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No.14/8/2011-DGAD  
Government of India  
Ministry of Commerce & Industry  
Department of Commerce  
(Directorate General of Anti-Dumping & Allied Duties)  
Udyog Bhawan, New Delhi

Dated 19th July, 2013

## NOTIFICATION

(Final Findings)

Subject: Final Findings in the anti-dumping investigation concerning imports of Bulk Drug Cefadroxil Monohydrate originating in or exported from the European Union -reg

No.14/8/2011-DGAD- Having regard to the Customs Tariff Act, 1975 as amended from time to time, and the Customs Tariff (Identification, Assessment and Collection of Anti- Dumping Duty on Dumped Articles and for Determination of Injury) Rules 1995 thereof:

### **A. BACKGROUND OF THE CASE**

1. Whereas, having regard to the Customs Tariff Act, 1975, as amended from time to time, (hereinafter referred to as the Act) and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 thereof, as amended from time to time (hereinafter referred to as the Rules or the AD Rules), the Designated Authority received a written application from M/s Lupin Ltd., Mumbai, on behalf of the domestic industry, alleging dumping of Cefadroxil Monohydrate originating in or exported from the European Union. M/s Aurbindo Pharma Ltd, Hyderabad, had supported the application.

### **B. PROCEDURE**

2. The procedure described below has been followed in this investigation:

- (i) The Designated Authority (hereinafter referred to as the Authority) under the above Rules, after having received the written application from M/s Lupin Ltd., Mumbai, (hereinafter referred to as the applicant) on behalf of the domestic industry, alleging dumping of Cefadroxil Monohydrate (hereinafter referred to as the subject goods or the product) originating in or exported from the European Union (hereinafter referred to as the EU or the subject territory) and on the basis of sufficient evidence submitted by the applicant justifying the initiation of the investigation, decided to initiate the investigation against imports of the subject goods from the subject territory.

- (ii) The Authority notified to the Delegation of European Union to India, New Delhi, as also the Embassy of Spain in India (as the applicant, in its application, had named a producer/exporter from Spain alleged to be dumping the subject goods) about the receipt of the application of dumping allegation before proceeding to initiate the investigation in accordance with sub-Rule 5(5) of the AD Rules.
- (iii) The Authority issued a public notice No 14/8/2011-DGAD dated 22nd February 2012, published in the Gazette of India, Extraordinary, initiating anti-dumping investigation concerning imports of the subject goods from the subject territory.
- (iv) The Authority forwarded a copy of the public notice to all the known exporters (whose details were made available in the application) and gave them opportunity to make their views known in writing within forty days from the date of the Initiation Notification in accordance with the Rule 6(2) of the AD Rules.
- (v) The Authority also forwarded a copy of the said public notice to all the known importers/users of the subject goods in India and advised them to make their views in writing within forty days from the date of the Initiation Notification.
- (vi) The Authority provided a copy of the non-confidential version of application to the known exporter, the Delegation of the European Union to India and the Embassy of Spain in India in accordance with Rule 6(3) of the AD Rules. A copy of the Application was also provided to other interested parties, wherever requested.
- (vii) The Authority sent questionnaires to elicit relevant information to the following known exporter in the subject territory (whose details were made available in the application) in accordance with Rule 6(4) of the AD Rules:
  - i. M/s DSM Anti-Infectives Chemferm S.A. Spain (producer)
- (viii) In response to the initiation notification, the following exporters / producers responded:
  - i. M/s DSM Anti-Infectives Chemferm S.A. Spain (producer), (now called DSM Sinochem Pharmaceutical Spain SA),
  - ii. M/s DSM Sinochem Pharmaceuticals Netherlands B.V, Netherlands (producer and exporter), and
  - iii. M/s DSM Anti-Infectives Egypt SAE (trader and exporter)
- (ix) Questionnaires were sent to the following known importers/users of subject goods in India (whose details were made available in the application) calling for necessary information in accordance with Rule 6(4) of the AD Rules:
  - i. M/s DSM Anti Infectives India Ltd., Gurgaon (now called DSM Sinochem Pharmaceuticals India Pvt Limited, Gurgaon)
  - ii. M/s Micro Labs Ltd., Bangalore
  - iii. M/s Aristo Pharmaceuticals Ltd., Mumbai
  - iv. M/s Ajanta Pharma Ltd., Mumbai
  - v. M/s FDC Ltd., Mumbai
  - vi. M/s Indian Drug Manufacturers' Assn., (IDMA), Mumbai

- vii. Organisation of Pharmaceutical Producers of India (OPPI), Mumbai
- viii. Bulk Drug Manufacturers' Assn. (BDMA), Hyderabad
- ix. Orchid Chemicals & Pharmaceuticals Ltd., Chennai

- (x) In response to the initiation notification, the following importers responded:
  - i. DSM Sinochem Pharmaceuticals India Pvt Limited, Gurgaon (formerly known as M/s DSM Anti Infectives India Ltd. (importer and trader)
  - ii. M/s Micro Labs Ltd., Bangalore (importer and trader)
  
- (xi) The Authority made available non-confidential version of the evidence presented by various interested parties in the form of a public file kept open for inspection by the interested parties.
  
- (xii) Information provided by interested parties on confidential basis was examined by the Authority with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has accepted the confidentiality claims, wherever warranted and such information has been considered confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non confidential version of the information filed on confidential basis.
  
- (xiii) Further information was sought from the applicant and other interested parties to the extent deemed necessary.
  
- (xiv) The non-injurious price based on the cost of production and cost to make and sell the subject goods in India based on the information furnished by the domestic industry on the basis of laid down guidelines under Annexure III of the AD 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.
  
- (xv) Investigation was carried out for the period of investigation (POI) starting from 1<sup>st</sup> April, 2010 to 30<sup>st</sup> September, 2011. The examination of trends, in the context of injury analysis, covered the financial years 2007-08, 2008-09, 2009-10 and the POI.
  
- (xvi) The Authority held an Oral Hearing on 14th December, 2012 to hear the interested parties orally. The interested parties present at the time of hearing were advised to file written submissions of the views expressed orally and also given an opportunity to file rejoinder to the views expressed by the other interested parties. The written submissions and rejoinders received from the interested parties have been considered to the extent considered relevant.
  
- (xvii) The submissions made by the interested parties considered relevant by the Authority have been analysed and addressed in this Final Findings Notification.

- (xviii) The original date to complete the investigation was up to 22nd February, 2013. However, at the request of the Authority, this date was extended by the Ministry of Finance up to 22nd July, 2013.
- (xix) A Disclosure Statement containing the essential facts in this investigation which would have formed the basis of the Final Findings was issued to the interested parties on 24.06.2013. The post Disclosure Statement submissions received from the interested parties have been considered, to the extent found relevant, in this Final Findings Notification.
- (xx) \*\*\* in this Final Findings Notification represents information furnished by the interested parties on confidential basis and so considered by the Authority under the Rules.
- (xxi) The exchange rate adopted for the POI is 1 US \$ =Rs 45.87.

## **C. PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE**

### **Views of the Domestic Industry**

3. The production under consideration (PUC) in the present investigation is bulk drug Cefadroxil Monohydrate of all forms including USP and other Pharmacopeial grades, and salts of the drug, if any. Cefadroxil Monohydrate is a white to yellowish-white crystalline powder. It is soluble in water and is acid-stable. Bulk drug Cefadroxil Monohydrate is an active pharmaceutical ingredient used for the manufacturing of pharmaceutical formulations. This bulk drug is used to manufacture formulations, which are consumed by the patients on the prescription of the doctors. Doses of 500 mg and 1000 mg are available as single dose or double dose per day. It is also available in the form of syrup. The drug is well absorbed orally. Bulk drug Cefadroxil Monohydrate falls under the group Oral Cephalosporins. Cephalosporins, in general, are broad spectrum bactericidal agents which inhibit bacterial cell wall synthesis. It is also used for urinary tract infections and skin infections. Bulk drug Cefadroxil Monohydrate is classified under Chapter Heading 29, Sub-heading No. 29420011 under the Customs Tariff Act, 1975. However, the customs classification is indicative only and in no way binding on the scope of the present investigation.

