previous year.

xxxii. Price undercutting was only because the domestic industry is unable to sell the product at reasonable international prices given that their cost of production is abnormally high due to reasons last stage conversion and revaluation of assets. Domestic industry's cost of production is high only due to its own commercial reasons of stopping the production from base raw materials in 2010 and undertaking only the last leg conversion of one form of Vitamin A to other. As a result, the Petitioner is unable to compete with producers in the World.

xxxiii. There has been a constant increase in production of the Petitioner on a year-to-year. Even though there was a slight decline in FY 2021-22, there has been an overall increase in domestic sales continuously in the last three years including the POI. Capacity utilization in during the injury period has been consistent. The decline in the capacity utilization during POI is due to the reason that there was an increase in total capacity

xxxiv. The increase in the capital employed, net fixed assets and working capital, depreciation and cost of sales is both on account of revaluation of assets because of demerger in the previous year and purchase of new assets, if any The reasonable levels of working capital ought to be considered without the effect of revaluation due to demerger. Further, the revaluation of fixed assets due to the demerger ought to be disregarded. Accordingly, capital employed shall be calculated without the effect of revaluation of both the fixed assets and working capital

xxxv. There is no injury in terms of number of employees and productivity per day as number of employees have stabilized in the injury period and productivity has increased.

xxxvi. DSM group is not dumping the PUC to India because it sells the PUC at a profit commensurate with the market conditions in a similarly placed third country. There is also no threat of material injury to the petitioner with respect to the DSM group, as capacity has remained constant in the last 4 years, the capacity utilisation is also very high, and there are no expansion plans in the near future.

xxxvii. Injury is due to other factors. The manufacturing and the production process adopted by the Petitioner leads to inefficiencies and increases the cost. Also, high raw material cost incurred by the Petitioner also leads to the losses suffered by it. Further, the higher conversion costs due to higher depreciation cost as a result of upward revaluation pursuant to demerger, and impact of floods in Raigad on the Petitioner's factory located in Mahad have also impacted the Petitioner.

xxxviii. The Authority has not considered factors outlined previously, including increase in cost of downstream products such as premixes; discouragement of fortification of foods leading to health emergencies thereby gravely affecting pharma industry; market monopolization due to the imposition of duties.

xxxix. The Domestic Industry has been misusing the extraordinary remedy provided through trade remedial measures since 2003. Duties have been sought five times and duties are in existence since 2003. Therefore, it is clear that the applicant is suffering the injury on account of its inefficiency and mismanagement and not on accounts of imports. The Authority is requested to not allow the same.

xl. Import data provided in the application with respect to imports from the EU is different from the import data taken into consideration in the disclosure statement. This shows that the applicant has filed misleading and incorrect information to provide non-existent injury

xli. The Applicant has not suffered injury or threat of material injury on account of imports from the EU. This is because the production, domestic sales, productivity have increased and the inventory declined.

xlii. Other factors that have afflicted injury on the applicant are: decline in the production of the non-PUC manufactured in the common plant and machinery, use of inefficient equipment, dependence on imported raw materials as the applicant is entirely dependent on imports for raw materials, existence of overcapacity, and mismanagement, as despite duty protection since 2003, the applicant has been suffering from losses.

xliii. Imposition of the duty will result in a monopolistic situation as applicant is the sole producer of the PUC in the country; increase in vitamin A deficiency, as the Government of India and the FSSAI is working closely with all vitamin suppliers and Vitamin A & D Premix manufacturers to fortify five staples with vitamins and micronutrients.; Scarcity of the PUC

as the applicant does not have sufficient capacity to meet the demands of the domestic industry and the wide number of sectors which use the PUC as an intermediate good, this will also affect government and FSSAI plans; exploitation by domestic industry as is evident from the applicant increasing the prices of the PUC when there was an incident in July 2024 at BASF's plant in Germany manufacturing the PUC. This shows the necessity of having multiple sources of supply. The Applicant has no ability to supply Tocopherol stabilized PUC which is required by many pharmaceutical companies.

xliv. Producers are surprised to note that Authority is treating China as an NME. In light of China's Protocol of accession to the WTO, the "surrogate country" practice in Anti-Dumping actions does not have any multilateral legal basis since 11th December 2016. The producers/exporters therefore request the Authority not to use "surrogate country" methodology in calculating the normal value for this case, and to calculate the dumping margin based on the producers' own data of domestic sales or cost.

