

MINISTRY OF COMMERCE
(Directorate General of Anti Dumping & Allied Duties)

NOTIFICATION

New Delhi, the 23rd September, 1998

Preliminary Findings

Subject : Anti dumping investigation concerning imports of Lovastatin-Preliminary Findings.

11/1/97/ADD.-Having regard to the Customs Tariff Act 1975 as amended in 1995 and the Customs Tariff (Identification, Assessment and Collections of Anti Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, thereof

A. PROCEDURE

The procedure described below has been followed with regard to the investigations

- i. The Designated Authority (hereinafter referred to as Authority), under the Rules, received written application from M/s. Artemis Pharmaceuticals Limited, on behalf of the domestic industry, alleging dumping of Lovastatin, originating in or exported from the People's Republic of China (referred to as China PR hereinafter);
- ii. The Authority, on the basis of sufficient evidence furnished by the petitioner, decided to initiate investigations against imports of Lovastatin from China PR. The Authority notified the Embassy of China PR about the receipt of dumping allegation before proceeding to initiate the investigations in accordance with sub-rules 5 (5) of the Rules;
- iii. The Authority issued a public notice dated 22nd Dec., 1997 published in the Gazette of India, Extraordinary, initiating anti-dumping investigations concerning imports of Lovastatin, classified under custom sub-headings 294 1.91.1 of Schedule I of the Customs Tariff Act, 1975, originating, in or exported from China PR;
- iv. The Authority forwarded a copy of the public notice to the known exporter (whose details were made available by the petitioner) and industry associations and gave them an opportunity to make their views known in writing in accordance with the rule 6(2);

- v. The Authority forwarded a copy of the public notice to the known importers of Lovastatin in India and advised them to make their views known in writing within forty days from the date of the letter;
- vi. Request was made to the Central Board of Excise and Customs (CBEC) to arrange details of imports of Lovastatin for the past three years, including the period of investigations.
- vii. The Authority provided x copy of the petition to the known exporter and the Embassy of China PR in accordance with rules 6(3) supra;
- viii. The Authority sent questionnaire, to elicit relevant information, to M/s. Wenzhou Kanlong Pharmacy Company Limited,, China, the known exporter from China PR, in accordance with Rule 6(4). No information was, however, received from any exporter from China PR;
- ix. The Embassy of the subject country in New Delhi was informed about the initiation of the investigations in accordance with rule 6(2) with a request to advise the exporters/producers from their country to respond to the questionnaire within the prescribed time. A copy of the letter, petition and questionnaire sent to the exporter was also sent to the Embassy, along with a list of known exporter/producer;
- x. A questionnaire was sent to the following known importers of Lovastatin in India calling for necessary information in accordance with rule 6(4):
 - a. M/s. Sun Pharmaceuticals Industries Limited, Mumbai
 - b. M/s. Torrent Pharmaceuticals Limited, Ahmedabad
 - c. M/s. Glenmark Pharmaceuticals Limited, Mumbai
 - d. M/s. Micro Labs. Limited, Bangalore
 - e. M/s. Cadila Healthcare Pvt. Ltd., Ahmedabad
 - f. M/s. Searle (India) Limited, Navi Mumbai
 - g. M/s. Wockhardt Limited, Mumbai
 - h. M/s. Intas Pharmaceuticals Limited, Ahmedabad
 - i. M/s. Blue Cross Labs. Limited, Mumbai
 - j. M/s. Medley Labs. Pvt. Ltd., Mumbai

No information was, however, filed by any importer.

- xi. Additional information regarding injury was sought from the petitioner, which was also received;
- xii. 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;
- xiii. Cost investigations were also conducted to work out optimum cost of production and cost to make and sell the subject goods in India on the basis of Generally Accepted Accounting Principles (GAAP) and the information

furnished by the petitioner so as to ascertain if anti-dumping duty lower than the dumping margin would be sufficient to remove injury to the domestic industry;

- xiv. Investigation was carried out for the period from starting 1st July 1996 to 30th June 1997.