### **Views of exporters, importers, consumers, users and other interested parties**

4. None of the exporters, importers, consumers and other interested parties has raised any substantive issue regarding the product under consideration its scope.

### **Examination by the Authority**

5. The Authority has noted that the product under consideration is defined as Bulk drug Cefadroxil Monohydrate. Cefadroxil Monohydrate is a white to yellowish-white crystalline powder. It is soluble in water and is acid-stable. Bulk drug Cefadroxil Monohydrate is an active

pharmaceutical ingredient used for the manufacturing of pharmaceutical formulations. This bulk drug is used to manufacture formulations, which are consumed by the patients on the prescription of the doctors. Doses of 500 mg and 1000 mg are available as single dose or double dose per day. It is also available in the form of syrup. The drug is well absorbed orally. Bulk drug Cefadroxil Monohydrate falls under the group Oral Cephalosporins. Cephalosporins, in general, are broad spectrum bactericidal agents which inhibit bacterial cell wall synthesis. It is also used for urinary tract infections and skin infections. Bulk drug Cefadroxil Monohydrate is classified under Chapter Heading 29, Sub-heading No. 29420011 under the Customs Tariff Act, 1975. However, the customs classification is indicative only and in no way binding on the scope of the present investigation.

### **Like Article**

6. Rule 2(d) of the AD Rules defines like article as follows:

*“an article which is identical or alike in all respects to the article under investigation for being dumped in India or in the absence of such article, another article which although not alike in all respects, has the characteristics closely resembling those of the articles under investigation”.*

7. The applicant has claimed that the subject goods produced by the domestic industry are identical to the product under consideration being imported into India from the subject territory. The applicant claimed that there is no known difference in applicant's product and the product under consideration exported from the subject territory and the two are comparable in terms of characteristics such as physical & chemical characteristics, manufacturing process & technology, functions & uses, product specifications, pricing, distribution & marketing and tariff classification of the goods. The subject goods produced by the applicant and those exported from the subject territory to India are technically and commercially substitutable. None of the responding interested parties has disputed the claim of the applicant in this regard.

8. The Authority has examined the matter and notes that there is no known difference in subject goods produced by the domestic industry and that imported into India from the subject territory. The subject goods produced by the domestic industry and that imported from subject territory are comparable in terms of characteristics such as physical & chemical characteristics, manufacturing process & technology, functions & uses, product specifications, pricing, distribution & marketing and tariff classification of the goods. The two are technically and commercially substitutable. The consumers are using the two interchangeably. None of the opposing interested parties has raised any objection in this regard. In view of the same, the Authority treats the subject goods produced by the petitioner companies as domestic like article to the product under consideration imported from the subject territory in accordance with the anti dumping Rules.

### **D. SCOPE OF DOMESTIC INDUSTRY AND STANDING**

9. Rule 2 (b) of the AD 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”*

### **Submissions by exporters/importers/users and other opposing interested parties**

10. The exporters/importers/users and other opposing interested parties have made the following submissions:

(i) Rule 2(b) of the AD Rules defines the term ‘Domestic Industry’ to mean domestic producers of the subject goods as ‘a whole’ or a ‘major proportion’ of the producers. The present petition has been filed by M/s Lupin Limited and supported by M/s Aurobindo Pharma Limited. The claim of the petitioner that there are only two producers, i.e., M/s Lupin Limited and M/s Aurobindo Pharma Limited, is factually incorrect. Orchid Limited and Surya Pharmaceuticals Limited are also engaged in the production of the subject goods. Further, Aurobindo Pharma Limited has merely filed a support letter but has not provided its injury information. Therefore, Aurobindo Pharma Limited can neither be regarded as a supporter nor be regarded as the domestic industry within the meaning of the statute. Reliance in this regard is placed on the finding of the Authority in the investigation concerning import of ‘Seamless tubes, pipes, hollow profiles of iron alloy steel other than cast iron’ from China PR, wherein the investigation was terminated as the supporter did not provide its costing and financial information. Standing of the petitioner should be determined after taking into account the production of all the domestic producers.

(ii) M/s Lupin Limited, the petitioner, has all along been holding only a minor proportion of the total domestic production in the country. It is Aurobindo Pharma which has been holding a major proportion in the domestic production. The information for the POI has, however, not been made available to the interested parties. Taking a cue from the production data for the earlier years, it is clearly evident that the petitioner does not hold a major proportion of the domestic production and, therefore, does not constitute domestic industry within the meaning of the statute.

(iii) The petitioner has not provided the breakup of production by individual producers for the POI proposed by the Authority in the updated petition. M/s Lupin Ltd, the petitioner, has all along been holding only a minor proportion of the total domestic production in the country. Petitioner alone cannot be regarded as domestic industry. Even in the international arena, the phrase ‘major proportion’ means all domestic producers except in cases where the market is unorganized.

(iv) Even if the production of the petitioner constitutes more than 50% of the total domestic production during the POI, the Authority should make an objective analysis of the situation for the last four years wherein the major proportion of production has been held by the other

domestic producer and hold that the petitioner does not constitute 'domestic industry' within the meaning of the statute.

(v) The claim of the petitioner that the other producers of the subject goods like Unimark, Aurobindo etc. have shut down their operation because of dumping from the EU is factually incorrect. In fact, M/s Unimark Pharma (India) Ltd could not continue producing because the goods were being manufactured under sub-optimal environment using production lines not meant for production of the subject goods.

### **Submissions by the Domestic Industry**

11. The Domestic Industry has made the following submissions:

- (i) The petitioner and the supporter together constitute the domestic industry.
- (ii) M/s Unimark discontinued the production of the subject goods in the year 2006-07 and M/s Orchid was producing the subject goods only for exports and offering only those quantities in the market which were permitted to an EOU as per the policy for such unit, varying between 15 to 30 tones per annum. There is relevance of Unimark as they were one of the producers taken into consideration by the National Pharmaceutical Pricing Authority in a study earlier, based on which the price of Rs. 2951 per kg was notified from 1<sup>st</sup> July, 2011. Further, even if there was some problem in exporting, they could have continued to sell within the country which they could not do on account of dumped price being abnormally low.
- (iii) M/s Surya Pharmaceuticals were out of operation in so far as subject goods are concerned for quite some time.
- (iv) The petitioner has given full details of production, period wise and month wise, for their unit as well as for supporter of the application, i.e., M/s. Aurobindo Pharma Ltd, to the Authority. There is no dispute that the applicant and the supporter account for the domestic industry.

### **Examination by the Authority**

12. M/s Lupin Limited has filed the application in the instant matter alleging dumping of bulk drug 'Cefadroxil Monohydrate' originating in or exported from the European Union and requested for imposition of the anti-dumping duties. M/s Aurobindo Pharma Ltd has supported their application and provided all the data/information for this purpose. It was stated that they represent the domestic industry as the other domestic producers of the subject goods have already stopped their production. The Authority notes that as per information provided by the National Pharmaceutical Pricing Authority, Department of Pharmaceuticals, Ministry of Chemical & Fertilizer, regarding the production of the subject goods in the POI, M/s Lupin Limited and M/s Aurobindo Pharma Ltd account for more than 50% of the domestic production of the subject goods in the POI. The Authority, thus, holds that the applicant is the domestic industry and has a clear standing as domestic industry in terms of Rule 2(b) of the Rules.

