

Ministry of Commerce & Industry
(Department of Commerce)
(DIRECTORATE GENERAL OF ANTI-DUMPING AND
ALLIED DUTIES)

NOTIFICATION

New Delhi, 31st July, 2003

Subject: Anti dumping investigation (Sunset Review) concerning imports of Vitamin-C from China and Japan – Final Findings

No. 14/14/2002-DGAD – Having regard to the Customs Tariff Act, 1975 as amended in 1995 and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, thereof.

A. PROCEDURE:-

1. The procedure described below has been followed with regard to the investigations:-

- i. The Designated Authority (hereinafter referred to as Authority) notified final findings vide Gazette Notification No. 11/1/97-ADD dated 25.05.1998 recommending imposition of anti-dumping duties on all imports of Vitamin C originating in or exported from China PR and Japan. The duties were imposed vide customs notification No. 53/987 dated 24.07.1998.
- ii. The Customs Tariff (Amendment) Act, 1995 and the Rules made thereunder require the Authority to review from time to time the need for the continued imposition of definitive anti-dumping duty imposed by the Central Government. Consequent upon a petition filed by one of the Indian Producers, the Authority issued Public Notice vide Notification No. 11/1/99 dated 9.7.1999 for initiation of mid-term review for the continuance of Anti Dumping Duty imposed on Vitamin-C originating in or exported from China PR and Japan and considered appropriate to continue the imposition of Anti Dumping Duty, which was notified vide final findings Notification dated 13.6.2000.
- iii. The domestic industry M/s. Sarabhai M. Chemicals has now submitted an application for continuance of Anti dumping Duty on Vitamin C originating in or exported from China PR and Japan for a further period of 5 years.

- iv. Having decided to review the existing Anti Dumping Duty in force, the Authority issued a public notice dated 14th August 2002 published in the Gazette of India, Extraordinary, initiating Sunset Review of anti-dumping duty concerning the subject goods originating in or exported from subject countries classified under heading 2936.27 of the Custom Tariff Act.
- v. The Authority forwarded a copy of the initiation notification, non confidential petition filed by the domestic industry and questionnaire proforma to following known exporters to furnish relevant information and their views on proposed continuance of Anti Dumping Duty:
 1. M/s. Takeda Chemical Ind.Ltd., Japan (M/s. BASF)
 2. M/s. National Chemicals & Pharmaceutical Corpn.,China
 3. M/s. Hebeu Whelcom, China
- vi. The Authority forwarded a copy of the initiation notification, non confidential petition filed by the domestic industry and questionnaire proforma to known importers and users of subject countries in India, to furnish relevant information and their views on proposed continuation of Anti Dumping Duty:
 1. M/s. Softesule Pvt.Ltd., Mumbai
 2. M/s. Pharmapak Pvt.Ltd., Mumbai
 3. M/s. ESPI Ind. & Chem.P.Ltd. Hyderabad
 4. M/s. Omni Protech Drugs Ltd. Pune
 5. M/s. E.Merck India Ltd. Raigarh
 6. M/s.Wyeth Laderle Ltd. Gujarat
 7. M/s. Saicure Pharma P.Ltd. Ahmedabad
 8. Anglo French Drugs & Ind.Ltd.,Bangalore
 9. M/s.Vital Therapecuties Pvt.Ltd.,Secunderabad
 - 10.M/s.Avitr Chemicals P.Ltd., Aurangabad
 - 11.M/s.Amstrin Pharma P.Ltd. Mumbai
 - 12.M/s. Swift Chem Ltd. Mumbai
 - 13.M/s. Stride Pharma Ltd., Mumbai
 - 14.M/s. Sai Mirra Innopharma, Chennai
 - 15.M/s. Sain Medicaments P.Ltd. Hyderabad
 - 16.M/s. Gandhi Pharma, Chennai
 - 17.M/s. Glaxo Smithline Pharma, Mumbai
 - 18.M/s. Heinz India Ltd. Aligarh
 - 19.M/s. Meyer Organics Ltd. Thane
 - 20.M/s. Torrent Pharma Lrd. Mehsana
 - 21.M/s.Sumae Pharma Pvt.Ltd., Bhimavaram
 - 22.M/s. Teekay Menthol P.Ltd. Mumbai
 - 23.M/s. Safex Int., Ahmedabad

- 24.M/s.Venky's India Ltd.
- 25.M/s. Kare Labs Pvt.Ltd., Goa
- 26.M/s. Remedex Pharma Pvt.Ltd., Bangalore
- 27.M/s.Liva Pharma Ltd. Nasik
- 28.M/s. Micro Nova Pharma, Bangalore
- 29.M/s. Bajaj Healthcare Pvt.Ltd., Mumbai
- 30.M/s.Chem Innova Remedies, Hyderabad
- 31.M/s. Emil Pharma Ind.,Thane
- 32.M/s.Dr. Reddy's Lab, AP
- 33.M/s.Pfizer Ltd. Mumbai
- 34.M/s.CFL Pharma Ltd., Goa
- 35.M/s.Beassica Pharma & Chem, Mumbai
- 36.M/s. Bezel Pharmacap. Bulsar
- 37.M/s. BASF India Ltd. Navi, Mumbai

