

MINISTRY OF COMMERCE & INDUSTRY
DEPARTMENT OF COMMERCE
DIRECTORATE GENERAL OF ANTI DUMPING AND
ALLIED DUTIES

New Delhi the 1st July 2002

FINAL FINDINGS

Subject: -: Anti Dumping Investigation concerning imports of Vitamin AB2D3K originating in or exported from European Union, USA, Thailand and Singapore --- Final Findings.

19/1/2001-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, (as amended) thereof:

A PROCEDURE

1. The procedure described below has been followed:

- i. The Designated Authority (hereinafter referred to as Authority), under the above Rules, received a written petition from M/s. Nicholas Piramal India Limited, Mumbai, (hereinafter also referred to as petitioner) alleging dumping of Vitamin AB2D3K being imported in single strength and triple strength forms (hereinafter also referred to as subject goods) originating in or exported from European Union, USA, Thailand and Singapore.
- ii. The preliminary scrutiny of the application revealed certain deficiencies, which were subsequently rectified by the petitioner. The petition was therefore considered as properly documented.
- iii. The Authority on the basis of sufficient prima-facie evidence submitted by the Petitioner decided to initiate investigations against alleged dumped imports of Vitamin AB2D3K originating in or exported from European Union, USA, Thailand and Singapore (hereinafter referred to as subject countries). The scope of the present investigations had included the EU as a single customs union and distinct economic entity as there is no customs boundary in the EU between various member countries. The Authority notified the Delegation of the European Commission, embassies of USA, Thailand and the High Commission of Singapore (hereinafter also called Embassies of the subject countries) about

- the receipt of dumping allegation before proceeding to initiate investigations in accordance with sub rule 5(5) of the Rules;
- iv. The Authority issued a Public Notice dated 2nd July 2001, published in the Gazette of India Extraordinary initiating anti-dumping investigations concerning imports of Vitamin AB2D3K (in single strength and triple strength forms) being cleared under Chapter 23 of the Customs Tariff Act, 1975, under subheading 2309.90 originating in or exported from territory of European Union, USA, Thailand and Singapore. No specific data is available with DGCI&S on the import and export of this product, hence the data collected from secondary sources (two private data collecting agencies) namely M/s Informant and M/s International Publishing House was relied upon to initiate the investigation.
 - v. The Authority notified preliminary findings dated 25.9.2001 and 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 of the date of the letter.
 - vi. The Authority also forwarded a copy of the preliminary findings to the Embassies of the subject countries in New Delhi with a request that the exporters/producers of subject goods and other interested parties may be advised to furnish their views on the preliminary findings in the time frame as stipulated in (v) above.
 - vii. The Authority forwarded a copy of the public notice to all the known exporters (whose details were made available by petitioner) and industry/user associations and gave them an opportunity to make their views known in writing in accordance with the Rule 6(2).
 - viii. The Authority provided an opportunity to all interested parties to present their views orally on 07.1.2002. All parties presenting views were requested to file written submissions of the views expressed. The parties were advised to collect copies of the views expressed by the opposing parties and offer rejoinder, if any;
 - ix. The Authority made available the public file to all interested parties containing non-confidential version of views / evidence submitted by various interested parties for inspection, upon request;
 - x. Request was made to the Central Board of Excise and Customs (CBEC) to arrange details of imports of subject goods made in India during the past three years, including the period of investigation.
 - xi. Arguments 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 the disclosure statement and/or these findings;

- xii. In accordance with Rule 16 of the Rules supra, the essential facts/basis considered for these findings were disclosed to known interested parties on 13.6.2002. Comments received on the same have also been duly considered in these findings.
- xiii. *** in this notification represents information furnished by an interested party on confidential basis and so considered by the Authority under the Rules.
- xiv. The period of investigation (POI) considered is 1.4.2000 to 31.12.2000

B. VIEWS OF DOMESTIC INDUSTRY, EXPORTERS, IMPORTERS, USER ASSOCIATIONS AND OTHER INTERESTED PARTIES & 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 paras 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 paras herein below. As already stated in the Preliminary Findings, imports of the subject goods from USA have been excluded from the scope of the present investigation.

C. PRODUCT UNDER CONSIDERATION

3.1 The product under consideration in the present investigation is Vitamin AB2D3K. It is a loose, brownish-yellow coloured powder, containing Vitamin A, B2, D3, and K. Groundnut meal is the carrier.

EACH GRAM OF VITAMIN AB2D3K 2D3K CONTAINS	SINGLE STRENGTH		TRIPLE STRENGTH	
VITAMIN A	82,500	IU	247500	IU
VITAMIN B2	50	MG	150	MG
VITAMIN D3	12,000	IU	36000	IU
VITAMIN K	10	MG	30	MG

The composition of triple strength is three times the composition of single strength.