## **E. MISCELLANEOUS ISSUES**

### **Submissions by the exporters/importers/users and other opposing interested parties**

13. The exporters/importers/users and other opposing interested parties made the following miscellaneous submissions:

- i. Abnormal delay in filing the non-confidential version of the petition.
- ii. The investigation initiated without examination of information/evidence for the POI: The petitioner had filed information on dumping, injury and causal link considering the nine months period of 01.04.2010 to 31.12.2010 as the POI. However, the Authority initiated the investigation considering the POI as 18 months from 01.04.2010 to 30.09.2011. The Authority was not in possession of the complete information at the time of initiation. Therefore, the initiation was in violation of the anti dumping Rules.
- iii. Excessive Confidentiality: Unwarranted confidentiality claims of the petitioner and the wholly deficient and inadequate non-confidential version of the petition have adversely affected the right of the respondents to file a meaningful response. The information with respect to volume of production, capacity utilization, volume of sales and cost of production, selling price and profits has been claimed confidential by the petitioner without providing any reasons for claiming them to be confidential or providing a non-confidential summary of the same and after the domestic industry provides this information, another opportunity of being heard should be provided to the exporters.
- iv. Non confidential version of the petition does not contain Proforma IV A. Without Proforma IV A, it would not be possible to provide any meaningful comments on the injury suffered by the petitioner.

### **Submissions by the Domestic Industry**

14. The Domestic Industry has made the following submissions:

(i) The data in Proforma IV A was made available and even updated Proforma IV A was also provided. Further, disclosure made in the non confidential part was as per the established procedure. The defendants have also not disclosed anywhere the price which DSM is offering to various countries and within India to DSM India and other importers. They have also not made any meaningful disclosure. The domestic industry does not want to compete with them on this issue but it is a fact that they have withheld vital information.

(ii) Their act is unsubstantiated by any facts and data. Prices are fixed based on the cost of production and the domestic industry has submitted details to the Authority showing price fixed, its cost of production and sales realization both in the country and abroad which all would substantiate injury caused to the domestic production by dumped imports at the notified price as well as on the basis of non injurious price.

(iii) To suggest that injury parameters be determined with reference to the notified price of

the bulk drug based on the decided cases is totally unfair and unjust when it is known that exchange rate of dollar has gone up after the price of Cefadroxil Monohydrate was notified and under the new proposed policy, price control on bulk drugs is being withdrawn. The issue needs to be examined on merits as the notified price is based on the costs of raw materials and utilities which are variable elements as on the date of notification and changes in variable costs subsequently have to be taken into consideration for study of injury parameters with reference to non injurious price in a just and fair manner. If these aspects are not taken into consideration, the entire exercise would be futile. Cost is not stationary for all times irrespective of time frame. It varies from period to period depending upon the rates and variability in the consumption norms which can only be kept at a constant level for the objective in hand as per the parameters approved for such studies to determine non injurious price.

### **Examination by the Authority**

15. As regards submission of information by the domestic industry in Proforma IV A, the Authority confirms that the requisite information was made available by both the domestic producers, namely, M/s Lupin Ltd and M/s Aurobindo Pharma Ltd to the Authority. A non confidential copy of Proforma IV A was placed in the public file maintained by the Authority.

16. As regards the information on injury parameters not being available for the entire POI, the Authority notes that initially the petitioners had submitted the application for initiation of investigation proposing POI from 1st April, 2010 to 31st December, 2010. Further, the application was noted to be deficient on a number of parameters. Accordingly, the petitioner company was requested to furnish additional information including the updated data on imports and other parameters for examination before the investigation could be initiated. It was only after the complete updated data for the domestic industry on all the relevant parameters including the amended POI from 1st April, 2010 to 30th September, 2011 was received and the Authority was prima facie satisfied on the existence of dumping, injury and causal link that the present investigation was initiated.

17. As regards excessive confidentiality, information provided by the interested parties on confidential basis was examined by the Authority with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has granted confidentiality, wherever warranted, and such information has been treated confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non confidential version of the information filed on confidential basis.

### **Assessment of Dumping – Methodology and Parameters**

#### **F. METHODOLOGY FOR DETERMINATION OF DUMPING MARGIN**

##### **Normal Value, Export Price and Dumping Margin**

18. The Authority notes that the producer/exporter from EU has contended that dumping margin has to be determined after making adjustment for difference in 'Level of Trade' between sales made in domestic market and export market. DSM Netherlands has sold the subject goods in the home market, i.e., EU, directly to the end-users. However, exports to India have been made to its related company DSM India which in turn re-sold the products to unrelated end-users in India. Therefore, DSM India acted in the capacity of a wholesaler/distributor of the product in India. Therefore, appropriate adjustment for the level of trade difference should be provided.

### **Determination of Normal Value for producers and exporters**

19. The information submitted by DSM Netherlands and DSM Spain in their questionnaire response was verified by the Authority. DSM Netherlands manufactures 7-ADCA and enzymes in its plant at Delft, Netherlands. These are supplied to DSM Spain along with other raw materials/inputs required for manufacturing the subject goods. DSM Spain carries out the final manufacturing process to manufacture the subject goods in its plant at Spain. For carrying out the final manufacturing step, DSM Spain gets a tolling fee. The subject goods are sold by DSM Netherlands either in the domestic market within EU or export markets outside EU.

20. DSM Netherlands submitted the details of sales made in the domestic market of EU and exports to India. DSM Netherlands sold the subject goods to its related company DSM Sinochem Pharmaceuticals India Pvt Ltd ("DSM India"), which further resold the subject goods to end consumers in India. In the domestic market of EU, DSM Netherlands sold the subject goods primarily to ACS DOBFAR S.P.A. Italy (who is a reseller of the subject goods) and Sandoz GmbH (who is a formulator/end user of the subject goods). DSM Netherlands made a request to the Authority to compare the export price to DSM India with the sales price to ACS DOBFAR for dumping margin calculations because both are acting at the same level of trade. In this regard, the Authority notes that the practice of the Authority, in general, has been that for the purpose of determining the dumping margin, the Authority does not distinguish between different types of sales, i.e., sales to the resellers or end-users and, thus, does not allow the level of trade adjustments on this basis and further that for determining the normal value the Authority takes all domestic sales as one and follows the weighted average rule if the sales are to resellers and end-users. In this case, the Authority, based on the facts of the case, does not see any merit to deviate from the general practice of not allowing the level of trade adjustment. The Authority, therefore, decides not to allow the level of trade adjustment in this case and accordingly, considers all the domestic sales for determination of normal value.

21. DSM Netherlands has claimed adjustments from the domestic selling price on account of inland transportation, insurance, credit cost, discount and bank charges. The expenses as verified and to the extent based on actuals have been allowed. The Authority also examined whether the domestic sales were in the ordinary course of trade or not by comparing the domestic selling price with the cost of production. The examination revealed that the domestic sales made by DSM Netherlands were in the ordinary course of trade. The normal value of the subject goods after allowing the deductions is worked out to US \$ \*\*\* per kg.

## Determination of Export Price for producers and exporters

22. M/s DSM Sinochem Pharmaceuticals Netherlands B.V, Netherlands, producer and exporter (DSM Netherlands) and its related trader/exporter M/s DSM Anti-Infectives Egypt SAE have submitted the Exporter Questionnaires. DSM Netherlands has exported \*\*\*kgs of subject goods to India during the POI on CIF/CIP basis having a total value of US \$ \*\*\*. Out of this, \*\*\*kgs having a total value of US\$ \*\*\*were exported directly to DSM Sinochem Pharmaceuticals India Pvt Ltd. The balance \*\*\*kgs having a total value of US\$ \*\*\*were exported to India through its related company in Egypt, DSM Anti-Infectives Egypt SAE.