xlv. Application of 22% ROCE is no longer appropriate in light of the significant changes in economic conditions and legal precedents over the past few decades. Authority is requested to adopt a more accurate, updated approach that reflects current economic conditions and legal standards. The actual profit earned by the domestic industry during periods when dumping was not alleged would provide a more realistic and fairer basis for determining the non-injurious price.

xlvi. The period from 2021-2023 was marked by significant global disruptions, including the COVID-19 pandemic, supply chain challenges, government interventions, and logistical issues, which distorted normal market conditions. Comparing the injury to the domestic industry based on this abnormal period would not provide an accurate or fair assessment. Thus, Authority is requested to reconsider the relevance of this period in assessing injury to the domestic industry.

xlvii. The imposition of duties is not in public interest - as it would lead to creation of a monopolistic market as the applicant is the sole producer of the PUC; disrupt the availability of Vitamin A i.e., an essential nutrient, undermining efforts to address widespread deficiencies, particularly in undernourished areas; potential shortages, price increases, and disruptions in these essential sectors; and increased costs for manufacturers in sectors like pharma and FMCG foods.

K.2 Views of the domestic industry

103. The following submissions have been made by the domestic industry:

i. It is critical to note that none of the users of the PUC (except for one related importer) have participated in the present investigation, or made any averments concerning the impact on public interest should duties be imposed. If there was genuinely a significant impact of potential duties on downstream products, several users would have registered themselves and made their averments in opposition of duties. The fact that none of them are on record evinces that the levy of duties on the PUC will not adversely impact the users or the wider

public interest.

ii. The Authority must take cognizance of the same and reject any averments placed on record by the aforesaid related importer, whose claims of the negative impact of duties on users would be clouded on account of its relationship with DSM Nutritional Products Limited ("DNP AG"). It is indeed interesting to note that the main parties averring for Indian public interest are not Indian users but rather Chinese, Swiss and German exporters.

iii. It is noteworthy that the opposing interested parties comprise of either importers/part of the importing chain or those who are related to the exporters. No actual users have opposed this petition on any grounds.

iv. The Domestic Industry concurs with the Authority's observations, particularly regarding the fact that Vitamin A Acetate and Vitamin A Palmitate are not like articles. The Authority is requested to reconfirm the same in its Final Finding.

a. The Domestic Industry reiterates the submissions previously filed, particularly those in response to the non-confidential submissions of the opposing interested parties on like article. The same are reiterated below, to the extent applicable, in response to the observations of the opposing interested parties recorded at Para. 5 (i) to (xx) of the Disclosure Statement concerning like article.
b. Vitamin A Acetate and the PUC may be esters of Vitamin A molecules, but they are not like articles. Indeed, the Authority is the previous findings concerning the PUC i.e., Sunset Review of Anti-dumping investigation concerning imports of Vitamin A Palmitate originating in or exported from China PR and Switzerland, has settled this issue. It categorically held that Vitamin A Acetate and the PUC are not like article. It also held that when an intermediate input i.e., Vitamin A Acetate is converted into a final product i.e., the PUC through a chemical process, the said process constitutes manufacturing and the said two products cannot constitute like articles. Consequently, the Domestic Industry therein was held eligible to constitute a domestic industry under Rule 2 (b) of the Anti-dumping Rules.
c. It is settled law that classifying different products under one HS does not make them like articles for purposes of Anti-Dumping law.
d. Vitamin A Acetate 2.8 is used to produce the PUC. Whereas the PUC is used to produce certain downstream products inter alia including NICOVEG BARBIE VITAMIN PREMIX, OVP (MT-0266) R0308, and OVP (MT-0735) R0461). Moreover, the regulatory requirements relating to pharmaceuticals across the globe require registration of ingredients/composition (including the PUC) used to produce formulations – given the same, it not commercially or technically prudent for businesses to use Vitamin A Acetate instead of Vitamin A Palmitate. Hence, both Vitamin A Acetate and the PUC are not commercially or technically substitutable with each other.
e. The Domestic Industry submits that the opposing interested parties are oversimplifying the Domestic Industry's production process of manufacturing the PUC. The manufacturing process of the PUC entails (i) a complex chemical