3.2 Vitamin AB2D3K falls under Chapter 23 of the Custom Tariff Act. However, the product has not been categorised precisely under single dedicated custom sub-heading but it has been covered under the category of other preparations of a kind used in

animal feeding. The present petition is against imports of Vitamin AB2D3K (in single strength and triple strength forms).

This classification is, however, indicative only and is no way binding on the scope of the present investigation.

Submissions made by various interested parties.

The Compound Livestock Feed Manufacturers' Association of India (CLFMA)

3.4 It was stated that they fail to understand the logic of initiating the investigation concerning import of Vitamin AB2D3K on the request of the petitioner M/s Nicholas Piramal, who are the manufacturer of Vitamin A only and not of the other 3 Vitamins namely Vitamin B2, Vitamin D3 and Vitamin K, which together with Vitamin A makes AB2D3K premix.

M/s BASF

3.5 M/s BASF stated that the petitioner produces only Vitamin A and Vitamin B2, Vitamin D3 and Vitamin K are being bought locally and the product under investigation is only a mixture. The Authority's attention was invited to the Preliminary Findings where it was stated that the "petitioner is a major producer of Vitamin AB2D3K in India". It should be shown what percentage of AB2D3K is produced by the petitioner and what percentage is bought from outside by end users. It was stated that the overall market potential is sufficiently higher than local production for the end users to depend on imports.

The Petitioner

3.6 It was stated that there is no restriction under the Anti Dumping Law that the petitioner should be the manufacturer of all the raw materials or that the product under investigation should not be a mixture of other materials. Hence, the contention that the subject goods is the mixture of four vitamins and is therefore not eligible for anti dumping duty is incorrect. They further stated that the major component in Vitamin AB2D3K premix is Vitamin A both in terms of quantity and as well as in value. Vitamin A is manufactured by the petitioner from the basic stage.

Examination by the Authority

3.7 As regards the issue relating to the logic of initiating the investigation concerning import of Vitamin AB2D3K on the request of the petitioner M/s Nicholas Piramal India Ltd, who are the manufacturer of Vitamin A only and not of the other 3

Vitamins namely Vitamin B2, Vitamin D3 and Vitamin K, which together with Vitamin A makes AB2D3K premix is concerned, the Authority notes that It is not mandatory for the applicant domestic industry to manufacturer each and every input in-house for manufacturing the Like Article under the Anti-dumping Rules.

3.8 The Authority, therefore, confirms the Preliminary Findings on product under consideration.

D. LIKE ARTICLES

Vitamin AB2D3K is an essential component of Poultry feed as it is used to provide required Vitamin Level in Poultry feed for better nutrition. It is added to the poultry feed at the poultry feed mills, hatcheries and farms who make there own feed. Vitamin AB2D3K single strength and triple strength are used interchangeably by the Poultry feed mills and other users.

The Authority notes that Vitamin AB2D3K single strength and triple strength produced by the domestic industry has characteristics closely resembling the imported Vitamin AB2D3K single strength and triple strength and is substitutable both commercially and technically. Vitamin AB2D3K single strength and triple strength produced by the domestic industry has been treated as like article to the product exported from European Union, Thailand and Singapore, within the meaning of Rule 2(d).

Submissions made by various interested parties.

CLFMA

4.3 It was contended that they strongly object to the Petitioner's statement that the stability study of ABDK shows that the product is stable and complies with label specification for even 24 months.

The Petitioner

4.4 It was stated that the product manufactured by the petitioner contains Vitamin A, which is Gelatin encapsulated to ensure full availability of Vitamin A at the time of feeding. The Indian law does not require product shelf life to be mentioned on the label and the product is as good as any international brands. The petitioner's stability studies show that the product is stable and complies with label specifications for even 24 months. The Petitioner further stated that they follow plan of continuous technology up gradation and cost reduction through yield and labour productivity improvements and energy conservation. The petitioner manufacturing facilities are

accredited with ISO9001 and ISO 14001 certifications HACCP (Hazard Analysis of Critical Control Points).

4.5 It was further stated that in one of the CEGAT judgement it has been held that "Process of manufacture is not a relevant factor under anti-dumping law. Quality difference is also not material. The imported goods and domestically produced goods have the same use and have been correctly held to be 'like article' by the Designated Authority." Automotive tyre Manufacturers Association vs. Designated Authority. Final Order Nos. 37-40/2000-AD, dated 6-11-2000.

Examination by the Authority

4.6 The Authority noted in the preliminary findings that Vitamin AB2D3K single strength and triple strength produced by the domestic industry has characteristics closely resembling the imported Vitamin AB2D3K single strength and triple strength and is substitutable both commercially and technically.

4.7 The Authority holds the view that the process of manufacture and the quality are not the relevant factors under anti-dumping laws. This view has also been upheld in the above-mentioned decision of the Hon'ble Tribunal.