23. From the CIF/CIP export price, adjustments were claimed on account of freight, insurance, credit cost and bank charges to arrive at the ex-factory export price. The adjustments from the export price have been allowed, as per actuals and as verified by the Authority. Accordingly, the ex-factory export price works out to USD \*\*\*per kg.

24. After the analysis of the data, the dumping margin is worked out as mentioned in the table below.

Producer	Exporter	Normal Value (in US\$)	Export Price (in US\$)	Dumping Margin (in US\$)	Dumping Margin %	Dumping Margin Range %
M/s DSM Sinochem Pharmaceuticals Netherlands B.V, Netherlands	M/s Sinochem Pharmaceuticals Netherlands B.V, Netherlands / M/s DSM Anti- Infectives Egypt SAE	*** per kg	*** per kg	***	***%	12-22%
Any other producer	Any other exporter	*** per kg	*** per kg	***	***%	16-25%

## **ASSESSMENT OF INJURY AND EXAMINATION OF CAUSAL LINK**

### **G. INJURY**

25. The exporters / importers and other opposing interested parties have argued that:

(i) Injury analysis should be carried out by the Authority taking into account the financial and costing data of AurobindoPharma as well.

(ii) The price of the subject goods are governed by Drugs (Prices Control) Order, 1995. Irrespective of the cost of production of the petitioner, the subject goods cannot be sold at a price higher than the DPCO price. Therefore, the Non-injurious Price (NIP) of the domestic industry shall not exceed the DPCO price. The Drug Price Control Order (DPCO) prices prevailing in the

POI should alone be considered and any subsequent increase post POI should not be considered by the Authority in determining the NIP.

(iii) Re-sale price of DSM India is to be considered for determining injury parameters.

(iv) Anti dumping duty is intended to remedy any injury suffered by the domestic industry due to the sale of the imported goods in the domestic market at prices less than the prices of the domestic producers. The non-injurious price of the domestic producer has to be compared with the price at which imported products are actually competing with the domestically manufactured products. A comparison amongst two factors always has to be done at the same level, which is referred to in trade parlance as 'same level of trade'. If the non-injurious price is the final price at which the customers or penultimate dealers would receive the product at ex-factory, the comparable export price also has to be determined necessarily at that level only. Non-injurious price for a domestic industry includes all expenses incurred for production and sale of the product by the domestic producer, except the outward freight expenses incurred by the domestic industry. In other words, non-injurious price is the ex-factory price of the product for delivery in India to the customers. Hence, for a comparison of prices at the same level of trade for the exported goods, the price at which the goods are available to the end customers have to be considered.

(v) DSM Netherlands exports the subject goods only to its related importer in India, namely, DSM India, which in turn re-sells them in India after incurring selling and administrative expenses in India. These expenses are, inter-alia, for marketing the product and, therefore, are incurred before the goods are ready to be sold to the end customers. Thus, the price at which the end customer in India can get the imported goods is the price at which DSM India re-sells these imported goods in India. It is pertinent to mention that where importers and exporters are related, the Designated Authority considers these exporters and importers as one single economic entity and calculates the exports price based on the re-sale price of the related importer for determining the dumping margin.

(vi) As per Rule 4(d) of the AD Rules, it is the duty of the Authority to recommend to the Central Government the amount of anti-dumping duty equal to the margin of dumping or less, which if levied, would remove the injury to the domestic industry. It is submitted that injury margin based on the difference between the lower of DPCO price and non-injurious price of the petitioner and the re-sale price of DSM India would be sufficient to remove the injury, if any, suffered by the petitioner because the imported goods compete with the domestically manufactured goods only at the level when they are resold in India.

(vii) The manufacturing facility used by the petitioner for the production of the subject goods can also be used to produce one other bulk drug, 'Cephalexin'. To the knowledge of the respondents, the petitioner as well as Aurobindo Pharma Limited produce both 'Cefadroxil' and 'Cephalexin' interchangeably from the same plant. The respondents also believe that the capacity disclosed in the petition for the subject goods is the combined capacity for the subject goods and Cephalexin and not for the subject goods alone. Even assuming that the capacity disclosed by the petitioner

in its petition pertains only to 'Cefadroxil' alone, it is submitted that the production capacity available in the country is far less than the domestic demand. The demand for the subject goods in India during the POI was 581 MT. As against this, the capacity available with the petitioner was just 306 MT. This shows that the capacity in the country is far less than the demand, necessitating imports from other countries. The domestic producers do not have adequate capacity to cater to the demand in the country. It is submitted that imposition of anti-dumping duty under such circumstances would adversely affect the interest of the pharmaceutical companies, resulting in spiking up of prices of medicines in the country.

(viii) Absence of causal link between alleged dumped imports and injury to the domestic industry.

(ix) The petitioner itself has stated that the landed prices of the imports are 5-10% less than their selling price during the POI. It can be observed from the questionnaire response filed by the respondents that the re-sale price of DSM India (the price at which imported goods compete with domestically manufactured goods) is 10% higher than the import price. It, thus, follows that re-sale price of imported goods is higher than the selling price of the petitioner.

(x) The petitioner domestic producer started incurring losses during the year 2009-10, i.e., the year immediately preceding the POI. However, during this year, DSM India has sold the imported goods in Indian market at DPCO prices. When the goods have been sold at prices fixed by DPCO, the domestic industry could not have suffered any losses due to the alleged dumped imports. In such a case, there exists no link between the imports and the prices of the goods sold by the petitioner. In the absence of causal link, it is prayed that the investigation may be terminated.

(xi) A major share in the domestic market is held by the other domestic producer, Aurobindo Pharma Limited. Due to the inter-se competition between the petitioner and the other domestic producer, the petitioner was required to lower its selling price and suffer injury. It is prayed that the Authority should examine the injury caused to the petitioner due to the volume and price of goods produced and sold by Aurobindo Pharma Limited.

(xii) The prices at which the subject goods can be sold to by the petitioner is controlled by the Government through DPCO, 1995. This means that if the DPCO price fixed by government is Rs. 100 and if the cost to make and sell the goods is Rs. 120, the petitioner would not have any option but to sell the goods at Rs. 100 and incur a loss of Rs. 20. This injury cannot in any manner be attributed to the subject imports. The primary cause of injury to the petitioner is the fact that the selling price of the subject goods is regulated by the government through DPCO.

(xiii) Anti dumping duty, if any, should be levied on a reference price basis.

26. The domestic industry has argued that:

- (a) Imports from the subject territory have increased in absolute terms and in relation to production and consumption in India.
- (b) Imports from the subject territory are undercutting the prices of domestic industry to a significant extent. The import price is undercutting the domestic price.
- (c) Whereas the cost of production was increasing, the selling prices declined. Further, even when there was some decline in the cost of production in earlier years, the decline in prices was more than the decline in costs. Overall, the imports are suppressing and depressing the domestic prices.
- (d) The market share of the domestic industry in the demand has declined.
- (e) Performance of the domestic industry with regard to profits, return on investment and cash profits was declining and became negative in the POI.
- (f) Wages and productivity have improved.
- (g) Dumping margin as a measure of extent of dumping is quite significant.

#### Examination by the Authority

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

28. For the examination of the impact of the dumped imports on the domestic industry in India, indices having a bearing on the state of the industry such as production, capacity utilization, sales volume, stock, profitability, net sales realization, the magnitude and margin of dumping, etc. have been considered in accordance with Annexure II of the Rules supra.