reaction with a series of processes that are undertaken on Vitamin A Acetate crystals, whereby there is a substantial value addition to Vitamin A Acetate, (ii) employment of labour and (iii) technology among others. Indeed, the Authority in the previous final finding concerning the PUC has held that when an intermediate input i.e., Vitamin A Acetate is converted into a final product i.e., the PUC through a chemical process, the said process constitutes manufacturing and the said two products cannot constitute like articles. Accordingly, the claim that Vitamin A Acetate and the PUC are like article is erroneous.

f. The opposing interested parties have cited the Indian Patents Act, 1970 to mis-represent the issue at hand i.e., the like article issue under the Anti-dumping Rules. Clearly, the objective and purpose of defining "like article" under the Antidumping law and jurisprudence is settled and the law differs from that under the Patent law. Anti-dumping laws consider various factors including inter alia similarity of physical characteristics, end use of the product, consumer preference, tariff classification, etc. while determining like products, rather than simply relying on production process, and the creation of a new and unique product - as considered in Patent law. Therefore, the opposing interested parties submission fails to consider the nuance involved in determining "like article" under the Anti-dumping law as opposed to the Patent law.

g. Similarly, the Food Safety and Standards (Fortification of Foods) regulations 2018 is irrelevant for the purposes of determining "like article" under the Anti-dumping laws. It may be noted that Vitamin A Acetate cannot be consumed in its form, while Vitamin A Palmitate is for consumption and is used as an additive to foods. Indeed, the very fact that the opposing interested parties are relying on external statutory definitions (rather than like article provisions and precedents) is an inadvertent admission that Vitamin A Palmitate and Vitamin A Acetate are not like article.

h. The Domestic Industry submits that there are differences in form, distributability, bioavailability and toxicity of Vitamin A Acetate and Vitamin A Palmitate. For substantiating the differences in chemical characteristics and toxicity, the Domestic Industry has placed on record the European Commission's Scientific Committee on Consumer Safety report. Self-serving arguments from parties with vested interests should be disregarded.

i. The Domestic Industry notes that if Vitamin A Acetate and the PUC are considered the same, then there would be direct imports of Vitamin A Acetate, which is not the case. Other than PPL, there are no entities importing Vitamin A Acetate 2.8 into India. Further, the Domestic Industry submits that not a single user (other than related importer of a producer from Switzerland) has participated in the investigation demonstrating actual use of Vitamin A Acetate in applications where Vitamin A Palmitate is typically utilized. Indeed, the opposing interested parties have made hollow claims, without a shred of evidence substantiating actual, practical substitutability in the market. To the best of the knowledge of the Petitioner, it remains the only importer of Vitamin A Acetate in the country. Indeed, the Authority has observed at Para. 8 of the Disclosure Statement that "[i]t is seen from verification of import data that there is no direct import and use of Vitamin A Acetate in applications similar to Vitamin A Palmitate. Thus, the likeness or interchangeability of the two products has not been established."

j. The Domestic Industry submits that Vitamin A Acetate is consumed to produce semi-finished goods at the Digwal plant.

k. Questionnaire responses are not only in contravention of the Trade Notice No. 10/2018 dated September 7, 2018, but also grossly deficient with unjustified claims of confidentiality. The questionnaire responses of these producers and their traders are deficient and warrant rejection, whereby they should not be granted individual dumping margins.

v. The NIP calculation disclosed by the Authority is merely a summary of the calculation. The NIP determined by the Authority differs substantially from the NIP claimed by the Petitioner, and yet the changes made by the Authority to determine the NIP are not substantiated by any disclosure in terms of actual calculations or workings, hindering the Petitioner's ability to offer meaningful comments on the NIP calculation. Indeed, the non-disclosure of essential facts in this manner also contradicts the ruling by the Hon'ble Supreme Court in *Reliance Industries Ltd v. Designated Authority*, which clearly states that the Anti-dumping Rules do not grant the Authority the right to claim confidentiality over information supplied by a party, particularly regarding information relevant to that party. The Petitioner requests that the Authority provide a detailed explanation and basis for the NIP calculation. In particular, the Petitioner would be grateful if the Authority could kindly clarify how it has arrived at the optimized raw material consumption cost, and the final working capital figures which were used for determining return on capital employed. Any deviation from the same would render the current proceedings violative of the principles of natural justice, and the Anti-dumping Rules.

a. ***.

b. ***.

vi. The questionnaire responses on record are grossly deficient and warrant rejection. No individual margins should be granted on the basis of the above-mentioned questionnaire response. Without prejudice, it is submitted that the extent of injury suffered and dumping recorded, the rate to DNP AG seems lower than what would be fair.