- vii. The Authority forwarded copy of the initiation notification, non confidential petition filed by the domestic industry and questionnaire proforma to Embassy of subject countries in India, requesting them to advise the producers and exporters in their country to respond to the initiation notification in the prescribed proforma within the time limits prescribed.
- viii. None of the producers/exporters from subject countries responded with relevant information to the Designated Authority.
- ix. The Authority provided an opportunity to all interested parties to present their views orally on 15th January 2003. All parties presenting views orally were requested to file written submissions of the views expressed orally. The parties were advised to collect copies of the views expressed by the opposing parties and offer rebuttals, if any.
- x. Arguments raised by the interested parties in the form of written submission have been considered in the Final Findings.
- xi. In accordance with Rule 16 of the Rule supra, the essential facts/basis considered for these findings were disclosed to known interested parties and comments received on the same have been duly considered in these Findings.
- 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 all interested parties.
- xiii. The Authority also conducted cost investigation and worked out optimum cost of production/ cost to make and sell Vitamin-C in India on the basis of Generally Accepted Accounting Principles.
- xiv. The investigation covered the period 1st April 2001 to 31st March, 2002 (12 Months).

xv. *** in this notification represents information furnished by an interested party on confidential basis and so considered by the authority under the rules.

B. PETITIONER'S VIEW:

2. The Petitioners have made following major submissions:

2.1 The product involved in the present investigation is Vitamin-C in all its form and derivatives. It is also known as ascorbic acid. It is classified under customs sub-heading no. 2936.27 under the Customs Tariff Act. It is also known by various synonyms such as L-Xyloascorbic Acid, 3-oxo L-gulofuranolactone (enol form), L-3-Ketothreohexuronic Acid Lactone etc., as described under entry number "867 of MERCK INDEX".

2.2 The exporters from China continue to dump the material in India. In fact, the exporters from China further reduced the prices in respect of their exports to India. Thus, dumping intensified from China.

2.3 The price at which the material was being exported was not only dumped price but also caused material injury to the domestic industry. The imports from China continued to cause material injury to the domestic industry. Further, revocation of Anti Dumping Duty in force would result in continuance and recurrence of material injury to the domestic industry.

2.4 Other arguments advanced by the domestic industry have been dealt at respective places in these findings.

2.5 The petitioner has made following major submissions on the views expressed by BASF:

- a. BASF India or BASF Germany has not filed any questionnaire response. Thus, the present participation by BASF is without providing relevant information. Petitioner requests the Designated Authority to kindly declare BASF as non-cooperating party.
- b. The exporter has not brought out any grounds justifying withdrawal of duty. Mere argument that price of the product have shot up in the post investigation period does not call for termination of the investigation or withdrawal of duty. The data or information of post period of investigation has no relevance in an Anti Dumping Investigation. Petitioner understands that this is the practice of Designated Authority. In any case no parameter can be seen in isolation. It is not even denied by BASF that normal value has not increased in the post investigation period.

- c. Petitioner was earlier producing Vitamin-C from basic stage. However, continued dumping from a number of sources forced the domestic industry to switch over to intermediate, i.e. production from 2KGA (which is cheaper). Since the company is competent to produce from basic stage, non availability of 2KGA would not be a bottleneck with the petitioner. The whole argument of BASF is without merit and irrelevant.
- d. It is not understood how rising import prices of Vitamin-C would benefit those formulators who are under DPCO in case the anti dumping duty is continued. The product is not having ad-valorem or fixed amount of anti dumping duty. The product is having a variable form of duty and the same would decline in case the export price goes up.
- e. It would be seen that there is no merit in the arguments advanced by BASF. BASF has not disputed that dumping of the product continues and the injury to the domestic industry continues. Nor has BASF argued that revocation of anti dumping duty would not result in recurrence of dumping and injury. Such being the case there are sufficient grounds to confirm continuation of anti dumping duty on imports of Vitamin-C from Japan and China.

C. Views of Exporters, Importers and Other Interested Parties:

Exporters

3.1 Submission made by BASF AG

- a. BASF AG has stated that it was not provided non-confidential version of the review petition filed by the domestic industry. The local producer Sarabhai Chemicals has filed this review petition with a request to the Authority to consider extending the current Anti Dumping Duties.
- b. BASF AG has stated that it has not exported any Vitamin-C of Japanese Origin to India during the period of investigation.
- c. BASF is of the opinion that the local producer has been given enough time and opportunity to improve their position for the past 5 years and in case after this period they have still been unable to make progress, logically there is no justification for a further extension.