29. Annexure-II of the AD Rules provides for an objective examination of both, (a) the volume of dumped imports and the effect of the dumped imports on prices, in the domestic market, for the like articles; and (b) the consequent impact of these imports on domestic producers of such articles. With regard to the volume effect of the dumped imports, the Authority is required to examine whether there has been a significant increase in dumped imports, either in absolute term or relative to production or consumption in India. With regard to the price effect of the dumped imports, the Authority is required to examine whether there has been significant price undercutting by the dumped imports as compared to the price of the like product in India, or whether the effect of such imports is otherwise to depress the prices to a significant degree, or prevent price increases, which would have otherwise occurred to a significant degree.

30. The Authority has considered the views of the interested parties and addressed the same appropriately. The specific submissions of interested parties have been dealt with by the Authority at appropriate places while examining the injury parameters to the domestic industry.

31. As regards the specific issues raised by the interested parties with regard to injury parameters to the domestic industry, the Authority has examined the matter as under:-

- a. The injury analysis has been carried out by the Authority based on the information / data furnished by the applicant companies M/s Lupin Ltd as well as M/s Aubindo Pharma, verified to the extent considered relevant.
- b. The Authority has undertaken the determination of NIP for the domestic industry in accordance with the provisions of the Anti Dumping Rules. Further, a comparative analysis has also been made of the NIP for the domestic industry with prevailing DPCO prices. As elaborated herein, the lower of the NIP and the DPCO price has been considered by the Authority.
- c. The injury to the domestic industry on account of the prices of the subject goods being controlled by the Government of India under the DPCO has been separately determined in order to quantify the injury on account of dumping of the subject goods.
- d. Since the NIP for the domestic industry has been determined at ex-factory level, a comparison of the same has been made with the landed value of imports in accordance with the provisions of Rules and in accordance with the consistent practice followed by the Authority in such cases.
- e. The contention of the exporters that the domestic industry does not have adequate capacity to cater to the demand in India is irrelevant as the purpose of the anti dumping investigation is not to restrict the imports but to ensure that the imports of subject goods take place at a fair price.
- f. The contention of the interested parties that the capacities of Cefadroxil Monohydrate and Cyfaexamine are interchangeable has been examined and the Authority has considered only the capacity in respect of Cefadroxil Monohydrate for the purpose of injury analysis and for determination of NIP for the domestic industry.

#### **G.1 Volume Effect of dumped imports and Impact on domestic Industry**

##### **a) Import volumes and share of subject country**

32. As regards the impact of the dumped imports on the domestic industry, para (iv) of Annexure-II of the Anti Dumping Rules states as follows:

“The examination of the impact of the dumped imports on the domestic industry concerned, shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the Industry, including natural and potential decline in sales, profits, output, market share, productivity, return on investments or utilization of capacity; factors affecting domestic prices, the magnitude of margin of dumping actual

and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital investments”.

Particulars	Unit	2007-08	2008-09	2009-10	POI April 2010 to Sept. 2011)	POI-Annualized
Imports -						
European Union	MT	124.19	161.70	136.67	287.25	191.00
Other Countries	MT	6.6	0	9.8	0	0
Total Imports	MT	130.80	161.70	146.50	287.23	191.00
Market Share in Imports						
European Union	%	95.38	100.00	93.29	100	100.00
Other Countries	%	4.62	0	6.71	0	0

33. It is noted that the imports from European Union have recorded a significant increase in absolute terms during the injury period from 124.19 MT in 2007-08 to 287.25 MT during the POI (191 MT annualised). The Authority further notes that the volume of imports from countries other than EU has been insignificant in the injury period.

b) Assessment of Demand and Market Share

34. The Designated Authority has determined demand as the sum of domestic sales of the domestic industry, sales of other Indian producers and imports of the subject goods in India from all sources. The demand, so assessed, is shown in the following table. It is seen that demand for the subject goods had grown significantly in 2008-09 over the base year. Further, during the subsequent year and the POI, there is no significant change in the demand of the subject goods.

	Unit	2007-08	2008-09	2009-10	POI April 2010 to Sept. 2011)	POI-Annualized
Demand						
Sales of Domestic Industry	MT	112.02	189.57	192.78	207.64	138.45
Sale of other Domestic Producers	MT	35.15	57.17	30.27	64.10	42.73
European Union-Imports	MT	124.19	161.70	136.67	287.25	191.69
Other Countries-Imports	MT	6.6	0	9.8	0	0
Total demand	MT	277.96	408.44	369.55	558.96	372.64
<i>Trend</i>		<i>100</i>	<i>145</i>	<i>133</i>	<i>201</i>	<i>201</i>
Market Share in Demand						
Domestic Industry	%	40.30	46.41	52.17	37.15	37.15
Other Domestic Producers		12.64	14	8.19	11.46	11.46

European Union-Imports	%	44.68	39.59	36.98	51.39	51.39
Other Countries-Imports	%	2.37	0.00	2.65	0.00	0.00

35. The Authority notes from the above that the share of domestic industry in the total demand has declined from 40.30% during the base year to 37.15% during the POI. On the other hand, the market share of imports from the subject territory has registered an increase from 44.68% to 51.39%. The Authority further notes that while there has been an increase in the demand for the subject goods during the injury period, the increase in the volume of imports from the subject territory was significantly higher than the increase in the quantum of sales of the domestic industry.

## G.2 Price Effect of the Dumped imports on the Domestic Industry

### a) **Price Undercutting**

36. With regard to the effect of the dumped imports on prices, Annexure II (ii) of the Rules lays down as follows:

*"With regard to the effect of the dumped imports on prices as referred to in sub-rule (2) of rule 18 the Designated Authority shall consider whether there has been a significant price undercutting by the dumped imports as compared with the price of like product in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increase which otherwise would have occurred to a significant degree."*

37. With regard to the effect of the dumped imports on prices, it has been examined whether there has been a significant price undercutting by the dumped imports as compared with the price of the like product in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree. In this regard, a comparison was made between the landed value of the product concerned and the average selling price of the domestic industry net of all rebates and taxes to elaborate. The prices of the domestic industry were determined at the ex factory level. This comparison showed that during the period of investigation, the subject goods originating in the subject territory were imported in the Indian market at prices which were lower than the domestic industry selling prices. It is, thus, noted that imports of subject goods were undercutting the domestic prices and margin of undercutting is considered significant in case of imports from European Union.

38. The price undercutting margin is determined as below:

Particulars	Unit	2007-08	2008-09	2009-10	POI April 2010 to Sept. 2011)
Net Selling Price	Rs./KG	***	***	***	***
<i>Trend</i>		<i>100</i>	<i>110.13</i>	<i>106.15</i>	<i>101.74</i>

Landed price of imports	Rs./KG	2468.88	3252	2416	2346
<i>Trend</i>		<i>100</i>	<i>131.72</i>	<i>97.85</i>	<i>95.03</i>
Price Undercutting	Rs./KG	***	***	***	***
Price Undercutting	%	***	***	***	***
Price Undercutting	Range	0-2%	(10-25%)	3-12%	5-15%

39. The Authority notes from the above that during the year 2008-09, as compared to the base year, there was an increase in the selling price as well as the landed price of import from the subject territory. During this period, while the selling price of a domestic industry increased by above 10%, the increase in the landed value of imports was much higher at 32%. In the subsequent period, there was a significant decline in the landed value of imports while the decline in the selling price of the domestic industry was only marginal. As a consequence, whereas in the years 2007-08 and 2008-09, the undercutting by the imports was negative, it increased significantly during 2009-10 and the POI.

