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F. No. 26/1/2000-DGAD

Government of India
Ministry of Commerce & Industry
Department of Commerce
Directorate General of Anti-Dumping & Allied Duties

New Delhi, the 26th June, 2001

FINAL FINDINGS

Subject: Anti dumping investigation concerning imports of Theophylline and Caffeine from European Union: Final Findings

26/1/2000-DGAD: Having regard to the Customs Tariff Act 1975 as amended in 1995 and the Custom 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:

- i. Based on the petition filed by from M/s. Kores (India) Limited, Thane, M/s. Bakul Aromatics & Chemicals Ltd., Mumbai and M/s. Valiant Industries Limited, Mumbai investigation against imports into India of Theophylline & Caffeine (hereinafter referred to as subject goods) from the territory of EU (hereinafter referred to as subject country) were initiated vide notification of number 26/1/2000-DGAD dated 11.7.2000.
- ii. The Designated Authority (hereinafter also referred to as the Authority) notified preliminary findings vide notification dated 2.1.2001 on anti-dumping investigation concerning imports of Theophylline & Caffeine from European Union and requested the interested parties to make their views known in writing within forty days from the date of its publication;
- iii. The Authority forwarded a copy of the preliminary findings to the known interested parties, who were requested to furnish their views, if any, on the preliminary findings within forty days from the date of its publication;
- iv. The Authority also forwarded a copy of the preliminary findings to the Delegation of European Commission in New Delhi with a request that the

- exporters and other interested parties may be advised to furnish their views on the preliminary findings in the time frame as stipulated in (ii) and (iii) above.
- v. The Authority provided an opportunity to the interested parties to present their views orally on 6.2.2001. All parties presenting views were requested to file written submissions of their views expressed. The parties were advised to collect copies of the views expressed by the opposing parties and offer rebuttals, if any;
 - vi. The Authority made available the public file to all interested parties containing non-confidential version of all evidence submitted by various interested parties for inspection, upon request;
 - vii. Argument raised by the interested parties before announcing the preliminary findings, which have been brought out in the preliminary findings notified have not been repeated herein for sake of brevity. However, the arguments raised by the interested parties subsequently have been appropriately dealt in these findings;
 - viii. In accordance with Rule 16 of the Rules *supra*, the essential facts/basis considered for these findings were disclosed to known interested parties and comments received on the same have also been duly considered in these findings;
 - ix. The period of investigation (POI) considered is 1.4.1999 to 31.3.2000;
 - x. ***** in this notification represents information furnished by the interested party on confidential basis and so considered by the Authority under the Rules;

B. VIEWS OF PETITIONERS, EXPORTERS, IMPORTERS AND OTHER INTERESTED PARTIES AND EXAMINATION BY AUTHORITY

2. The views expressed by various interested parties have been discussed in the preliminary findings and also in the disclosure statement. The views which have not been discussed earlier in the preliminary findings and disclosure statement and those now raised in response to the disclosure statement are discussed in the relevant paragraphs herein below to the extent these are relevant as per rules and have a bearing upon the case. The arguments raised by the interested parties have been examined, considered and, wherever appropriate, dealt in the relevant paragraphs herein below. Here it may be mentioned that none of the interested parties has raised any argument for or against anti dumping duty levied in the case of Theophylline, its derivatives, its salts, etc. All the comments made are in respect of Caffeine, its salts, its derivatives, etc., and product being imported in natural crude or pure form.

3. M/s. Shri Ahimsa Mines and Minerals Ltd., Jaipur- Vide their letter dated 23.2.01, received in this Directorate, M/s. Shri Ahimsa Mines and Minerals Ltd. have stated

that they are importers of crude caffeine natural which is their basic raw material and that they are an interested party to this investigation. They requested that a copy of the petition and other documents received from various parties be provided to them in order to enable them to make submissions. M/s. Shri Ahimsa Mines and Minerals Ltd. were provided with all the non confidential papers from public file and an opportunity was given to them to offer their comments on the disclosure statement. M/s. Shri Ahimsa Mines and Minerals Ltd. have made detailed comments on various aspects of the investigation such as the initiation of investigation, definition of product under consideration, like article and the standing of the domestic industry, access to confidential information, etc.