B. PETITIONER'S VIEWS

2. The petitioner has raised the following issues in its petition:

i) On Dumping:

- a. There are only three producers of Lovastatin in the world.
- b. The dumping is originating from the producer of Lovastatin in China PR. Chinese producer is offering the material at throw away prices in order to capture the Indian Market.
- c. Chinese producer is exporting Lovastatin to various European countries at more than US \$ 6000 per kg., while the same Lovastatin is being exported to India at prices between US \$ 3100 to 4100 per Kg.
- d. Chinese producer is continuously reducing price in Indian -market while maintaining the price in the European Market. The prices offered by the exporters from China PR are unrelated to its cost of production. The prices in the Indian market have been continuously reduced as is evident from the following:

Date of Quotation Price Quoted Price Basis

(US \$ per MT) r

26.11.96 4300 CIF by air, L/C at site

27.11.96.1 3900 CIF by air, L/C at site

30.12.96 4100 CIF by air, L/C at site

04.03.97 3000 CIF by air, L/C 90 days

28 05.97 3000 CIF by air, L/C at site

24.06.97 2490 CIF by air, 90 days D/A

13.08.97 2400 CIF by air, L/C 90 days

The above establish that Lovastatin is being dumped in India.

ii) **On injury:**

The petitioner has suffered injury as seen from the following:

- a. The imports of Lovastatin from China PR increased from nil up to 1995-96 to 1400 Kg. in 1996-97 and 525 Kg.(April - July, 1996) in 1997-98.
- b. Though the consumption' of Lovastatin in India has been growing over the years, the petitioner has been forced to reduce its production.
- c. Artemis has been forced to reduce its prices in the Indian market in view of reduction in the prices by the Chinese exporter.
- d. The Chinese producer is trying to keep Artemis out of business to create his monopoly.
- e. Sales of the petitioner have drastically declined.
- f. The selling prices of the petitioner are based on cost of production, in spite of which the petitioner is not able to compete with the prices offered by the exporter from China PR. Selling prices of the petitioner include on element of sales tax on raw materials, other inputs and finished goods, whereas the imports from China PR do not have to bear this cost.
- g. The petitioner has not been able to earn any return on capital.

C. VIEWS OF EXPORTERS IMPORTERS AND OTHER INTERESTED PARTIES

3. None of the interested parties from China PR ' ,has responded to the notice of initiation nor any other interested party has offered any comment,

D. EXAMINATION OF THE ISSUES RAISED

4. The submissions made by the petitioner have been examined, considered and have been dealt at appropriate places hereinafter.

E. PRODUCT UNDER CONSIDERATION AND SCOPE OF INVESTIGATIONS

5. The product considered in the present investigations is Lovastatin originating or exported from China PR. Lovastatin is a bulk drug and is used for controlling Cholesterol level. It reduces the risk of Coronary Heart disease and Cardiac failure. Lovastatin is not substitutable with any other material.

6. Lovastatin is produced by fermentation process. Major inputs used for its production are Lactose, Dextrose, Ethyl Acetate and Yeast Extract Liquid.

7. Lovastatin is classified under custom sub-heading 2941.90 of Schedule 1 of the Customs Tariff Act, 1975 and under 2941.90.00 of International Trade Classification. The manufacturing process, function & uses and tariff classification indicated herein are, however, indicative only and are in no way binding on the scope of the present investigations.

F. LIKE ARTICLES

8. The petitioner has claimed that the Lovastatin produced by it has characteristics closely resembling to the Lovastatin imported from China PR and the two are consumed interchangeably. None of the interested parties have disputed the claim of the petitioner. In order to analyze that the Lovastatin produced by the domestic industry is a like article to the Lovastatin exported from China PR, characteristics such as physical characteristics (size, chemical composition, raw material), manufacturing process and technology, functions and uses, product specifications, pricing, distribution and marketing and tariff classification of the goods have been considered. Lovastatin produced by the domestic industry has characteristics closely resembling to the Lovastatin originating in or exported from China PR. The authority therefore, holds that the Lovastatin produced by the petitioner is a like article to the Lovastatin imported from China PR within the meaning of Rule 2(d).