#### b) Price Suppression and Depression

40. The cost and selling price movement of the domestic industry and the landed value of imports from the subject territory have been compared over the injury period to examine whether the effect of dumped imports is to depress prices to a significant degree or prevent price increases which otherwise would have occurred to a significant degree. The trends in this regard are summarized below:

Particulars	Unit	2007-08	2008-09	2009-10	POI April 2010 to Sept. 2011)
Landed price of imports	Rs./KG	***	***	***	***
<i>Trend</i>		<i>100</i>	<i>131.72</i>	<i>97.85</i>	<i>95.03</i>
Net Selling Price	Rs./KG	***	***	***	***
<i>Trend</i>		<i>100</i>	<i>110.13</i>	<i>106.15</i>	<i>101.74</i>
Cost of Sales	Rs./KG	***	***	***	***
<i>Trend</i>		<i>100</i>	<i>96.49</i>	<i>90.51</i>	<i>102.09</i>

41. During the year 2008-09, while the cost of sales of the domestic industry declined, the selling price of the domestic industry moved upward by 10%. On the other hand, during the same period the landed value of imports increased by a significantly higher percentage of 32%. The analysis of the trends in the landed value of imports, cost of sales and the net selling price of the domestic industry, as above, does not prime-facie suggest any evidence of price suppression or depression on account of dumping of the subject goods.

#### c) Comparison of NIP vs DPCO Prices

42. A comparison of the NIP for the domestic industry with the prices as notified by the Indian Government under DPCO indicates that the DPCO prices are marginally lower than the NIP for the domestic industry. The Authority, therefore, notes that part of the injury to the domestic industry has been on account of the prices of the subject goods being subject to Government control. However, for the propose of determining to injury to the domestic industry on account of dumped imports, a comparison has been made of the landed value of imports with lower of the two, i.e., average prices as per DPCO during the POI and the NIP for the domestic industry. Based on the above, the injury margin suffered by the domestic industry on accounts of dumped imports is as in the table below:

Particulars	Unit	POI
Non Injurious Price Rs/Kg	Rs/Kg	***
Average Prices as per DPCO	Rs/Kg	2790
Landed Price	Rs/Kg	***
Injury Margin	Rs/Kg	***
Injury Margin (%)	%	***
Injury Margin Range	%	12 to 25

### **G.3 Economic Parameters of the Domestic Industry**

43. Annexure II to the AD Rules requires that a determination of injury shall involve an objective examination of the consequent impact of these imports on domestic producers of like product. With regard to consequent impact of these 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. An examination of performance of the domestic industry reveals that the domestic industry has suffered material injury. Various injury parameters relating to the domestic industry are discussed below.

#### **(a) Capacity, Production, Capacity Utilization and Sales**

44. Information on capacity, production, capacity utilization and sales volumes of the domestic industry has been as under:-

Particulars	Unit	2007-08	2008-09	2009-10	POI April	Annualized POI
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					2010 to Sept. 2011)	
Capacity-Domestic industry	MT	514	514	514	771	514
Production-Domestic industry	MT	186	300	310	374	249.37
Capacity Utilization-Domestic industry	%	36.25%	58.41%	60.35%	48.52%	48.52
Sales-Domestic	MT	112	190	193	208	139

45. The Authority notes that during the injury period and the POI, the actual capacity utilization as well as the domestic sales of the domestic industry have shown an upward trends till 2009-10. However, the capacity utilization of the domestic industry declined to 48.52 % in the POI. Similarly, during the POI, the sales of the domestic industry also declined significantly whereas no change in the demand for the subject goods has been noted. The Authority further notes that while the production, capacity utilization and the sales of the domestic industry declined during the period of investigation, the volume of imports from the subject territory registered an increase during the same period.

**(b) Profits, Return on Capital Employed and Cash Profit**

46. The profits, return on investment and cash flow of the domestic industry have been examined as under:

Particulars	Unit	2007-08	2008-09	2009-10	POI April 2010 to Sept. 2011)
Cost of Sales	Rs/KG	***	***	***	***
<i>Trend</i>		<i>100</i>	<i>96</i>	<i>90</i>	<i>102</i>
Selling price	Rs/KG	***	***	***	***
<i>Trend</i>		<i>100</i>	<i>110</i>	<i>106</i>	<i>102</i>
Profit/loss per Unit	Rs/KG	***	***	***	***
<i>Trend</i>		<i>(100)</i>	<i>(18)</i>	<i>(0.43)</i>	<i>(104)</i>
Profit before Tax	Rs.Lacs	***	***	***	***
<i>Trend</i>		<i>(100)</i>	<i>(30.49)</i>	<i>(0.74)</i>	<i>(193.33)</i>
Interest	Rs.Lacs	***	***	***	***
<i>Trend</i>		<i>100</i>	<i>216</i>	<i>83</i>	<i>72</i>
Profit before Interest & Tax	Rs.Lacs	(***)	***	***	(***)
Capital employed	Rs.Lacs	***	***	***	***
Return on	%	(***)%	***%	***%	(***)%

capital employed					
Cash Profit	Rs.Lacs	***	***	***	***
<i>Trend</i>		(100)	91	(75)	(190)

47. The Authority notes from the above as under:

- i. The net selling price of the domestic industry in the base year and the POI is in line with the cost of sales of the domestic industry.
- ii. The profitability of the domestic industry improved till 2009-10, but declined in the POI.
- iii. The decline in the profitability of the domestic industry during the POI was noted to be on account of significant decline in the volume of domestic sales of the domestic industry.

**(c) Employment and Wages:**

48. The status of employment levels and wages of the domestic industry has been as under:

Particulars	Unit	2007-08	2008-09	2009-10	POI April 2010 to Sept. 2011)
Wages	Rs.Lacs	***	***	***	***
<i>Trend</i>		100	168	248	347
Employment	Nos.	***	***	***	***
		100	147	219	214

49. The number of employees as well as the wages of the domestic industry have registered an increasing in the injury period.

**(d) Productivity of Employees**

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

Productivity of Employees	Unit	2007-08	2008-09	2009-10	POI April 2010 to Sept. 2011)
Output per Employee	MT	***	***	***	***
<i>Trend</i>		100	109	36	50

51. The Authority notes that the productivity per employee during the year 2009-10 has declined as compared to base year due to increase in the number of employees deployed during the period. However, the same has increased in the POI in comparison to the year 2009-10.

**(e) Inventories**

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

Stock ( Volume)	Unit	2007-08	2008-09	2009-10	POI April 2010 to Sept. 2011)
Opening	MT	***	***	***	***
Closing	MT	***	***	***	***
Average	MT	***	***	***	***

53. It is noted that the inventory of the domestic industry has increased during the period of investigation.

**(f) Factors Affecting Domestic Prices**

54. Consideration of the import prices from the subject territory and other countries, change in the cost structure, competition in the domestic market, factors other than dumped imports that might be affecting the prices of the domestic industry in the domestic market show that the landed value of imported material from the subject territory is below the selling price of the domestic industry, causing significant price undercutting in the Indian market. It is further noted that most of the imports of subject goods from other countries are at much higher prices. There is no viable substitute to this product. It is also noted that demand for the subject goods was showing significant increase during the injury period and this could not have been a factor affecting domestic prices. Thus, the principal factors affecting the domestic prices is landed value of the subject goods from subject territory and cost of the raw materials.

**(g) Ability to raise capital**

55. The Authority notes that the units representing the domestic industry are multiproduct companies. The share of production and sales of the subject goods in the overall operations of both the companies has been noted to be very insignificant. Therefore, the Authority notes that any change in the profitability and performance of both the companies in respect of operations from the subject goods may not significantly impact the ability of these companies to raise capital.

**(h) Growth**

56. With regard to the growth of the domestic industry, the Authority notes the following:

Growth (year by year)	Unit	2007-08	2008-09	2009-10	POI April 2010 to Sept. 2011)
Production	%	-	***	***	***
Sales Volume	%	-	***	***	***
Profit/Loss per unit	%	-	***	***	***
Return on Investment	%	-	***	***	***
Market Share	%	-	***	***	***

57. The Authority notes that the production, sales volume, profits and the Return on Investment of the domestic industry declined in the injury period and the POI.