4. The domestic industry has argued that M/s. Shri Ahimsa Mines and Minerals Ltd. is a 100% EoU and because of the notification of the Department of Revenue exempting imports made by 100% EoU from payment of anti dumping duty they are not affected by the anti dumping investigation. It has also been stated by the domestic industry that participation by M/s. Shri Ahimsa Mines and Minerals Ltd. at such a late stage in the investigation should not be allowed as there are prescribed time limits at each stage in the investigation. Permitting fresh submissions to be made at such a late stage will delay the process of investigation and it is not fair to others who have participated in the investigation and made submissions in time.

5. Examination by Authority: As per Rule 2© of the Anti Dumping Rules -

"Interested party" includes –

- i. an exporter or a foreign producer or the importer of an article subject to investigation for being dumped in India, or a trade or business association a majority of the members of which the producers, exporters or importers of such an article;
- ii. the government of the exporting country; and
- iii. a producer of the like article in India or a trade and business association a majority of the members of which produce the like article in India".

As per the evidence available before the Authority, M/s. Shri Ahimsa Mines and Minerals Ltd. is 100% export oriented unit (EoU) and imports made by them during the period of investigation were made for use for 100% EoU only. Though as per Rule 2©, mentioned above, an importer of an article is an interested party but in this case import is being done for export which does not enter into the commerce of the country. Without going into the issue of as to whether M/s. Shri Ahimsa Mines and Minerals Ltd. is an interested party or not, the Authority has decided to take into account the submissions made by them on various issues to the extent these are

relevant to the investigation and address the same at appropriate places in the findings given below.

C. Product under Consideration and Like Article

6. It was mentioned both in the initiation notification as well as in the preliminary findings that the product under consideration are Theophylline, its derivatives, salts thereof and Caffeine, its derivatives and its salts and includes these products in pure as well as crude form. Theophylline and Caffeine are organic chemicals classified under chapter 29 of the Custom Tariff Act. Both are used for pharmaceutical formulations and Caffeine is also used for beverages and soft drinks. The products are defined under Customs sub-heading 2939.30 and 2929.50. The classification is, however, indicative only and is not binding on the scope of the present investigation.

7. Further, in the preliminary findings, the representation made by M/s. Shri Ahimsa Mines and Minerals Ltd. for exclusion of crude caffeine natural from the scope of investigation was taken into account and it was decided to include crude caffeine natural within the scope of investigation and treat it as 'like article' to the product under consideration. It was argued by importers that the production process as well as the raw materials used for product under consideration are different from those required for synthetic caffeine. However, since synthetic and natural caffeine are close substitutes and are used interchangeably the Authority decided to keep crude caffeine within the scope of investigation.

8. In reply to the preliminary findings, M/s. Ahinsha Chemicals Ltd., who are the importer of crude caffeine (natural) have made the following submissions regarding product under consideration:-

- i. The process of manufacture of caffeine from crude caffeine (natural) is entirely different from the process of manufacture by synthetic route. Further, crude caffeine (natural) and crude caffeine synthetic cannot be equated and be treated at the same footing just on the ground that both of them lead to caffeine.
- ii. Crude caffeine (natural) contains naturally different ingredient as compared with the ingredients contained in the synthetic caffeine being manufactured by the petitioner companies. These ingredients are in the form of tannin, polyphenol and chloroform.
- iii. It has been stated that the crude caffeine (natural) and caffeine are different product and cannot be equated with each other. The caffeine manufactured from natural crude caffeine is better than caffeine manufactured from synthetic route. The crude caffeine cannot be used in the manufacture of beverages, soft drinks and pharma industry. It is not a finished product and it should be taken

out of the scope of the investigation as this is not a like article to the goods manufactured by the petitioner.

- iv. It is further stated by M/s. Ahinsha Chemicals that even assuming that the final product of the respondents and the petitioners are 'like articles', even then this does not substitute with crude caffeine (natural). Thus import item i.e., crude caffeine natural is not a 'like article' to the caffeine manufactured by the petitioners.

9. In reply to the written submissions made above by M/s. Ahinsha Chemicals Ltd., the petitioner companies have argued as follows:-