G. DOMESTIC INDUSTRY

9. The petition has been filed by M/S. Artemis Pharmaceuticals Limited, Jeedimala, Hyderabad-500082. The petitioner is the only producer of Lovastatin in India and has claimed that it is the third producer of the, subject goods in the world. The petitioner being the sole producer of the subject goods satisfies the standing to file the present petition and constitutes the domestic industry in accordance with Rule 2(b) supra.

H. DUMPING

Normal value:

10. Under Section 9A(1)(c), normal value in relation to an article means:

- i. The comparable price, in the ordinary course of trade, for the like article when meant for consumption in the exporting country or territory as determined in accordance with the rules made under sub-section (6); or

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

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.

11. The Authority provided opportunity to the exporters from China PR to furnish information relevant to the investigations and offer comments, if any, in accordance with the Section cited above. The Authority wrote to the Embassy of China PR in India also. However, none of the exporter from China PR has responded to the Authority's request for information.

12. None of the importers of the subject goods in India or other interested parties has responded to the notice of initiation of investigations nor has any interested party furnished any information relevant for determination of normal value. The claim made by the petitioner with regard to the determination of normal value has also not been disputed by any interested parties. The Authority has, therefore, proceeded on the basis of Rule 6(8), i.e., best information available.

13. The normal value was determined at the time of initiation on the basis of exports from China PR to third countries. The Authority has considered the same basis for determination of normal value.

14. The petitioner has furnished evidence that Lovastatin has been exported from China PR at the rates given below:

Date Price Basis

(US \$ pmt)

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15. The petitioner has not claimed any price adjustment in the above price. None of the interested parties have furnished any information which can be relied upon for determining price on ex-works basis. The Authority has adopted normal value based on the average of the above mentioned export price from China PR to other countries in the absence of any information from the exporters from China PR.

16. The normal value thus works out to US \$ ***

Export price:

17. None of the exporters from China PR has responded to the notice of initiation and furnished information requested by the Authority: The importers and other interested parties have also not furnished relevant information. The export price has, therefore, been worked out on the basis of information furnished by the petitioner.

18. The petitioner had furnished export price on the basis of quotations of Chinese exporters to-” importers: Since the petitioner has furnished a number of quotations, the Authority has worked out export price on the basis, of average of the export price mentioned in all the quotations, copies of which have been furnished by the petitioner.

19. None of the interested parties, including petitioner, have claimed any price adjustment from the export price. The Authority has, therefore, not made any price adjustment, in the weighted average export price.

20. The rules relating to comparison provides as follows:

“While arriving at margin of dumping, the designated authority shall make a fair comparison between the export price and :the normal value. The comparison shall be made at the same level of trade, normally at ex-works level, and in respect of sales made at as nearly possible the same time. Due allowance shall be made in each case, on its merits, for differences which affect price comparability, including differences in condition and terms of sale, taxation, levels of trade; .quantities, physical characteristics, and any other differences which are demonstrated to affect price comparability.”

21. For, the purpose of fair comparison between. the normal value and the export price, the information furnished by the petitioner has been .relied upon. The normal

value and export price determined, as detailed above, has been considered as at ex-works levels.

22. The dumping margin comes to 57.48%.

I. INJURY

23. Under Rule 11 supra, Annexure-II, when a finding, of injury is arrived at, such finding shall involve determination of the injury to the domestic industry, "...taking into account all relevant facts, including the volume of dumped imports, their effect on prices in the domestic market for like articles and the consequent effect of such imports on domestic producers of such articles". In considering the effect of the dumped .imports on prices, it is considered necessary to examine whether there has been a significant price undercutting by the dumped imports as compared with the price of the like article in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree.

24. For the examination of the impact of the imports on the domestic industry in India, the Authority has considered such indices having a bearing on the state of the industry as production, capacity utilisation, sales quantum, stock, profitability, net sales realisation, the magnitude and margin of dumping, etc. in accordance with Annexure II (iv) of the rules supra.

25. Various parameters indicating injury to the domestic industry are as follows:

(a) Export price from China:

26. CIF export price of Lovastatin from China PR declined steeply as shown in the graph below:

A. please see the original notification

b Economic parameters affecting domestic industry.