Importers

3.2 Submissions made by M/s. Bajaj Health Care Pvt. Ltd. Mumbai

In response to the initiation, they requested for a copy of non-confidential version of the petition for making their submissions. As requested, a copy of non-confidential version was forwarded to the company vide our letter no.14/14/2002-DGAD dated 6.1.2003. In response to disclosure, they have given their submissions highlighting various issues which have been dealt at relevant paragraphs in these findings. Some of the major issues raised by the Company are:-

- i. Complete information are not made available in the non-confidential version of the petition of the domestic industry.
- ii. Procedure followed by the Designated Authority are contrary to the provisions law. As per notice on Initiation dated 14.8.2002 does not contain adequate information as per rule 6(1).
- iii. The scope of investigation to be restricted only to Vitamin 'C' of specification BP/USP imported into India from subject countries.
- iv. Petitioner has no standing to file the petition on behalf of the domestic industry.
- v. The petitioner has marked the information relating to normal value and export price as confidential.
- vi. Petitioner has not submitted the required information as per application proforma IVA & IVB prescribed by the Authority.
- vii. Under the provision of rules 12(1), the Authority is duty bound to record a preliminary finding regarding dumping injury and causal link in the above anti dumping investigation.
- viii. The petitioner claims that the cost of production i.e. substantial decreased, however, the Authority wrongly states that there is increase in cost of production of petitioners.
- ix. Authority in the contravention of the Rule, has arbitrarily determined, margin of dumping for all procedures of Vitamin 'C' in China and Japan (Rule 17(3))

3.3 M/s Liva Health Care Ltd, Mumbai

They have stated that their consumption of Vitamin C is negligible and they would not participate in the public hearing / investigation;

D. EXAMINATION AND FINDINGS BY AUTHORITY

4.0 The submission made by the importers, exporters, users, domestic industry and other interested parties have been examined and considered while arriving at these findings and wherever appropriate have been dealt hereinafter.

The cases of new exporters or those stated to be willing to give price undertaking shall be considered, on request, by the Authority in accordance with the Rules supra.

E. PRODUCT UNDER CONSIDERATION

5.0 The product under consideration in the present investigation is Vitamin C and most commonly used synonyms of Vitamin C like Ascorbic Acid, L-Xyloascorbic Acid, 3-Oxo-L-gulofuranolactone (enol form), L-3-Ketothreohexuronic Acid Lactone etc., as described under entry number" 867 of MERCK INDEX"(also referred as subject goods) originating in or exported from China and Japan. Vitamin C is classified under the Customs sub-heading no. 2936.27 in the Customs Tariff Act, 1975. The classification is, however, indicative only and in no way binding on the scope of the present investigation.

5.1 It has been argued by Bajaj Healthcare that there is a difference in production process employed by the domestic industry and by the producers in the subject countries. The Authority notes that neither the producers in the subject countries responded to the Review investigation, nor claimed a difference in the production process nor M/s. Bajaj Healthcare has either submitted any documentary evidence on the alleged difference and quantified the same. Under the circumstances, the argument with regard to alleged difference in the manufacturing process is rejected.

5.2 With regard to the difference in the production process, the authority notes that no cogent reasons have been adduced to justify restricting the scope of product under consideration to pharma grade. It has not been established that this was the only form of Vitamin-C imported into India. Further, it has not been established that pharma grade Vitamin-C and other types are different products and can not be technically and commercially substitutable. The authority notes that the importers M/s. Bajaj Healthcare has not provided information as per importers' questionnaire. The authority, therefore, holds that the product under consideration includes all forms of Vitamin-C.

5.3 In view of the above, the Authority confirms that the product under consideration in the present investigation is Vitamin-C, originated and exported from China and Japan. Vitamin-C is classified under the Customs subheading no. 2936.27 under the Customs Tariff Act, 1975. The classification is, however, indicative only and in no way binding on the scope of the present investigation.

F LIKE ARTICLES

6.0 Rule 2(d) of the Anti dumping Rules specifies that "Like Articles" means an Article, which is identical or alike in respects to the product under investigation or in the absence of such an Article, another article, having characteristics closely resembling those of the articles under examination

The Authority notes that the Vitamin-C produced and sold by domestic industry and those imported from the subject countries have similar characteristics and should be treated as like articles. Vitamin-C produced by the petitioner and imported from China are comparable in terms of characteristics such as physical and chemical properties, functions & uses, product specifications, pricing, distribution & marketing and tariff classification of the goods. While the argument of an importer with regard to difference in the production process is unsubstantiated and unquantified, even if it is assumed that there is a difference in the production process, Vitamin-C produced by the domestic industry and imported from China are technically and commercially substitutable. The consumers are using the two interchangeably.