- i. Indian industry produces caffeine through synthetic route. Such caffeine is produced first in its crude form and then further processed to obtain pure caffeine. The processing between crude and pure form is quite an insignificant activity in terms of total manufacturing process;
- ii. There is no significant difference between the crude caffeine imported from EU and crude caffeine produced by the domestic industry;
- iii. As admittedly argued by Ahinsha, crude caffeine (whether natural or synthetic) is necessarily required to be processed. The pure caffeine so processed results in caffeine closely resembling synthetic caffeine;
- iv. Even the distinction between crude and pure caffeine (whether obtained through synthetic or natural sources) is very thin and the two closely resemble each other;
- v. Assuming though not admitting that crude and pure form of a product imply two different products, it is submitted that conceiving the two as different product would imply continued injury to the domestic industries even after imposition of anti dumping duties. In every case, it would be feasible for any company to circumvent duties as the crude form of the product is obtained in most of the chemicals and petrochemicals. Thus the entire exercise would be a futile;
- vi. The fact that the data compiled by DGCIS does not differentiate between the crude caffeine and pure caffeine (whether natural or synthetic) and the fact that custom classification for both the products is the same further proves that they are products with closely resembling characteristics. Any minor differences in the two (such as purity) merely calls for a price adjustment which at best would have been argued by Ahinsha.

10. In their submissions, M/s. Shri Ahimsa Mines and Minerals Ltd. have stated that it is necessary to define the product under consideration and its like articles clearly in the petition and to identify all the interested parties and to have fair and proper investigation giving opportunity of submission to all interested parties. In this case, since the domestic industry have not defined any article other than Theophylline and

Caffeine i.e., they have not defined the salts and derivatives, definition of like article is not proper. The findings arrived at on the basis of this definition will be bad in law.

11. Examination by Authority: In the case of Theophylline, its derivatives, its salts etc., the Authority has decided to continue with the definition of product under consideration and like article as given in the preliminary finding.

From the submissions of the opposing parties discussed above, it is clear that the major argument against imposition of anti dumping duty on natural crude caffeine is on the issue of definition of product under consideration. Natural crude caffeine being imported by their own admission contains caffeine and impurities such as tanin, poly phenonoul and chloroform which need to be removed. However, the caffeine contained in the imported product is not different from the synthetic caffeine being manufactured by the petitioner companies. As far as the synthetic caffeine being manufactured by the petitioner companies and the caffeine being extracted from crude natural caffeine being imported are concerned, these are admittedly quite similar and substitutable. Both synthetic caffeine and natural caffeine compete for the same market as both are being used for making beverages and pharmaceuticals. Though the production process of crude caffeine out of decaffeination of natural sources (e.g., coffee beans, tea) differs from the synthetic production of crude caffeine but the purification step of crude caffeine from natural source though not identical but is comparable with the synthetic way of handling. More important than this, the natural crude caffeine cannot be used as it is and the intention of every importer is to produce pure caffeine out of it which is then to be handled as competitive product of synthetic pure caffeine and is thus a 'like article' to the product under consideration. Therefore, the Authority has decided to treat all forms of caffeine, including crude natural caffeine as product under consideration for the purpose of investigation and continue with the definition of 'product under consideration' adopted in the preliminary finding. However, the reference price fixed in paragraph 20 of the preliminary findings can be made applicable to pure, natural as well as synthetic caffeine of 100 per cent purity and be reduced proportionately in proportion to the degree of purity of crude caffeine being imported.

D. DOMESTIC INDUSTRY:

12. It has been argued by the importers of crude caffeine that apart from M/s. Kores India Limited, M/s. Bakul Aromatics Ltd and M/s. Valiant Industries Ltd., who are the petitioner companies, there are other manufacturers of the subject goods such as M/s. Kudos Chemicals Ltd., M/s. Suvan Pharmaceuticals Ltd., M/s. Ahinsha Chemicals Ltd., and M/s. Shri Ahimsa Mines and Minerals Ltd. It has been stated that determination of standing of petitioners for filing the petition is not correct and the

investigation needs to be terminated on this account. Here it is interesting to note that M/s. Ahinsha Chemicals Limited and M/s. Shri Ahimsa Mines and Minerals Limited have sought to get themselves considered as caffeine producers and yet they have argued that caffeine is not 'like article' as discussed above and it is a different product.

13. Examination by Authority: As per Rule 2(b) of the Anti Dumping Rules "Domestic Industry means the domestic producers as a whole engaged in the manufacture of 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 which case such producers shall be deemed not to form part of domestic industry."

Also Article 5.4 of WTO Agreement on Anti Dumping states that ".....the application shall be considered to have been made 'by or on behalf of the domestic industry' if it is supported by those domestic producers whose collective output constitutes more than 50 per cent of the total production of the like product produced by that portion of the domestic industry expressing either support for or opposition to the application. However, no investigation shall be initiated when domestic producers expressly supporting the application account for less than 25 per cent of total production of the like product produced by the domestic industry."