4.8 No argument has been raised disputing that Vitamin AB2D3K produced by the domestic industry has characteristics closely resembling the imported Vitamin AB2D3K and is substitutable both commercially and technically. Therefore, Vitamin AB2D3K produced by the domestic industry is being held as like article to the product exported from European Union, Thailand and Singapore, within the meaning of Rule 2(d).

4.9 In view of the above, the Authority confirms the Preliminary Findings on Like Articles.

E. DOMESTIC INDUSTRY

5.1 M/s Nicholas Piramal India Limited, Mumbai has filed the Petition in the present case. The petitioner is the major producer of Vitamin AB2D3K in India and accounts for nearly 62% of the total Indian Production of Vitamin AB2D3K.

Submissions made by various interested parties

CLFMA

5.2 CLFMA stated that according to the Preliminary Findings, the petitioner Nicholas Piramal is not the only manufacturer of this product in the country and there are other manufacturers also. In fact, they are the first affected parties, but still did not use this back door route for making more profits at the cost of the feed and poultry industry and the poor farmers. It was stated that the Petitioner claims 62% of the market share. It was stated why other 38% are not joining the petitioner or applying for easy route of anti-dumping to make more money.

Examination by the Authority

5.3 M/s. Nicholas Piramal India Limited, Mumbai filed the petition in the instant case. The petitioner is the major producer of Vitamin AB2D3K in India and accounts for nearly 62% of the total Indian Production of Vitamin AB2D3K. The Authority therefore notes that the Petitioner constitutes 'domestic industry' and has the required standing to file the present petition under the Rules.

5.4 The Authority further notes that there is no requirement under the anti-dumping rules that the entire domestic industry must come forward and file an anti-dumping petition to claim relief against the dumped imports. In view of the above, the Authority confirms the Preliminary Findings on 'DOMESTIC INDUSTRY'.

F. DUMPING MARGIN, NORMAL VALUE & EXPORT PRICE

DUMPING

6.1 Under Section 9A(1), Normal value in relation to an article means:

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

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:

comparable representative price of the like article when exported from the exporting country or territory to an appropriate third country as determined in accordance with the rules made under sub-section (6); or

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.

6.2 It may be recalled that the Authority sent questionnaires to the exporters from the subject countries in terms of the section cited above. Though some of the exporters from European Union, Thailand and Singapore responded to the questionnaire but the same was not deemed sufficient in terms of the format prescribed for this purpose. Despite an opportunity being provided to them to furnish relevant information / documents, the exporters failed to submit the sufficient relevant and necessary information / documents.

6.3 As brought out in the preliminary findings, M/s BASF AG, Germany and M/s BASF South East Asia Pte. Ltd, Singapore stated that they have only exported the material under investigation with the origin of Thailand and if there should be any other material, produced by BASF with origin in Germany (EU), Singapore and / or USA it must have been exported via traders which is out of their responsibility and influence. Thus, they have no obligation to provide a response to the questionnaire. M/s BASF Corporation, USA stated that after reviewing the complaint and their internal records, they have found no evidence that they manufacture the product at issue in this case (nor, as well, that they export any such product to India) and thus have no obligation to provide a response to the questionnaire. As already stated above, imports of the subject goods from USA have been excluded from the scope of the present investigation. M/s Rhone Poulence SA (Aventis), France did not file any response to the questionnaire.

6.4 M/s BASF (Thai) Limited, Thailand submitted their response to the questionnaire and claimed that they are exporting the product under Investigation at non-dumped Prices. However, the response was not deemed sufficient in terms of the information sought as per the questionnaire and therefore additional clarifications / documents were sought from the exporter. As per the information submitted by them, it was noticed that there was no domestic sale of subject goods as there was no demand of subject goods in Thailand and that the sales of subject goods to India were on 'made to order basis'. It was further noticed from the Annual Report of the exporter that their major dealing towards purchase of raw materials was with related companies. The exporter was, *inter-alia*, asked to furnish necessary supporting documents / evidence

to show that the purchases made by them from related companies was on an arm's length basis and were made in the ordinary course of trade. The exporter in their response accepted that they have bought raw materials from related companies while stating that mainly they bought raw materials from M/s BASF South East Asia in the ordinary course of trade but expressed their inability to submit the necessary supporting documents.

6.5 Besides, M/s BASF (Thai) Limited, Thailand did not furnish certain material information on the grounds that the same was company's internal strength and was therefore irrelevant to the export sale price, marketing, administration and distribution. The Authority notes that the exporter is required to furnish the information as is deemed necessary by it. While the exporter can always advance argument to support his case, yet he is required to furnish the information requested by the authority before advancing any such argument. Moreover, it is not conceived in law that the exporter has a right to pre-decide as to what information is necessary and what is not for the Authority to arrive at a decision.

6.6 In view of the above, the data furnished by M/S BASF (Thai) Limited, Thailand was found insufficient and therefore disregarded in the preliminary findings.