7.0 The Authority finds that there is no other argument disputing that Vitamin C produced by the domestic industry has characteristics closely resembling the imported material and is substitutable to Vitamin C imported from the subject countries both commercially and technically. Opposing interested parties have failed to establish that Vitamin C produced by the domestic industry is not a like article to the imported product. Vitamin-C produced by the domestic industry has been treated as Like Article to the product exported from China within the meaning of Rule 2(d).

G DOMESTIC INDUSTRY

8.1 The present investigations are sunset review investigations to examine whether cessation of Anti Dumping Duty in force would lead to recurrence or continuance of dumping and injury. Further, a petition was filed by M/s. Ambalal Sarabhai Enterprises Limited having its Registered Office at Wadi, Baroda-390007. There are a number of other producers of Vitamin C in India. M/s. Amoli Organics Limited, is also a producer of the product, who has supported the petition. Earlier, M/s. Jayant Vitamin Limited had created capacity for production of Vitamin-C. However, the company has suspended the production for a long time. The information furnished by National Pharmaceutical Pricing Authority (NPPA) corroborates this fact.

8.2 Authority notes, M/s New S-hem Search Ltd, Vadodara & M/s Kerbs Bio Chemicals Ltd. Hyderabad have started production after the period of investigation; whereas, other units, M/s Cardinals Drugs Ltd, M/s Tonira Pharma etc are reported making the product for export purposes. While M/s Bajaj Health Care has disputed standing of Ambalal Sarabhai as domestic industry, the Company has not given any quantified data either about any of these companies or their own status with regard to subject goods.

8.3 Ambalal Sarabhai has provided information relevant to determination of standing and scope of domestic industry. As regards standing requirement, it is

reiterated that the present investigations are review investigations, initiated in accordance with Section 9A(5) and Rule 23 and, therefore, requirements under Rule 5 are not attracted.

8.4 It is clarified that Amoli Organics has supported the petition. Moreover, production of Ambalal Sarabhai alone constitute a major proportion of the Indian Production.

8.5 In view of the foregoing and after carefully going through the arguments advanced by various interested parties, the authority holds that Ambalal Sarabhai accounts for a major proportion of Indian Production and thus constitutes domestic industry under anti-dumping duty Rules.

9.0 NORMAL VALUE, EXPORT PRICE, DUMPING MARGIN

9.1 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 rule 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 mark 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 exporter 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 alongwith 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 of there is no comparable price in the country of export, the normal value shall be determined with reference to its price in the country or origin"

9.2 Submissions made by M/s.BASF Aktiengesellschaft, Ludwigshafan, Germany:

Vide their fax dated 19th September, 2002 in response to the initiation of Sunset Review investigation, they have stated that:

- a. They are one of the major producers and suppliers of Vitamin 'C' globally and wished to respond to the investigation.
- b. With effect from 4th January, 2001, M/s. BASF and Takeda, Japan have merged their water soluble vitamin business. Under terms of agreement, Takeda, Japan would continue to produce water-soluble vitamins including Vitamin 'C' at their manufacturing location in Hikari, Japan.
- c. M/s. Takeda, Japan does not market the products as this is the responsibility of BASF and its group companies.
- d. BASF did not export any Vitamin 'C' of Japanese origin manufactured by Takeda, Japan to India during the period of investigation.
- e. BASF did not export any Vitamin C of Chinese origin to India during the period of investigation.
- f. As regards to exports to India in future they would request for a new shipper review.

9.3 Submissions made by the domestic industry :-

- a. The Authority sent questionnaire to all the known exporters and producers of Vitamin-C in subject Countries. However, none of the exporters from subject countries responded to the Authority and furnished any information in the form and manner prescribed by the Authority. The Authority is, therefore, fully justified in proceeding with best available information, i.e., constructed normal value.
- b. The petitioner has claimed export price based on the data published by the DGCI&S, Calcutta. Export price has been adjusted for commission, inland freight, overseas freight, packing & handling charges.

9.4 Authority's Position – Determination of normal value and export price

The Authority sent questionnaire to all the known exporters and producers of Vitamin-C in subject countries. However, none of the exporters from subject countries responded to the Authority in the form and manner prescribed by the Authority. The Authority has therefore no option but to proceed on the basis of best available information available on record of the Designated Authority, in terms of Rule 6(8) of Anti Dumping Rules.

Petitioner claimed normal value based on estimates of cost of production. The Authority has carefully examined the information and evidence presented by the petitioner with regard to cost of production and have carried appropriate adjustments.

The normal value has thus been determined on the basis of constructed cost of production.

The petitioner has claimed export price based on the data published by the Directorate General of Commercial Intelligence & Statistics, Kolkata. In the absence of any cooperation from any exporter from China, Designated Authority has determined export price on the basis of information as per DGCI&S.

The DGCI&S prices are CIF prices. For comparison at same level of trade, the Authority has adjusted the export price for commission, inland freight, overseas freight, packing, and handling charges on the basis of information furnished by the petitioner and best information available with the Authority.