With regard to the definition of domestic industry, the rule clearly states that domestic industry would be the domestic producers of the like article whose collective output of the said article constitutes a 'major proportion of the total domestic production'. The rules further provide that in case the producers of the article is/are related to the exporters or importers of the article or; are themselves importers thereof, they shall not form the part of domestic industry.

Having defined the product under consideration above to include natural crude caffeine as well, both M/s. Ahinsha Chemicals and M/s. Shri Ahimsa Mines and Minerals are importers of the product under consideration and are excluded from the definition of domestic industry. Also as per the definition of domestic industry mentioned above, the collective output of the petitioner companies has to constitute a major proportion of the domestic industry excluding the production of importers of the allegedly dumped article. The requirements of standing is that the domestic producers expressly supporting the application account for more than 25% of the total production of the domestic industry and there is no opposition to the investigation by producers who are part of the domestic industry which does not include the producers of the product under consideration who are related to the exporters or importers of subject goods or are themselves importers thereof. As per evidence available before

the Authority, the petitioner companies satisfy the requirement of the standing as mentioned above. The Authority therefore determines that the petitioners have the standing to file the petition and satisfy the conditions laid down under Rule 2(b) of the Anti Dumping Rules and represent the domestic industry.

E. DUMPING

14. The Authority provided opportunity to the known exporters to furnish information in accordance with Section 9(1) © of the Custom Tariff Act 1975, as amended in 1995, cited above. As mentioned in the preliminary finding, the response given by M/s. BASF, AG, Germany, one of the manufacturers and exporters from EU was accepted and the information given by them regarding the domestic and export prices as well as their claim for adjustments on account of landing charges, ocean freight, marine insurance, commission, etc., was also accepted.

15. It has been argued by the importers of natural crude caffeine that there is no evidence of dumping of crude caffeine from EU and that the information as given by M/s. BASF, Germany cannot be taken as basis for calculation of dumping margin and for levy of anti dumping duty on natural crude caffeine as M/s. BASF, Germany manufactures synthetic caffeine only.

16. In the absence of participation by any exporter of natural crude caffeine, it is not possible for the Authority to calculate separate dumping margin for natural crude caffeine. Normal value is price of the product in domestic market regardless of manufacturing process or inputs used in manufacturing, etc. However, it has been argued by the importers themselves that natural caffeine is much more expensive than the synthetic caffeine. Also natural crude caffeine is a bye product of the process of commercial decaffeination of coffee beans and tea. In view of the system of reference price used in the preliminary finding, for calculation of anti dumping duty leviable, the import of more expensive natural crude caffeine being imported above the reference price, will not be adversely affected. Also, as stated above, it has been proposed that the reference price fixed for caffeine can be made applicable to pure caffeine of 100 per cent purity and this will be reduced proportionately in proportion to the degree of purity of crude caffeine being imported. This will take care of the concerns of the importers of natural crude caffeine.

17. In view of above, the Authority therefore, has decided to continue with the calculations of margin of dumping on the basis of the information given by the only cooperating exporters i.e., M/s. BASF Germany and the dumping margin works out to 229% of the export price in case of Theophylline, its derivatives and salts, 177% in

the case of Caffeine, its derivatives and salts thereof. The same dumping margin is applicable to all the exporters from the EU.

F. INJURY AND CAUSAL LINK

18. 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 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. Also the effect of dumped imports on the volume of sales by the domestic industry has been looked into while determining injury being caused.

19. For the examination of the impact on the domestic industry in India, the Authority has considered such indices having a bearing on the state of industry as production, capacity utilization, sales quantum, stock, profitability, net sales realisation, the magnitude and margin of dumping, etc., in accordance with Annexure II (iv) of the Rules *supra*. The Authority has also examined factors other than dumped imports viz., demand contraction, recession, uneconomical plant size, high and inefficient consumption norms of raw materials and utilities, high interest burden, distress exports etc., which might be injuring the domestic industry at the same time.

20. All the parameters of injury mentioned above, were examined and considered by the Authority and on the basis of the evidence available it was determined in the preliminary finding that all the relevant factors, cumulatively and collectively establish that the domestic industry has suffered material injury during the period of investigation caused by dumped imports from EU. It was determined that the increase in volume of imports in absolute as well as percentage terms of subject goods from EU is matched by fall in the share of domestic industry in total sales in India during the period of investigation. It was observed that most significant effect has been the situation of price suppression caused by dumped imports in the Indian market which prevented the domestic industry to sell at prices not commensurate with its cost of production resulting in losses from the sale of the subject goods in the domestic market.