27. The petitioner commenced commercial production from July, 1996. It produced 122 kgs in the nine months ending 1996-97, but could sell only 120 kgs resulting in 2 kgs stocks (valued above Rs. 3 lacs). The petitioner produced 47 kgs in the first three months of 1997-98, but could sell 46.5 kgs, resulting in a stock of 2.5 kgs. Though the petitioner holds substantially higher capacity, the additional equipment held was not made operational. The petitioner reduced selling prices, steeply from an average of Rs. ***** per kg (1996-97) to Rs. ***** per kg (1997-98) in the investigation period.

Though the cost of production of the petitioner also declined in 1997-98 as compared to 1996-97 in the investigation period, the reduction in the selling price was much more than the reduction in the cost of production resulting in much higher losses in the 1997-98 as compared to 1996-97 in the investigation period.

28. It is thus seen that the petitioner was not able to utilise the capacities acquired by it and was forced to sell below its cost of production resulting in financial losses. The domestic industry has thus suffered material injury from dumped imports.

J. CAUSAL LINK:

29. In establishing that the material injury to the domestic industry has been caused by the imports from the subject countries, the Authority holds that steep decline in the export price from China PR forced the domestic industry to reduce its selling prices, resulting in increase in financial losses to it. Further, the domestic industry was not able to operationalise its full capacities affecting its capacity utilisation. The domestic industry thus suffered material injury from dumped imports.

K. INDIAN INDUSTRY'S INTEREST & OTHER ISSUES

30. The purpose of anti dumping duties, in general, is to eliminate dumping which is causing injury to the domestic industry and to re-establish a situation of open and fair competition in the Indian market, which is in the general interest of the country.

31. It is recognised, that the imposition of anti dumping duties might affect the price levels of the products manufactured using the subject goods and consequently might have some influence on relative competitiveness of these products.

However, fair competition on the Indian market will not be reduced by the anti dumping measures, 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 of the domestic industry and help maintain availability of wider choice to the consumers of subject goods. Imposition of anti dumping measures would not restrict imports from the subject countries in any way, and, therefore; would not affect the availability of the product to the consumers.

32. To ascertain the extent of anti-dumping duty necessary to remove the injury to the domestic industry, the Authority has relied on a reasonable selling price of Lovastatin in India, for the domestic industry, by considering the optimum cost of production at optimum level of capacity utilisation for the domestic industry.

L. LANDED VALUE

33. The landed value has been determined on the- basis of export price of Lovastatin from China PR, determined as detailed above in the para relating to dumping, after adding the prevailing level of customs duties and one percent landing and two percent handling charges.

M. CONCLUSIONS:

34. It is seen, after considering the foregoing, that:

- a. Lovastatin originating in or exported from China PR has been exported to India below normal value, resulting in dumping;
- b. The Indian industry has suffered material injury;
- c. The injury has been caused cumulatively by the imports from the subject country.

35. It is considered necessary to impose anti dumping duty, provisionally, pending final determination, on all imports of Lovastatin originating in or exported from the subject country, pending investigations.

36. It was considered whether a duty lower than the dumping margin would be sufficient to remove the injury. Landed price of the imports, for the purpose, was compared with the reasonable selling price of the domestic industry, determined for the period of investigations. Wherever the difference was less than the dumping margin, a duty lower than the dumping margin is recommended.

37. The anti-dumping duty shall be the difference between Rs. 191869 per kg. and the landed price of imports per kg, subject to a maximum of Rs. 73944 per kg.

38. Landed value of imports for- the purpose shall be the assessable value as determined by the customs under the Customs Act, 1962 and all duties of customs except duties levied under Section 3, 3A and 9 of the Customs Tariff Act, 1975.

N. FURTHER PROCEDURE:

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

- a. The Authority invites comments on these findings from all interested parties and the same would be considered in the final findings;

- b. The Authority would conduct verifications to the extent deemed necessary. No fresh evidence will be accepted at this stage;
- c. The Authority would provide opportunity to all interested parties for oral submissions, for which the date and time shall be communicated to all known interested parties separately;
- d. The Authority would disclose essential facts before announcing final findings.

RATHI VINAY JHA,
Designated Authority