#### **G.4 Price as per Drug Price Control Order (DPCO), 1995**

58. The Authority notes that the Central Government vide Notification No. S.O. 539(E) dated 20.3.2008 has fixed the maximum sales price of Cefadroxil Monohydrate at Rs.2758/ per kg. Subsequently, on 1.7.2011, the Central Government vide Notification No S.O. 150(E) dated 1.7.2011 revised the maximum selling price of Cefadroxil Monohydrate to Rs. 2951/ per kg. Thus, the average DPCO price of the subject goods during the period of investigation was Rs. 2790/ per kg. Since the injury caused to the domestic industry is partly due to the maximum selling price notified by the Government, the Authority has considered the average DPCO price, as notified by the Government, for the purpose of working out injury as may be attributed to the dumped imports.

Particulars	Unit	M/s DSM Sinochem Pharmaceuticals Netherlands B.V.	Other producers / exporters
DPCO Price	Rs./Kg	2790	2790
Landed Price	Rs./Kg	***	***
Injury Margin	Rs./Kg	***	***
Injury Margin	%	***	***
Injury Margin Range	%	12 to 25	14 to 27

#### **G.5 Other Known Factors and Causal Link**

59. As per the AD Rules, the Designated Authority is, inter alia, required to examine any known factors other than the dumped imports which at the same time are injuring the domestic industry, so that the injury caused by these other factors must not be attributed to the dumped imports. Factors which may be relevant in this respect include, inter alia, the volume and prices of imports not sold at dumping prices, contraction in demand or changes in the patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology, export performance and the productivity of the domestic industry. The Authority has examined whether other factors listed under the AD Rules could have contributed to injury to the domestic industry.

60. The examination of causal link has been done as follows:

(a) Imports from third countries and other known factors

61. The Authority notes that the volume of imports from the countries other than the subject territory has been insignificant.

(b) Contraction in demand and / or change in the pattern of consumption

62. There has been increase in demand in the injury period with slight decrease in the period of investigation. Therefore, no injury to the domestic industry can be attributed to contraction in demand or changes in the pattern of consumption of the subject goods.

(c) Trade restrictive practices of and competition between foreign and domestic producers

63. It is noted that there is a single market for the subject goods where dumped imports from the subject territory compete directly with the subject goods supplied by the domestic industry. It is also noted that the imported subject goods and domestically produced goods are like articles and are used for similar applications/end uses. There is no evidence of trade restrictive practices of and competition between the foreign producers and domestic producers causing injury to the domestic industry.

(d) Developments in Technology

64. There is no allegation of developments in technology, nor has the investigation so far shown that possible injury to the domestic industry could have been caused by developments in technology.

(e) Export performance

65. The Authority notes that the volume of exports of the petitioner companies are not very significant. Therefore, the losses to the domestic industry during the injury period and the period of investigation can not be attributed to the export performance of the domestic industry.

(f) Productivity of the domestic industry

66. The Authority notes that there is no significant change in the productivity of the domestic industry during the POI over the base year.

#### **G.6 Causal Link**

67. The following submissions have been made by the exporters/importers and other opposing interested parties with regard to the injury to the domestic industry and the casual link.

- i. There exists no link between the imports and the prices of the goods sold by the petitioner. In the absence of causal link, it is prayed that the investigation may be terminated.
- ii. The prices at which the subject goods can be sold by the petitioner are controlled by the Indian Government through DPCO, 1995. The primary cause of injury to the petitioner is the fact that the selling price of the subject goods is regulated by the government through DPCO. The Authority should examine whether the petitioner would have earned profits in the absence of any competition from the imported goods keeping in mind the fact that the selling prices of the subject goods are controlled by DPCO.
- iii. The petitioner started incurring losses during the year 2009-10, i.e., the year immediately preceding the POI. However, during this year, DSM India has sold the imported goods in Indian market at DPCO prices. When the goods have been sold at prices fixed by DPCO, the domestic industry could not have suffered any losses due to the alleged dumped imports.
- iv. A major share in the domestic market is held by the other domestic producer, AurobindoPharma Limited. Due to the inter-se competition between the petitioner and other domestic producer, the petitioner was required to lower its selling price and suffer injury.

68. The following submissions have been made by the domestic industry with regard to the injury to the domestic industry and the casual link.

- i) Imports from the subject territory are undercutting the prices of domestic industry to a significant extent. The import price is undercutting the domestic price.
- ii) Whereas the cost of production was increasing, the selling prices declined. Further, even when there was some decline in the cost of production in earlier years, the decline in prices was more than the decline in costs. Overall, the imports are suppressing and depressing the domestic prices.
- iii) Performance of the domestic industry with regard to profits, return on investment and cash profits was declining and became negative in the POI.

#### **Examination by the Authority**

69. The Authority notes that while listed known other factors do not show that injury to the domestic industry has been caused by these factors, following parameters show that injury to the domestic industry has been caused by the dumped imports.

70. There has been a significant increase in the volume of dumped imports from the subject territory at the absolute level. The market share of dumped imports from the subject territory in total imports of subject goods has remained significantly high. It is also noted that the dumped imports were undercutting the prices of the domestic industry in the market. It is also determined that the dumped imports have had significant adverse price effect in terms of price depression and price underselling. Further, the dumping margins from responding producers and exporters from the subject territory have been determined and are considered significant. It is noted that dumped imports of subject goods from the subject territory have adversely impacted the production and sales levels of the domestic industry. Further, it is also noted that the dumped imports have had significant adverse price effect in terms of price depression and price suppression which in turn have led to significant deterioration in profits and return on investments. Therefore, the Authority concludes that the domestic industry has suffered material injury and such injury has been caused significantly by price and volume effects of dumped imports from the subject territory. The Authority, therefore, holds that material injury to the domestic industry has been caused by the dumped imports of subject goods from the subject territory.

71. The Authority has determined non-injurious price for the domestic industry taking into consideration cost of production of the domestic industry. This non-injurious price of the domestic industry has been compared with the landed values of the subject imports of the responding producers and exporters to determine injury margin. The injury margins have been worked out as follows:

Injury Margin

Unit: US\$ per kg

Producer	Non Injurious Price	Landed Price	Injury Margin (IM)	IM%	Injury Margin Range %
M/s DSM Sinochem Pharmaceuticals Netherlands B.V, Netherlands	***	***	***	***	12 to 25
Any other producer/exporter	***	***	***	***	14 to 27

72. The level of dumping margins and injury margins, as determined are, considered significant.

**H. INDIAN INDUSTRY’S INTEREST & OTHER ISSUES:**

73. The Authority notes that the purpose of anti-dumping duties, in general, is to eliminate injury caused to the domestic industry by the unfair trade practices of dumping so as to re-establish a situation of open and fair competition in the Indian market, which is in the general interest of the country. Imposition of anti-dumping measures would not restrict imports from the