21. It has been argued by the importers that in the preliminary findings, the discussion on injury regarding volume and market share of dumped imports, is largely on the

imported Theophylline and injury caused on account of theophylline cannot be attributed to the imports of natural crude caffeine.

22. Here it may be mentioned that theophylline and caffeine employ common production facilities and the production process is largely common which gets differentiated only at the last stage. Thus, the market conditions in one product affect the production and sales of the other as well, implying that the injury parameters have to be looked at jointly. Market share of imports from EU have increased during the period of investigation. The landed value of caffeine and theophylline, during the period of investigation is below the cost of production of the domestic industry. Even though the cost of production of domestic industry has declined over the last three years the decline in selling price is much more than the decline in the cost of production resulting in significant increase in financial losses to the domestic industry. The imports of caffeine and Theophylline from EU are undercutting the prices in the Indian market. All these injury parameters are evident from the information submitted by domestic industry on confidential basis and duly verified by the Authority. The Authority, therefore, confirms preliminary findings on determination of injury being suffered by the domestic industry.

23. The issue of causal link has been addressed in the preliminary finding where it has been determined that the dumped imports at dumped price from EU have caused injury to the domestic industry especially because of situation of price undercutting prevailing in the Indian market. It has been argued by the importers of natural crude caffeine that since there is no domestic industry producing natural crude caffeine, the injury being suffered by petitioners cannot be said to have been caused by imports of natural crude caffeine. However, as has been made clear above, that nobody imports natural crude caffeine for direct use but the import is undertaken to purify it and use it as natural caffeine for pharmaceutical and beverage applications where it competes with the synthetic caffeine being produced by the petitioner companies. There is a clear causal link between the imports of the product under consideration as defined above and the injury being caused to the domestic industry.

G. INDIAN INDUSTRY'S INTEREST AND OTHER ISSUES

24. The Authority reiterates that 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.

25. The Authority again recognises that the imposition of anti dumping duties might affect the price levels of the products manufactured using Theophylline & Caffeine 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. 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 Theophylline & Caffeine. The Authority notes that the imposition of anti dumping measures would not restrict imports from EU in any way, and therefore, would not affect the availability of the product to the consumers. The consumers could still maintain two or even more sources of supply.

26. To ascertain the extent of anti dumping duty necessary to remove the injury to the domestic industry, the Authority has relied upon non injurious selling price of subject goods in India for the domestic industry by considering the optimum cost of production for the domestic industry.

27. The non injurious price (NIP) for the domestic industry has been determined by making appropriate analysis of all relevant factors like usage of raw material, usage of utilities, captive consumption, captive generation of utilities etc., and the actual expenses during the period of investigations including the investments and capacity utilisation. The NIP of domestic industry has been determined by considering the optimum cost of production and considering the reasonable return on the capital employed by the domestic industry. While determining NIP, the Authority has taken into account the best consumption norms of raw materials and utilities and has, thereby addressed any inefficiencies which might lead to financial injury to the industry on account of the inefficiencies.

H. FINAL FINDINGS

28. After considering the foregoing the Authority concludes that -

- i. Theophylline & Caffeine of EU origin has been exported to India below its normal value;
- ii. the Indian industry has suffered material injury;
- iii. the injury has been caused by the imports from EU.

29. The Authority proposes to recommend 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. For the purpose of determining injury, the landed price of imports is proposed to be compared with the non injurious selling price of the petitioner

companies determined for the period of investigation. 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 Sections 3, 3A, 8B, 9 and 9A of the Customs Tariff Act, 1975.

30. The Authority recommends imposition of definitive anti dumping duty on all imports of Theophylline & Caffeine falling under Customs Code 2939.30 and 2939.50 originating in or exported from European Union. As already determined in the preliminary finding, the anti dumping duty shall continue to be the difference between the amount mentioned in column 3 and landed value of import per MT for all exporters/manufacturers (including M/s. BASF, AG, Germany):

Territory/Country	Product	Amount in US\$ per MT
European Union (all member-countries)	1. Theophylline, its salts and its derivatives	10686
	2. Caffeine, its salts and its derivatives	11486

However, in case of Caffeine, the reference price mentioned in column 3 above, shall be for pure Caffeine (i.e., for caffeine with 100 percent purity) and for natural crude caffeine it will be in proportion to the caffeine content of the imported product.

31. Subject to the above, the Authority confirms the preliminary findings dated 2.1.2001.

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

L V Saptharishi,
Designated Authority