6.7 M/s Aventis Animal Nutrition, Singapore responded to the questionnaire but the same was not deemed sufficient in terms of the format prescribed for this purpose. Therefore, clarifications / additional information was sought from them. Despite an opportunity being provided to them to furnish the relevant information / documents, the exporter failed to submit the sufficient relevant and necessary information / documents to the Authority.

Submissions made by M/s BASF

6.8 In response to the Preliminary Findings, the following issues were, *inter-alia*, raised by M/s BASF:

6.9 It was stated that the domestic industry has failed to provide sufficient material in order to support the allegations of export by M/s BASF Thai at prices below their cost of production. It was reiterated that any export by them in the previous year has never been below their cost of production and has been at a fair and normal price.

6.10 It was contended that if BASF, Thai states that they have bought raw materials "in the ordinary course of trade" it should be up to the Designated Authority to cross check, if the prices of the input material are in line with the world prices. It was further stated that they have checked and they don't know how to "submit necessary supporting documents" and that the Authority is asking for additional documents

unilaterally as compared to the low quality of the complaint. " The facts available" are not accessible for the alleged party and therefore they do not have a chance to see if the figures are realistic. They have sought disclosure of the individual figures concerning BASF, Thai and that for the European Union and Singapore. It has also been stated that as they have not exported from the EU and Singapore, they claim the newcomer status in case of potential exports in future.

6.11 In their written submissions on behalf of M/s BASF group of companies, a composite reply was filed pursuant to the Public Hearing. It was stated that they are ready and willing to cooperate with the Authority in the procedure and further willing to furnish all such necessary and reasonable information that the Authority may require further to what had already been submitted and supplied.

6.12 It was stated that M/s BASF has only exported the material under investigation with the origin of Thailand. If there is any other material produced by BASF with origin in Germany (EU), Singapore and / or USA it must have been exported via traders which is out of their responsibility and influence. They expressed their happiness for excluding USA from the scope of the present investigation.

6.13 It was stated that M/s BASF Thailand have submitted required information exhibiting that they had exported the product at non-dumped prices. This is shown in answers by comparing ex-works price to India with the normal value, which can be based on cost of Production. This is due to the fact that the product under investigation is tailor made for India and has no consumption in Thailand. It was stated the Authority has prima facie chosen to reject their claim of purchase of raw materials in the ordinary course of trade from the related company viz. M/s BASF South East Asia Pte Ltd, Singapore. It was stated that they would like to submit to the Authority that the list of raw materials imported from BSEA and their costs have been provided in Appendix 8 of the Exporter's Questionnaire. It was stated that they use SAP Program software and all raw materials costs are shown in a format 'Moving Average Price' meaning that the old and new cost is merged and computed as Average Price per unit which can be easily demonstrated during an on-the spot investigation to which they cordially invite the Authority.

CLFMA

6.14 As regards the Normal Value, it was contended that they fail to understand how the Normal Value of this product was arrived, since the product in question is not sold in exporting countries. As the products in question are sold primarily in India and Nepal.

Submissions made by various interested parties in response to the Disclosure Statement

M/s BASF

6.15 On behalf of M/s BASF Group of Companies, a composite response to the Disclosure Statement was filed. They protested against the Authority's view regarding the level of cooperation extended by them. With respect to transactions between related companies, it was stated that how can somebody demonstrate sales at arms length between related companies beside the statement that this pricing policy is part of BASF's general pricing policy? It was contended that the Designated Authority had access to the purchase prices of at least 3 of the 4 input products, which are not produced by the complaining company Piramal. By cross checking the input prices of Piramal with the input prices of BASF Thai, the Designated Authority could have found that their internal prices were not manipulated and in line with the world market prices. It was claimed that in this case no "necessary supporting documents" were available. It was also contended that the Designated Authority has given them a burden of proof which could not be satisfied. It was stated that by this approach the wording of 2.14 –2.35 of the disclosure statement is correct.

6.16 It was stated that by showing the essential figure of the export price and normal value it is difficult to understand that "its disclosure would significantly harm the interest of the person supplying the information". They sought to see the figure and not the source.

M/s. Rhodia Chemicals India Pvt. Ltd. on behalf of Aventis Animal Nutrition.

6.17 It was contended that the normal value, ex-factory export price and the alleged margin of dumping have all been kept confidential and not disclosed to them, without which they are unable to make an effective representation.

6.18 As per the decision of the Hon'ble Tribunal in Birla Erichsson Ltd – Vs - Designated Authority (2001(127) ELT363) held that the designed authority must supply the information to the concerned party and that Rule 7 merely applied to divulging confidential information furnished by party to another. We, therefore, submit that we are entitled to the disclosure of the information relating to the determination of the normal value, ex-factory price and the margin of dumping arrived at by you in the above matter.