K.3 Examination by the Authority

104. The Authority has examined the post disclosure submissions made by the interested parties. It is noted that comments which are reiterations and have already been suitably examined and adequately addressed in the relevant paras of the final findings, are not being repeated in the post-disclosure examination by the Authority for the sake of brevity. The issues raised for the first time in the post disclosure comments/submissions by the interested parties and considered relevant by the Authority are examined below.

105. As regards the argument that the Authority makes a specific finding on actual value addition from Vitamin A Acetate to produce the PUC, the Authority notes that the value addition to Vitamin A Acetate 2.8 to manufacture the PUC is ***%.

106. As regards the argument that a delay of one day be condoned for K. Sevantilal, the Authority notes

that while K. Sevantilal filed belated questionnaire response, it registered itself as an interested party before the deadline. Given the same, the Authority has considered the submissions filed by K. Sevantilal.

107. As regards the argument that there is a mismatch in the trend of profit before tax and the return on capital employed, the Authority has verified the confidential figures of the Domestic Industry during the verification and notes that there is no discrepancy in the profit before tax and return on capital employed.

108. As regards the argument that the applicant's concerns on margins are due to their dependence on imports whereas other producers are backward integrated, the Authority notes that a domestic industry is required to be seen as it exists i.e., it is suffering injury irrespective of whether such industry is import dependent on raw materials or not. Indeed, the Hon'ble CESTAT in *Nippon Zeon Co. Ltd. v. Designated Authority,* has held that "[t] *the question of injury to domestic industry cannot be decided by assuming ideal conditions, but has to be decided on prevailing conditions though giving reasonable adjustments.*" In any event, the Authority has verified that there has been no disruption in sourcing raw materials in the injury period.

109. The Domestic Industry and one of the users have requested for reference form of duty in the case. After considering the submissions made by the parties, the Authority notes that domestic industry is constituted by a sole producer which is dependent on imports for a significant raw material for the PUC. It is also noted that there have been significant fluctuations in the prices of the PUC. Further, it is difficult to rule out the volatility in prices on account of prices of the raw material in future. A fixed reference form of duty will not be an effective measure both in the event of downward or upward pressure on the costs. Considering these circumstances, the Authority notes that it will not be appropriate to apply a fixed reference form of duty in this matter.

110. As regards the argument made by the European Commission that the non-confidential summaries i.e., of the essential data concerning prices and their evolution, calculations of normal value, alleged dumping calculations are insufficient, the Authority notes that these have been determined based on best facts available and the Domestic Industry's data wherever applicable. The Authority notes that the information which is business sensitive and not available in the public domain cannot be disclosed by the Authority.

111. As regards the argument that the increase in imports must be seen in light of the growing demand, the Authority notes that the demand supply gap does not disallow domestic industry from seeking duties against injurious dumping.

112. As regards the argument that the accuracy of the application is questionable as there is a discrepancy in the import data provided in the petition and that considered in the disclosure, the Authority notes that the DG systems data was considered for the purposes of initiation and the disclosure statement.

113. As regards the argument that price undercutting per origin is not provided in the application and the disclosure statement, the Authority notes that the non-confidential application of the Domestic Industry indicates the price undercutting for the subject countries including each subject country. The disclosure statement on the other hand had undertaken a cumulative assessment of the impact

of dumped imports from the subject countries on the domestic industry.