The Authority notes that the volume and CIF price of imports from Japan are 1699 Kg. @Rs 800.17 per kg. The volumes are de minimus and no dumping margin has been determined.

9.5 DUMPING MARGIN

The Rules relating to determination of dumping margin provide comparison of normal value and export price provides as under: -

"6.(I) 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 the ex-factory level and in respect of sales made at a nearly as possible the same time. Due allowance shall be made in each case, on its merits, for differences which affect price comparability, including differences in conditions and terms of sale, taxation, levels of trade, quantities, physical characteristics, and any other differences which are demonstrated to affect price comparability."

9.6 For the purpose of fair comparison between normal value and export price the Authority has considered the information furnished by the petitioner and the best information available. The comparison has been done at ex-factory level, as both the normal value and export price are at ex-factory level. The comparison shows the following dumping margins: -

Country	Normal value US\$/Kg	Export Price US\$/Kg	Dumping Margin US\$/Kg	DM as % of Export price
China	***	***	***	208.13
Japan	---	----	-----	De-minimus

The Authority holds that the volume of imports as also dumping margin from Japan is de-minimus.

INJURY:

10.0 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;

10.1 Submission made by BASF AG

- a. There are at least three other Indian producers and they will also be affected due to the non-availability of the intermediate 2Keto Gulonic (2KGA) which all of them import from China. BASF understands that currently there are no offers or shipments from China for this intermediate and this situation will continue. The price of intermediate has increased and this situation will also continue. In case the current trend of prices continues, BASF fears that no 2KGA will be available from China, as Chinese producers would like to realise better value-addition for finished products.
- b. The sudden and drastic change in the price of intermediates would have already disturbed the profitability of formulations which are all under the Drug Price Control Order.
- c. The present world market prices, demand and supply position is completely different as compared to the period of investigation. Therefore, there is no likelihood of the recurrence of any injury and there is no justification for extension of the anti-dumping duty.

10.2 Submissions made by the domestic industry :- The domestic industry has provided all information relevant to injury determination desired by the Authority. Further, the domestic industry has made following major submissions:-

- a. BASF has not brought out any grounds justifying withdrawal of duty. Mere argument that price of the product have shot up in the post investigation period does not call for termination of the investigation or withdrawal of duty. The

data or information of post period of investigation has no relevance in an Anti Dumping Investigation. Petitioner understands that this is the practice of Designated Authority. In any case no parameter can be seen in isolation. It is even denied by BASF that normal value has not increased in the post investigation period.

- b. It has been stated by BASF that the enough protection has been given to the domestic industry and, therefore, Anti-Dumping duty should be revoked. Petitioner submits that BASF is not the adjudicating authority.
- c. The duty can be revoked only if both dumping and injury have got eliminated. It is not even the case of BASF that dumping has ceased from the subject countries.
- d. In the instant case, the exporters have, in fact, reduced the prices and have absorbed anti dumping duty in force to some extent. Thus, in spite of imposition of anti dumping duty on imports from subject countries, dumping has continued and domestic industry continues to suffer injury.
- e. The Petitioner was earlier producing Vitamin-C from basic stage. However, continued dumping from a number of sources forced the domestic industry to switch over to intermediate. i.e. production of 2KGA (which is cheaper). Since the company is competent to produce from basic stage, non availability of 2KGA would not be a bottleneck with the petitioner. The whole argument of BASF on this issue is without merit and irrelevant.
- f. It is not understood how rising import prices of Vitamin-C would benefit those formulators who are under DPCO in case the anti dumping duty is continued. The product is not having ad-valorem or fixed amount of anti dumping duty. The product is having a variable form of duty and the same would decline in case the export price goes up.
- g. It would be seen that there is no merit in the arguments advanced by BASF. BASF has not disputed the argument of the domestic industry that dumping of the product continues and the injury to the domestic industry continues. Nor has BASF argued that revocation of anti dumping duty would not result in recurrence of dumping and injury. Such being the case there are sufficient grounds to confirm continuation of anti dumping duty on imports of Vitamin-C from subject countries.
- h. The Designated Authority is required to assess whether cessation of such duty is likely to lead to continuation or recurrence of injury. Under the Rules, the duty is required to be extended for a further period of five year in case removal of the anti dumping duty in force would result in recurrence of injury to the domestic industry. Petitioner states that injury to the domestic industry is required to be seen in the light of existing duties and injury due to dumping from other countries.