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

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

## **I. POST DISCLOSURE STATEMENT SUBMISSIONS BY THE INTERESTED PARTIES**

### **I.1 Post Disclosure Statement submissions by the opposing Interested Parties**

75. Following are in brief the post Disclosure Statement submissions made by the opposing interested parties:

- i. It is reiterated that non-confidential copy of Proforma IV-A was never made available despite several reminders. Such an action on the part of DGAD is against Rule 6(7) of AD rules as well as Article 6.1.2 of WTO: ADA.
- ii. The excess confidentiality was claimed by domestic industry with respect to various injury parameters including inventories, growth, depreciation & fixed assets, which should have been disclosed.
- iii. Rule 6 provides that due allowance shall be made in each case on its merits for differences which affect price comparability including levels of trade. DGAD is bound to follow existing rule and cannot decide to neglect them in the guise of past practice. DSM has provided sufficient evidence and justification with respect to level of trade adjustment and therefore request DGAD to allow the level of trade adjustment in the present case and re-compute the dumping margin.
- iv. In terms of Rule 15(1) of Antidumping Rules, DSM Netherlands and DSM Spain has made an offer for a price undertaking. No communication has been received in this regard from DGAD nor this fact has been considered in disclosure statement. In view of the same, DSM again reiterates its request for price undertaking.
- v. During 2009-10, the landed price of the subject goods was lower than 2008-09. Despite this fact, the profitability of the domestic industry improved drastically during 2009-10. This clearly shows that causal link between the imports and injury to domestic industry is absent.

vi. Injury caused to the petitioner due to factors like domestic competition and Government control should not be attributed to injury suffered due to dumping. DGAD has not examined whether the petitioner would have earned profits in the absence of any competition from the imported goods keeping in mind the fact that the selling prices of the subject goods are controlled by DPCO.

vii. Injury is self inflicted since number of employees has gone up despite Domestic Industry claiming fall in capacity utilization.

viii. In the disclosure statement, the Authority has observed that the facts do not prime-facie suggest any evidence of price suppression or depression on account of dumping of the subject goods. However, at other places in the disclosure statement, DGAD has made contrary observations. DGAD is requested to clarify and provide a revised disclosure statement, so that DSM may offer its comments.

ix. DGAD has considered that the subject goods produced by the domestic industry and that imported from subject territory are comparable, inter-alia, in terms of manufacturing process & technology and distribution & marketing. DSM submits that there exists different manufacturing process, technology, distribution and marketing as compared to domestic industry. DSM has a patented process, which others cannot use. Domestic Industry sells direct and mostly in FDF, whilst respondents sell via reseller in India (DSM India). DSM brands the product as Puridrox as it is a more pure, clean and green product than that of the applicant and other competitors.

x. Comparison of NIP of the domestic producer and price of imported products has to be done at a same level, which is referred to in trade parlance as 'same level of trade'. If NIP is the final price at which the customers or penultimate dealers would receive the product at ex-factory, the comparable export price also has to be determined necessarily at that level only. For a comparison of prices at the same level of trade for the exported goods, the prices at which the goods are available to the end customers have to be considered.

xi. DSM Netherland exports the subject goods only to its related importer in India, namely, DSM India, which in turn re-sells them in India after incurring selling and administrative expenses in India. These expenses are, inter-alia, for marketing the product and therefore are incurred before the goods are ready to be sold to the end customers. Thus, the price at which the end customer in India can get the imported goods is the price at which DSM India re-sells these imported goods in India. Since, importers and exporters are related, DGAD has considered before and should again consider in this case, these exporters and importers as one single economic entity and calculate the exports price based on the re-sale price of the related importer for determining the dumping margin.

xii. Since the prices of subject goods are controlled by DPCO, the importer cannot in any manner re-sell the products at a price higher than the DPCO price. Under such circumstances with consistent weakening of rupee, fixed rate of duty, the import price along with Anti-dumping Duty would exceed the DPCO price. As a result, reference price based duty in terms of Indian Rupees would be appropriate.

xiii. DGAD is requested to add the name of M/s DSM Sinochem Pharmaceuticals Spain S.A, Spain, in the dumping margin and injury margin table. Further, in case the Authority decides to levy antidumping duty on the exports made by the respondents, the name of M/s DSM Sinochem Pharmaceuticals Spain S.A, Spain may be added to the duty table.

### **I.2 Post Disclosure Statement submissions by the Domestic Industry**

76. Following are in brief the post Disclosure Statement submissions made by the domestic industry:

i) Domestic Industry has already submitted all the necessary details and as such there are no additional comments to make. Dumping of the subject goods continues on a larger scale causing injury to the domestic industry with each passing day.

### **I.3 Examination by the Authority**

77. The Authority notes that most of the post disclosure statement submissions made by the opposing interested parties are repetitive in nature and have already been dealt with in the Disclosure Statement and are again addressed to in this Final Findings Notification under the appropriate headings. With regard to the claim that non-confidential copy of Proforma IV-A was never made available, the Authority noted that non-confidential copy of Proforma IV-A was placed in the public file for perusal by the interested parties. With regard to the claim of DSM Netherlands and DSM Spain for a price undertaking, the Authority has not accepted price undertaking in view of the practical difficulties in monitoring price undertakings. As regards inclusion of DSM, Spain, the Authority noted that DSM Spain is only engaged in partially processing some of the activities in the manufacturing of the subject goods and gets a tolling fee for the same. DSM Spain is not the principal manufacturer nor any documents regarding exports have been raised in the name of DSM, Spain. Therefore, the Authority does not agree with the inclusion of the name of DSM, Spain in the dumping margin table, injury margin table and duty table. With regard to the claim that duty be fixed based on Reference Price, the Authority noted that the form of duty is decided by the Authority keeping in view the nature, circumstances and merits of the individual case and accordingly, fixed duty has been determined in this case. As regards the claim of the exporter for adjustment on account of level of trade, the Authority notes that majority of the sales in the domestic market are to the re-seller. The Authority, therefore, has considered the weighted average of the domestic sales for determination of normal value.

### **J. Conclusion**

78. After examining the submissions made by the interested parties and issues raised therein; and considering the facts available on record, the Authority concludes that the product under consideration Bulk Drug Cefadroxil Monohydrate has been exported to India from the European Union below its associated normal value, thus, resulting in dumping of the product. The domestic industry has suffered material injury in respect of the subject goods. The material injury has been caused by the dumped imports from the European Union.

### **K. Recommendations**

79. The Authority notes that the investigation was initiated and notified to all interested parties and adequate opportunity was given to the exporters, importers and other interested

parties to provide positive information on the aspects of dumping, injury and the causal link. Having initiated and conducted investigation into dumping, injury and the causal link thereof in terms of the AD Rules and having established positive dumping margins as well as material injury to the domestic industry caused by such dumped imports, the Authority is of the view that imposition of definitive anti dumping duty is required to offset dumping and consequent injury. Therefore, the Authority considers it necessary to recommend imposition of definitive anti-dumping duty on imports of the subject goods from the European Union in the form and manner described hereunder.

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

**Duty Table**

Sl No	Sub-heading	Description of goods	Country of origin	Country of exports	Producer	Exporter	Amount	Unit of measurement	Currency
1	2	3	4	5	6	7	8	9	10
1	29420011	Bulk Drug Cefadroxil Monohydrate	European Union	European Union	M/s DSM Sinochem Pharmaceuticals Netherlands B.V, Netherlands	M/s DSM Sinochem Pharmaceuticals Netherlands B.V, Netherlands	7.88	Kg	US\$
2	29420011	Bulk Drug Cefadroxil Monohydrate	European Union	European Union	M/s DSM Sinochem Pharmaceuticals Netherlands B.V, Netherlands	M/s DSM Anti-Infectives Egypt SAE	7.88	Kg	US\$
3	29420011	Bulk Drug Cefadroxil Monohydrate	European Union	European Union	Any combination except at Sl No 1 and 2 above		9.03	Kg	US\$
4	29420011	Bulk Drug Cefadroxil Monohydrate	European Union	Any except European Union	Any	Any	9.03	Kg	US\$
5	29420011	Bulk Drug Cefadroxil Monohydrate	Any except European Union	European Union	Any	Any	9.03	Kg	US\$

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

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

**(J S Deepak)**

**Designated Authority**