6.19 It was contended that the data has been rejected by making a general statement without disclosing to them how and why and in what manner is the data/information furnished by them is found to be insufficient. They claimed to have submitted the

information in the questionnaire and mentioned that the information relating thereto can be verified at the production site, but it appears that these have been ignored and/or overlooked. It was claimed that there is no dumping in as much as the cost of production is less than our selling price of the goods for export to India from Singapore.

Examination by the Authority

6.20 The Authority notes that the exporter is required to furnish the information as is deemed necessary by it. While the exporter can always advance arguments to support his case, he is required to furnish the information requested by the Authority before advancing any argument.

6.21 The Authority is of the view that it correctly issued the Preliminary Findings in the instant case after duly adhering to both the substantive and procedural requirement of the Anti-dumping Rules.

6.22 As regards the Normal Value, it is clarified here that the normal value has been arrived at in terms of Section 9A(1)(c) of the Customs Tariff Act and the relevant Anti-dumping Rules.

6.23 As regards the issue relating to the purchase of raw materials by M/s BASF "in the ordinary course of trade" is concerned, the Authority found the initial response filed as incomplete and therefore sought additional information / relevant documents. Since the Authority did not receive an appropriate response from the party, the data furnished was disregarded in the Preliminary Findings. The information required was duly explained to the resident representative of the party apart from clearly detailing the deficiencies.

6.24 Sufficient opportunity was provided to M/s BASF to submit the details sought by the Authority. M/s BASF did submit additional data / information though after the stipulated date. The data submitted by M/s BASF was examined. As per the information submitted by BASF group of companies, it was noticed that M/s BASF Thai only exported the subject goods to India during the Period of investigation. There was no domestic sale of subject goods as there was no demand of subject goods in Thailand and that the sales of subject goods to India were on 'made to order basis'. It was further noticed from the Annual Report of the exporter that their major dealing towards purchase of raw materials was with related companies. The exporter was, *inter-alia*, asked to furnish necessary supporting documents / evidence to show that the purchases made by them from related companies was on an arm's length basis and were made in the ordinary course of trade. The exporter in their response accepted

that they have bought raw materials from related companies while stating that mainly they bought raw materials from M/s BASF South East Asia.

6.25 On a detailed examination, it was noted that the data furnished was inconsistent, insufficient and unreliable and hence the same is being disregarded. It was noted that the transactions entered into by the related companies were not in the ordinary course of trade and at arm's length. For instance, the costs as given in the information submitted were different for different customers and no justified reasons for this variation in the costs were provided. It was also observed that the cost of production for major raw materials as provided in Appendix 8 of the Exporter's Questionnaire was less than the cost of Procurement by M/s BASF Thai from M/s BSEA Singapore thereby making the entire claim of M/s BASF Thai inconsistent with their own data and hence unreliable and thus unacceptable.

6.26 It was further noticed that the credit notes details were not provided. The relevance of this detail is primarily linked to the incidence of financing costs in the total price structure. It was, *inter-alia*, claimed that the payments were cleared on the 15th of the 7th month which was in contradiction with the terms of credit mentioned in their consolidated procurement statement. Besides, the terms of payment as explained by M/s BASF Thai were in contradiction with the financial statement for the years 1999/2000. It was also noted that in the financial statements, the amount payable to related companies had gone up from *** Baht to ***Baht. It was also seen that the cost of procurement of Vitamin K3 by M/s BSEA Singapore was not provided.

6.27 As regards 'the facts available' and disclosure of figures are concerned, the same cannot be divulged as it includes analysis, *inter-alia*, based on confidential information supplied by the interested parties.

6.28 In respect of their claim that they have not exported from the EU and Singapore, and would thus claim the newcomer status in case of potential exports in future. It is stated that the Authority would initiate a new-shipper's review in such an event.

European Union

6.29 Except BASF Group of companies, no further response was received from any other exporter as per the Exporters' questionnaire. As already stated in the preliminary findings, BASF stated that they have only exported the material under investigation with the origin of Thailand and if there should be any other material, produced by BASF with origin in Germany (EU), it must have been exported via traders which is out of their responsibility and influence. Thus, they have no obligation to provide a response to the questionnaire.

6.30 Thus, despite an opportunity being provided to the producers / exporters from European Union to furnish relevant information / documents, they failed to submit the sufficient, relevant and necessary information / documents. Hence, Normal value in their case is being determined on the basis of 'facts available' in terms of Rule 6(8) of the Anti-dumping Rules.

6.31 As regards the export price, the same has been worked out on the basis of 'facts available' with the Authority. Thus, in the absence of any further relevant information; the Normal value, export price and dumping margin for all exporters of European union is being calculated on the basis of the 'facts available' in terms of Rule 6(8) of Anti Dumping Rules.