- i. The exporter and producer from China are still dumping Vitamin-C in the Indian market. Petitioner submits that the price at which material is being exported from China is significantly lower than the selling price of the domestic industry.
- j. The domestic industry has been forced to sell its material at below its fair value, since the domestic industry was forced to match the price. Thus, the imports forced the domestic industry to undersell the product. The company continues to suffer financial losses in spite of imposition of anti dumping duty on a number of sources and significant reduction in cost of production. Dumped imports from various sources forced the company to lower the prices, even below the cost of production.
- k. The Landed price of import without prevailing anti dumping duties is significantly below the selling price of domestic industry.
- l. The selling price of domestic industry over the years has declined in the spite of existing anti dumping duties on a number of sources.
- m. The landed value of imports was not only below the selling price of the domestic industry but also below the cost of production of the domestic industry. Thus imports were causing severe price suppression/depression in the Indian market.
- n. The dumping margin from China is not only more than de-minimus, but also very significant. Significant dumping margins have very adversely effected the performance of the domestic industry.
- o. The dumping from subject countries is very adversely affecting the cash flow situation of the domestic industry.
- p. The domestic industry has not increased employment to a significant degree in spite of addition of capacities. This is due to continued losses being faced by the domestic industry.
- q. There is no significant change in demand of Vitamin-C in India.

10.3 Examination of the Authority

1. With regard to recurrence or continuance of injury, Section 9A (5) states as under:-

(5) The Anti dumping duty imposed under this section shall, unless revoked either, cease to have effect on the expiry of five years from the date of such imposition;

Provided that if the Central Government, in a review, is of the opinion that the cessation of such duty is likely to lead to continuation or recurrence of dumping and injury, it may, from time to time, extend the period of such imposition for a further period of five years and such further period shall commence from the date of order of such extension;

Provided further that where a review initiated before the expiry of the aforesaid period of five years has not come to a conclusion before such expiry, the Anti Dumping duty may continue to remain in force pending the outcome of such a review for a further period not exceeding one year.

Authority notes that volume of imports from Japan are de-minimus. The Authority holds that revocation of Anti Dumping Duty on imports from Japan would not lead to recurrence or continuance of injury to the domestic industry.

2. Substantial increase in import from the subject countries in absolute term:

The imports of Vitamin-C from the subject countries is significant in absolute terms.

Annexure-II (ii) of the Indian Anti-dumping rules provides as under: -

"While examining the volume of dumped imports, the said authority shall consider whether there has been a significant increase in the dumped imports, either in absolute terms..."

In the instant case, imports of Vitamin-C from China in absolute terms are significant, as may be seen from the table below:

Particulars	Unit	1998-99	1999-00	2000-01	2001-02
Imports					
Imports-China*	MT	405.54	227.73	290.67	130.97
Imports-Japan*	MT	312.70	239.70	49.50	1.70
Imports EU and Russia*	MT	267.20	631.60	43.54	16.84
Imports from -Countries attracting duty*	MT	985.45	1099.03	383.70	149.51
USA	MT	63.11	134.76	51.33	230.51
Canada	MT	0.00	7.00	27.40	152.08
USA, Canada	MT	63.11	141.76	78.72	382.58
Imports Other than above	MT	9.36	41.78	18.00	76.31
Total Imports	MT	1057.91	1282.57	480.43	608.41
<i>* Countries already attracting Anti Dumping Duty.</i>					
Total Domestic Production	MT	269.28	237.25	544.88	456.30
Demand in the Country	MT	1327.20	1519.82	1025.31	1064.71
Market share in Imports					
China *		38.33	17.76	60.50	21.53
Japan *		29.56	18.69	10.30	0.28
Other Countries attracting duty	%	25.26	49.24	9.06	2.77
USA	%	5.97	10.51	10.68	37.89
Canada	%	0	0.55	5.7	25
Imports from Other countries	%	0.88	3.26	3.75	12.54
Total	%	100	100	100	100

Import data *As per DGCI&S*

It may be seen from the above table that even though there is a decline in the import volumes from China, the same are still very significant. The volume of imports must be seen in the light of the fact that there is an Anti Dumping Duty in force on the product. Moreover, what is more relevant in the present case is whether cessation of Anti Dumping Duty in force would result in recurrence or continuance of injury to the domestic industry. Thus, absolute increase in import volumes is not a precondition for examination of continuance or recurrence of injury. Existence of significant volumes of imports at dumped prices is sufficient for the purpose.

3. Significant decline in export price:

More significant than the volume of imports is the price effect of imports. The exporters from the subject country have reduced the prices significantly, as may be seen from the following table:

Rs. Per KG	1998-99	1999-00	2000-01	2001-02
CHINA PR	231.66	226.14	213.57	188.50

It is evident from the above, average export price from subject country has declined. The above prices must be seen under the circumstances of the present case that there is an Anti Dumping Duty in force on the product. There appears to be a tendency on the part of the exporters to absorb the Anti Dumping Duty earlier imposed.

Various parameters relating to the performance of the domestic industry shows as under: -

4. Production of the domestic industry:

The production of the domestic industry which had increased over the years till 2000-01, declined in the period of investigation. Further, the price at which the industry has been forced to sell the product is not remunerative price and is, therefore, causing injury to the domestic industry.