114. As regards the arguments that Vitamin A Acetate and Vitamin A Palmitate are like article and its impact on the domestic industry's standing, the Authority has undertaken a comprehensive analysis in the section concerning product under consideration and domestic industry standing. Additionally, the Authority notes that none of the users (other than a related importer of a producer from Switzerland) has come on record to support that that Vitamin A Palmitate and Vitamin A Acetate are being used interchangeably. Further, it is seen from verification of import data that there is no direct import and use of Vitamin A Acetate 2.8 in applications similar to Vitamin A Palmitate. Moreover, it was held in the previous investigations concerning the PUC that when an intermediate input i.e., Vitamin A Acetate is converted into a final product i.e., the PUC through a chemical process incurring a significant value addition, the said process constitutes manufacturing and the said two products cannot constitute like articles. Consequently, it was held that the applicant therein was eligible to constitute a domestic industry under Rule 2 (b) of the Anti-Dumping Rules, 1995.

115. As regards the argument that the Authority must provide in a non-confidential manner as to how much impact the Authority has removed on account of revaluation for us to provide any comments in this regard, the Authority notes that the figures concerning adjustments made on account of revaluation are business sensitive information of the domestic industry.

116. As regards the argument that (i) DSM group had explained in Additional Submissions dated 3 February 2025 that they had already placed on record country wise quantity and value of PUC sold by DSM group to third party external customers or used as part of the premix sold to third party external customers in all the third countries during the POI, and (ii) that they will provide the details of other adjustments on a transaction wise basis for determining the normal value once the Authority selects the appropriate third country, the Authority notes that the DSM group did not file the relevant information in the questionnaire response. Accordingly, the Authority is unable to accept the submissions of DSM Group at this stage.

117. As regards the arguments that (i) the Authority provide adjustments made (if any) to DSM group's cost of production and (ii) that the Authority should recompute the profitability by taking into account the adjusted cost of production, the Authority notes that only verified information with necessary rectification, wherever applicable, has been relied upon for the purpose of determining normal value for DSM group in these final findings. The Authority also allowed necessary adjustments as it has deemed fit as per its consistent practice.

118. As regards the argument that DSM group is (i) not dumping to India and (ii) there is no threat of material injury with respect to DSM group as its capacity has remained constant in last 4 years, capacity utilization is high and there are no expansion plans, the Authority notes that it has been determined from material placed on record that there is dumping of the PUC exported to India by DSM group.

119. As regards the argument that duties on the PUC are in existence since 2003 and the applicant is suffering injury on account of its inefficiency and mismanagement and not on accounts of imports, the Authority notes that the imports of the PUC into the country have been made at dumped and injurious prices. Hence, the existence of past investigation or duties does not disentitle the domestic

industry from seeking recourse against dumped and injurious imports in the injury period.

120. As regards the argument that the Petitioner does not have the capacity to produce the PUC stabilized with Tocopherol, the Authority notes based on the information placed on record that the Petitioner has the capability to produce the PUC stabilized with tocopherol and also produces and sells the same in the Indian market.

121. As regards the argument that the Authority should adopt ROCE earned by the industry when there was no allegation of dumping (as a reasonable profit margin) and not 22% ROCE, the Authority notes that it has relied upon its well settled practice for determining the NIP and there is nothing on record to deviate from this consistent practice.

122. With regard to the submission made by interested parties that any impact of the revaluation of assets on the cost structure, capital employed, net fixed assets and working capital, and depreciation must be removed for calculating the NIP as well for injury analysis, the Authority notes that it has verified the figures reported by the Domestic Industry and has eliminated the impact of revaluation as per rules, on the injury parameters assessed in these findings. Specifically, the Authority notes that NIP has been calculated in accordance with Annexure III of Anti-dumping Rules and disclosed as per consistent practice of the Authority. As regards the Domestic Industry's claims that there are differences in the NIP claimed by the Petitioner and that considered by the Authority, the Authority notes certain corrections have been made to the calculations in determining the optimal cost of raw material consumed based on evidence collected over the course of verification.

123. With regard to the argument that the floods in Raigad on the Petitioner's factory located in Mahad have also impacted the Petitioner, the Authority notes that the Domestic Industry has demonstrated that the impact of floods on the Petitioner's economic parameters is minimal.