Singapore

6.32 M/s Aventis Animal Nutrition, Singapore responded to the questionnaire but the same was not deemed sufficient in terms of the format prescribed for this purpose. Therefore, clarifications / additional information was sought from them. Despite an opportunity being provided to them to furnish the relevant information/documents, the exporter failed to submit the sufficient relevant and necessary information / documents to the Authority. For instance, evidence with regard to price adjustments claimed was not given as required vide para 5 of the exporter's questionnaire. The details and evidence of trading arrangements with purchasers in respect of the goods affecting unit purchase price as sought vide Part C para 3 of the Exporter's Questionnaire was not furnished. The details as sought vide Part D para 3, 4 & 5 of the Exporter's Questionnaire were not provided. The details as sought vide Part F of the Exporter's Questionnaire were not furnished. Break-up of amount specified against Before FOB & After FOB- along with supporting documents in Appendix 4 for each sub-head separately was not provided. Details as required under Appendix 7 of the questionnaire were not furnished. Basis of allocation and coverage against the head "overheads" in the Appendix 8 & 10 and their reconciliation with the financial statement for the period of investigation along with the copy of the financial statement was not furnished. The details about the conversion cost with actual no. of hours (for one batch) put in the total production process were not furnished.

6.33. In view of the above, the data furnished by M/s Aventis Animal Nutrition, Singapore was found insufficient and hence disregarded in the preliminary findings. Subsequent to the Preliminary findings, neither any rectification in their exporter questionnaire was made nor any fresh evidence given. Hence, Normal value in their case is being determined on the basis of 'facts available' in terms of Rule 6(8) of Anti Dumping Rules.

6.34. M/s BASF stated that they have only exported the material under investigation with the origin of Thailand. If there is any other material produced by BASF with origin in Singapore, it must have been exported via traders, which is out of their responsibility and influence.

6.35. As regards the export price, the same has been worked out on the basis of 'facts available' with the Authority. Thus, the Authority for determination of normal Value, export price and dumping margin is constrained to rely upon 'facts available' in terms of Rule 6(8) of Anti Dumping Rules as far as the export of subject goods from all exporters from Singapore is concerned.

Thailand

6.36 M/s BASF stated that they have only exported the material under investigation with the origin of Thailand. It was claimed that they have submitted required information exhibiting that they had exported the product at non-dumped prices as shown in answers by comparing ex-works price to India with the normal value, which they suggested could be based on cost of Production. It was stated that this is due to the fact that the product under investigation is tailor made for India and has no consumption in Thailand. It was contended the Authority has prima facie chosen to reject their claim of purchase of raw materials in the ordinary course of trade from the related company viz. M/s BASF South East Asia Pte Ltd, Singapore. It was stated that they would like to submit to the Authority that the list of raw materials imported from BSEA and their costs have been provided in Appendix 8 of the Exporter's Questionnaire. It was mentioned that they use SAP Program software and all raw materials costs are shown in a format 'Moving Average Price' meaning that the old and new cost is merged and computed as Average Price per unit which can be easily demonstrated during an on-the spot investigation to which they cordially invite the Authority.

6.37 Sufficient opportunity was provided to M/s BASF to submit the details sought by the Authority. M/s BASF did submit additional data / information though after the stipulated date. The data submitted by M/s BASF was examined. As already explained before, on a detailed examination, it was noted that the data furnished was inconsistent, insufficient and unreliable and hence is being disregarded. It was also noted that the transactions entered into by the related companies were not in the ordinary course of trade and at arm's length.

6.38 Thus, M/s BASF Thai responded to the questionnaire with insufficient, inconsistent / unreliable information and documents thereby making it impossible to arrive at Normal value on the basis of their data. Hence, Normal value for exporters

from Thailand is being determined on the basis of 'facts available' in terms of Rule 6(8) of Anti Dumping Rules.

6.39 No specific data was made available by DGCI&S, as there is no specific ITC (HS) Code for the subject goods. Therefore, the volume and value of the subject goods imported into India from the subject countries is proposed to be compiled on the basis of 'facts available', i.e. from the data made available by the Petitioner (secondary sources; namely, M/s. Informant and M/s. International Publishing House) and on the basis of information provided by some of the importers and exporters.

6.40 The adjustments towards ocean freight, marine insurance, commission, inland transportation and loading, unloading and port expenses etc. have been made on the basis of 'facts available' before the Authority.

6.41 Hence, the Authority for determination of normal value, export price and consequent dumping margin is constrained to rely upon 'facts available' in terms of Rule 6(8) of Anti Dumping Rules as far as the export of subject goods from all exporters from European Union, Thailand and Singapore is concerned.

A. NORMAL VALUE

European Union

6.42 The examination of the response by M/s BASF, Aktiengesellschaft, Germany shows that they have only exported the material under investigation with the origin of Thailand and if there should be any other material, produced by BASF with origin in Germany (EU), Singapore and / or USA it must have been exported via traders which is out of their responsibility and influence.