5. Sales volume of the domestic industry

Authority notes that the sales volume of the domestic industry have declined in the investigation period as compared to previous year, even though the same were increasing till 2000-01. Further, the domestic industry has been forced to sell at prices significantly below cost of production, resulting in continuous losses.

6. Selling price

The industry has been forced to reduce its selling prices, in view of dumped imports from a number of countries present in the market. Even though selling price increased marginally in 2000-01 over 1999-00, the same declined again in the investigation period.

7. Price undercutting

The Authority notes that the dumped imports have forced the domestic industry to reduce its prices in spite of increase in the cost of production. The landed value of the imported material is significantly below the selling prices of the domestic industry, causing severe price undercutting in the Indian market. The price undercutting is in spite of sub-optimal prices.

8. Profitability

The Authority notes that the industry has been forced to keep its selling prices below its cost of production, resulting in continued financial losses to the domestic industry. The production of the domestic industry increased when compared to 1998-99. However, higher production did not help the domestic industry in improving its profits and the domestic industry continued to make losses.

9. Price suppression/depression

The Authority notes that the landed value of the imported material is significant below the cost of production of the domestic industry causing price suppression / depression in the Indian market.

10. Employment and wages

The domestic industry has been forced to reduce number of employees. Further, the wages paid by the domestic industry has also declined as a direct consequence of reduction in number of employees.

11. Inventories

Inventories with the domestic industry have declined. However, decline in inventories must be seen alongwith decline in the production itself.

12. Cash Flow

On the lines of profitability, the domestic industry is suffering continuous cash losses (except 2000-01) from sale of the product due to continued dumping of the product in the market. Further, cash losses which were showing decline till 2000-01 and the domestic industry made cash profit in 2000-01, again turned into cash losses in the investigation period.

13. Productivity

On the lines of changes in production, productivity of the domestic industry increased upto 2000-01. The same has, however, declined again in the investigation period as compared to previous year.

14. Growth

On the lines of production and sales, growth of the domestic industry was positive upto 2000-01 (even though the same was negative in 1999-2000), the same became negative in the investigation period.

15. Ability to raise fresh Investment

The domestic industry is finding it difficult to plan fresh investments given that the performance has materially deteriorated.

16 With regard to recurrence or continuance of injury to the domestic industry, as stated earlier, the Authority is required to examine whether cessation of Anti Dumping Duty in force is likely to lead to continuance or recurrence of injury to the domestic industry. In the instant case, following parameters shows that the cessation of anti dumping duty on imports from China is likely to lead to continuation or recurrence of injury.

1. While actual volume of production and sales the domestic industry have declined after showing an increase, cessation of anti dumping duty is likely to lead to further decline in sales and hence production volumes. This would adversely affect the utilization of capacity, productivity, growth and inventories also.
2. While the actual profits realized by the domestic industry over the past few years show adverse trend, cessation of anti dumping duty is likely to lead to further deterioration in profits. This would adversely affect return on investments and cash flow also.
3. While the import price of Vitamin-C during POI from China are already having adverse impact on the prices of the domestic industry, cessation of anti

dumping duty in force would lead to further adverse impact on the prices, as the level of price undercutting and underselling would further increase.

10.4 In view of the above, it is concluded that cessation of anti dumping duty in force against Chinese imports would likely to lead to continuation or recurrence of both dumping and injury.

10.5 **Conclusions:**

- a. The dumping margins from China is significant and volume of imports are more than de-minimus;
- b. Imports from China have remained at very significant levels even after imposition of Anti Dumping Duty, both in absolute terms as also relative to production and consumption in India.
- c. The export price from the subject countries has declined.
- d. Selling price of the domestic industry have declined. The decline in the prices is in spite of the fact that the domestic industry was selling at sub-optimal prices (and was facing financial losses).
- e. The imports were causing severe price undercutting and prevented the domestic industry from effecting legitimate price increases;
- f. The domestic industry has been forced to sell at prices significantly below cost of production.

It may thus be seen that the industry has suffered material injury. It is further seen that injury to the domestic industry would continue should the Anti Dumping Duty in force be revoked.

K CAUSAL LINK:

11.0 The Authority holds that the material injury to the domestic industry has been caused by imports from China PR (subject country) that are major exporters of Vitamin C to India. The Authority notes that import prices from the subject country have undercut the price of the domestic product forcing the domestic industry to sell below its cost of production and non-injurious price which resultantly, the domestic industry was unable to recover. The material injury to the domestic industry was therefore caused by the dumped imports from the subject country.

11.1 Volume and value of imports from other countries are either de-minimus or the prices are significantly higher or are already attracting anti-dumping duties.