L. CONCLUSION AND RECOMMENDATION

124. Having regard to the contentions raised, submissions made, information provided and facts available before the Authority as recorded above and on the basis of the above analysis of dumping and consequent injury to the domestic industry, the Authority concludes as follows:

i. Vitamin A Acetate and Vitamin A Palmitate are not like articles, whereby the Domestic Industry is not an importer of the PUC from the subject countries.

ii. The goods produced by the domestic industry are like article to the subject goods being imported from the subject country in terms of Rule 2 (d) of the Anti-dumping Rules.

iii. The Domestic Industry meets the requisite requirements of standing under Rule 2 read with Rule 5 of the Anti-dumping Rules.

iv. The imports have significantly increased in absolute and relative terms. Except for the base year, the landed value of the imports was below the selling price of the domestic industry in the injury period including the POI. The prices of imports have also reduced and were much

below the cost of sales of the domestic industry in the injury period (except base year). This prevented the domestic industry from increasing its price in line with the increase in cost. The Domestic Industry's market share also decreased in the POI in comparison to the base year.

v. Capacity utilization for PUC has decreased during the injury period. As regards domestic sales and production, the same has increased. However, the same remains far below the growth of demand, imports and the potential of the Petitioner.

vi. The performance of domestic industry in terms of profit, cash profits and ROCE have been adversely affected by the dumped imports.

vii. The domestic industry has suffered material injury as a result of dumped subject imports.

viii. The dumping and injury margins are significant.

ix. The Authority has examined the submissions made by the parties on any other factors which could have caused injury to the domestic industry. No other factor has caused injury to the domestic industry. The Authority concludes that the material injury suffered by the domestic industry has been caused by the dumped imports from the subject countries.

x. The Authority has quantified the impact of the anti-dumping duty on the consumers. It is seen that the imposition of anti-dumping duty would not have any significant impact on the consumers.

125. Having initiated and conducted the investigation into dumping, injury, and causal link in terms of the provisions laid down under the Anti-Dumping Rules, the Authority is of the view that imposition of the anti-dumping duty is required to offset the dumping and consequent injury. The Authority considers it necessary to recommend imposition of the anti-dumping duty on the imports of the subject goods originating in or exported from the subject country.

126. Having regard to the lesser duty rules followed by the Authority, the Authority recommends imposition of anti-dumping duty equal to the lesser of margin of dumping and margin of injury so determined in these findings for the period under investigation, so as to remove the injurious effects of the dumped imports on the domestic industry. Accordingly, the Authority recommends imposition of anti-dumping duty on the imports of subject goods originating in or exported from the subject country for a period of 5 years from the date of notification to be issued in this regard by the Central Government, equal to the amount mentioned in Col. 7 of the duty table appended below. The landed value of imports for this purpose shall be the assessable value as determined by the customs under the Customs Act, 1962 and applicable level of custom duties except duties levied under Section 3, 3 A, 8B, 9 and 9A of the Customs Tariff Act, 1975:

Duty table

SN	Heading/ Subheading	Description of goods	Country of origin	Country of export	Producer	Amount	Unit	Currency
1	2	3	4	5	6	7	8	9
1	29362100, 29362290, 29362800, 29369000, 29362690, and 29362990	Vitamin-A Palmitate", covering both Vitamin A Palmitate 1.7 MIU/Gm and Vitamin A Palmitate 1.0 MIU/Gm in all its strengths and forms, with or without stabilization*	China PR	Any country including China PR	Shangyu NHU Bio-Chem Co., Ltd.	14.95	KG	USD
2	-do-	-do-	China PR	Any country including China PR	Any producer other than SN 1	20.87	KG	USD
3	-do-	-do-	Switzerland	Any country including Switzerland	DSM Nutritional Products Limited	0.87	KG	USD
4	-do-	-do-	Switzerland	Any country including Switzerland	Any producer other than SN 3	8.2	KG	USD
5	-do-	-do-	European Union	Any country including European Union	Any producers	11.09	KG	USD

**The scope of the PUC does not cover Vitamin-A Palmitate 1.6 MIU/Gm which is used for animal consumption and has different end-uses compared to the PUC"*

M. FURTHER PROCEDURE

127. An appeal against these findings after its acceptance by the Central Government shall lie before the Customs Excise and Service Tax Appellate Tribunal in accordance with the Customs Tariff Act, 1975 as amended in 1995 and Customs Tariff Rules, 1995.

(Darpan Jain)
Designated Authority