6.43 M/s Rhone Poulence SA (Aventis), France did not respond to the questionnaire.

6.44 The Petitioner has stated that they have not been able to get any reasonable and authentic evidences with regard to domestic prices of Vitamin AB2D3K (Triple strength) or price list of exporters either for selling in their domestic market or for export to other countries other than India. The Petitioner has requested that the normal value may be based on constructed cost.

6.45 Authority notes that exporters of European Union did not respond to the questionnaire, thereby making it impossible to arrive at Normal Value on the basis of their data.

6.46 Under the circumstances, Normal Value under the rules is determined on the basis of 'facts available' which works out to US \$ *** per kg for Vitamin AB2D3K (Triple Strength) in the case of European Union.

Thailand

6.47 M/s BASF (Thai) Limited, Thailand, *inter-alia*, stated that there was no sale of subject goods in the domestic market during the period of investigation as there was no demand for the product in the domestic market and that the product under investigation is a tailor-made for Indian Market with the exception of small shipments to countries other than India.

6.48 M/s BASF (Thai) Limited, Thailand have given the details of sales made by them of the subject goods to countries other than India but the same have not been considered for arriving at the normal price as the raw materials for the same have been bought from the related companies and the transactions of which have not been shown as arm's length transactions and therefore cannot be treated as having being made in the ordinary course of trade.

6.49 The Petitioner has stated that they have not been able to get any reasonable and authentic evidences with regard to domestic prices of Vitamin AB2D3K or price list of exporters either for selling in their domestic market or for export to other countries other than India. The Petitioner has requested that the normal value may be based on constructed cost.

6.50 Authority notes that exporters of Thailand did not submit the necessary and relevant information/ documents as sought by the Authority to enable it to arrive at Normal Value on the basis of their data.

6.51 Under the circumstances and as per the rules, the normal value has to be determined on the basis of the constructed cost of production of the subject goods in the country of origin as per 'facts available' in terms of Rule 6(8) of the Anti-dumping Rules. The data furnished by M/s BASF (Thai) Limited, Thailand was examined and it was noted that their major dealing towards purchase of raw material was with the related companies. In view of this fact, the exporter was asked to furnish all supporting documents to establish that their dealings with the related companies were at an arm's length basis and that the purchases made were in the ordinary course of trade. Since the exporter failed to furnish the required supporting documents and there is no other known producer/exporter in Thailand, the cost of production furnished by M/s BASF (Thai) Limited, Thailand is the only data that is available for calculating the Normal Value. However, the data furnished by M/s BASF (Thai) Limited, Thailand cannot be relied upon as the same has not been shown to be at an arm's

length and in the ordinary course of trade. Thus, the normal value has to be determined on the basis of 'facts available' in terms of Rule 6(8) of the Anti-dumping Rules which works out to US \$ *** per kg for Vitamin AB2D3K (Single strength) and US \$ *** per kg for Vitamin AB2D3K (Triple Strength) in the case of Thailand.

SINGAPORE

6.52 M/s BASF South East Asia Pte. Ltd. Singapore stated that they did not export any material under investigation and consequently is not obliged to provide exporters questionnaire. If there should be any other material, produced by BASF with origin in Germany (EU), Singapore and / or USA, it must have been exported via Traders, which is out of their responsibility and influence.

6.53 As already stated, M/s Aventis Animal Nutrition, Singapore did not submit relevant information/ documents as per the prescribed questionnaire despite an opportunity given to them and hence the same is being disregarded.

6.54 The Petitioner has stated that they have not been able to get any reasonable and authentic evidences with regard to domestic prices of Vitamin AB2D3K or price list of exporters either for selling in their domestic market or for export to other countries other than India. The Petitioner has requested that the normal value may be based on constructed cost.

6.55 Authority notes that exporters of Singapore did not submit the necessary and relevant information/ documents as per the questionnaire, thereby making it impossible to arrive at Normal Value on the basis of their data.

6.56 Under the circumstances, Normal Value under the rules is determined on the basis of 'facts available' in terms of Rule 6(8) of the Anti-dumping Rules which works out to US \$ *** per kg for Vitamin AB2D3K (Single strength) and US *** per kg for Vitamin AB2D3K (Triple Strength) in the case of Singapore.

(B) EXPORT PRICE

6.57 The Petitioner has stated that Vitamin AB2D3K (single strength and triple strength) was imported under Chapter 23 of the Custom Tariff Act under Sub heading 2309.90. The product has not been categorised precisely under single dedicated custom sub-heading, but it has been covered under the category of other preparations of a kind used in animal feeding.

6.58 No specific data was made available by DGCI&S, therefore, the volume and value of the subject goods imported into India from the subject countries has been

compiled on the basis of the 'facts available', i.e. from the data made available by the Petitioner (Secondary sources, namely, M/s Informant and M/s International Publishing House) and on the basis of information provided by some of the importers and exporters.