11.2 Demand for the product is on the increase. While the demand between 1998-99 and the investigation period shows declining trend, it is found that the same has

increased between the investigation period and the previous year. Further, between 1998-99 and the investigation period, while the sales of the domestic industry shows a positive trend, total imports have declined significantly. Petitioner has alleged that the imports are not fully being reported in the data being compiled and released by the DGCI&S. In any case, since the sales of the domestic industry shows increase between 1998-99 and the investigation period, decline in the demand has not caused injury to the domestic industry. As regard decline in sales volumes in the investigation period as compared to previous year, it is noted that demand has rather increased and while the domestic industry has lost sales, the imports have increased significantly.

11.3 Factors such as changes in pattern of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance does not appear to be a cause of injury to the domestic industry.

11.4 The following factors establishes that injury to the domestic industry has been caused due to dumped imports: -

- a. Landed price of imports from the subject countries was significantly lower than the selling price of the domestic industry, preventing the domestic industry from realizing fair prices after imposition of anti dumping duty on other sources earlier found to be dumping.
- b. Imports from the subject countries have increased significantly. As a direct consequence, sales of the domestic industry have declined.
- c. Market share of domestic industry in demand in the Country increased with imposition of anti dumping duty on a number of sources. However, the same declined again with continued dumping from China and continued dumping from other sources.
- d. In spite of imposition of anti dumping duty on a number of countries, the profitability of the domestic industry has not improved due to continued dumping experienced from China PR and continued dumping from a number of countries.

L Indian Industry's Interest and other issues:

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

12.1 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 petitioner companies. On the country, imposition of anti dumping measures would remove the unfair advantages gained by dumping practices, would prevent the decline of the petitioner company(ies) and help maintain availability of wider choice to the consumers of Vitamin-C. Imposition of anti dumping measures would not restrict imports from the subject country/ies in any way, and therefore, would not affect the availability of the product to the consumers.

12.2 To ascertain the extent of anti-dumping duty necessary to remove the injury to the petitioner companies, the Authority has relied upon non-Injurious selling price of Vitamin-C in India for the petitioner companies, by considering the optimum cost of production at optimum level of capacity utilization for the petitioner companies.

M. LANDED VALUE :-

13.0 The landed value of imports is determined on the basis of export price of Vitamin C determined as detailed above in the para relating to dumping, after adding the prevailing level of customs duties and one per cent landing charges.

N. CONCLUSIONS;

14.0 The Authority, after considering the foregoing, concludes that

- a. Vitamin-C (Ascorbic Acid) originating in or exported from China has been exported to India below normal value, resulting in dumping. Cessation of Anti Dumping Duty in force would result in continuation of dumping of Vitamin-C in the Market;
- b. The Indian industry has suffered material injury. Cessation of Anti Dumping Duty in force would result in continuation of injury to the domestic industry;
- c. The injury has been caused cumulatively by the dumped imports.

It is considered necessary to continue definitive anti-dumping duty, on all imports of Vitamin-C originating in or exported from China PR.

15.0 The Authority considered recommending the amount of Anti-Dumping Duty equal to the margin of dumping or less, which if levied, would remove the injury to domestic industry. The average landed price of the imports, for the purpose, was compared with the non-injurious selling price of the domestic industry, determined for the period of investigation. Wherever the difference was less than the dumping

margin, a duty lower than the dumping margin is recommended. It is considered necessary to impose definitive antidumping duty, on all imports of Vitamin C originating in or exported from China PR.

16.0 Accordingly, the Authority has therefore, decided to recommend definitive Anti-dumping Duty to be imposed, on all imports of Vitamin-C and most commonly used synonyms of Vitamin C like Ascorbic Acid, L-Xyloascorbic Acid, 3-Oxo-L-gulofuranolactone (enol form), L-3-Ketothreohexuronic Acid Lactone etc., as described under entry number " 867 of MERCK INDEX"(also referred as subject goods) falling under Custom Heading 293627 originating in or exported from China PR. The Anti-Dumping duty shall be the difference between the amount mentioned in column (9) table below and the landed value of imports per kg to be imposed on all imports of subject goods falling under Chapter 29 of the Customs Tariff, originating in or exported from subject countries : -

Sl. No	Currency	US \$	US \$
1.	Unit of Measurement	Kilogram	Kilogram
2.	Amount	10.11	10.11
3.	Exporter	Any Exporter	Any Exporter
4.	Producer	Any Producer	Any Producer
5.	Country of export	Any Country	China PR
6.	Country of Origin	China PR	Any country except China PR
7.	Specification	Any Specification	Any Specification
8.	Description of goods	Vitamin C & its synonyms	Vitamin C & its synonyms
9.	Sub Heading	293627	293627

18.0 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, 8B and 9, 9A of the Customs Tariff Act, 1975.

19.0 An appeal against this order shall lie to the Customs, Excise and Gold (Control) Appellate Tribunal in accordance with the Act supra.

(LV Saptharishi),
Designated Authority