6.59 The Petitioner has claimed adjustments towards ocean freight, marine insurance, commission, inland transportation and Port expenses. However, the Authority has accepted the adjustments on the basis of evidence/ documents produced to that effect.

A. European Union

All Exporters

6.60 The weighted average c.i.f. price per kg. of exports of Vitamin AB2D3K (Triple Strength) effected during the period of investigation by the exporters of European Union works out as US \$ ***. The weighted average ex-works export price has been determined after taking 2.19% as ocean freight, 0.18% as marine insurance charges, 5% as commission amount, 5.20% as inland transportation and 3.74% as port expenses. After adjustments on these accounts for US \$ *** per kg. against the total quantity of exports of 1052 kg; the weighted average ex-works export price works out to US \$ *** per kg.

B. THAILAND

M/s BASF (Thai) Limited, Bangkok, Thailand.

6.61 The weighted average c.i.f. price per kg. of exports of Vitamin AB2D3K (Single strength) effected by M/s BASF (Thai) Limited, Thailand during the period of investigation works out as US \$ *** per kg. The weighted average ex-works export price has been determined after taking 2.39% as freight, 0.38% as insurance charges, 4% as commission amount, and 0.95 % as other expenses. After adjustments on these accounts for US \$ *** per kg. against the total quantity of exports of 6500 kg; the weighted average ex-works export price works out to US \$ *** per kg.

6.62 The weighted average c.i.f. price per kg. of exports of Vitamin AB2D3K (Triple strength) effected by M/s BASF (Thai) Limited, Thailand during the period of investigation works out as US \$ *** per kg. The weighted average ex-works export price has been determined after taking 1.03% as freight, 0.39% as insurance charges, 4% as commission amount, and 0.46% as other expenses. After adjustments on these accounts for US \$ *** per kg. against the total quantity of exports of 8150 kg; the weighted average ex-works export price works out to US \$ *** per kg.

All other exporters

6.63 The weighted average c.i.f. price per kg. of exports of Vitamin AB2D3K (Single strength) effected by all other exporters of Thailand during the period of investigation works out as US \$ *** per kg. The weighted average ex-works export price has been determined after taking 2.59% as ocean freight, 0.18% as marine insurance charges, 5% as commission amount, 4.26% as inland transportation and 9.58% as port expenses. After adjustments on these accounts for US \$ *** per kg. against the total quantity of exports of 2500 kg; the weighted average ex-works export price works out to US \$ *** per kg.

6.64 The weighted average c.i.f. price per kg. of exports of Vitamin AB2D3K (Triple strength) effected by all other exporters of Thailand during the period of investigation works out as US \$ *** per kg. The weighted average ex-works export price has been determined after taking 1.13% as ocean freight, 0.18% as marine insurance charges, 5% as commission amount, 1.86% as inland transportation and 4.19% as port expenses. After adjustments on these accounts for US \$ *** per kg. against the total quantity of exports of 7750 kg; the weighted average ex-works export price works out to US \$ *** per kg.

C. SINGAPORE

M/s Aventis Animal Nutrition, Singapore

6.65 The weighted average c.i.f. price per kg. of exports of Vitamin AB2D3K (Single strength) effected by M/s Aventis Animal Nutrition, Singapore during the period of investigation works out as US \$ *** per kg. The weighted average ex-works export price has been determined after taking 2.11% as ocean freight, 0.18% as marine insurance charges, 5% as commission amount, 3.25% as inland transportation and 6.99% as port expenses. After adjustments on these accounts for US \$ *** per kg. against the total quantity of exports of 7000 kg; the weighted average ex-works export price works out to US \$ *** per kg.

6.66 The weighted average c.i.f. price per kg. of exports of Vitamin AB2D3K (Triple strength) effected by M/s Aventis Animal Nutrition, Singapore during the period of investigation works out as US \$ *** per kg. The weighted average ex-works export price has been determined after taking 0.77% as ocean freight, 0.18% as marine insurance charges, 5% as commission amount, 1.19% as inland transportation and 2.56% as port expenses. After adjustments on these accounts for US \$ *** per kg. against the total quantity of exports of 4000 kg; the weighted average ex-works export price works out to US \$ *** per kg.

All other exporters

6.67 The weighted average c.i.f. price per kg. of exports of Vitamin AB2D3K (Single strength) effected by all other exporters of Singapore during the period of investigation works out as US \$ *** per kg. The weighted average ex-works export price has been determined after taking 2.91% as ocean freight, 0.18% as marine insurance charges, 5% as commission amount, 4.48% as inland transportation and 9.64% as port expenses. After adjustments on these accounts for US \$ *** per kg. against the total quantity of exports of 6000 kg; the weighted average ex-works export price works out to US \$ *** per kg.

6.68 The weighted average c.i.f. price per kg. of exports of Vitamin AB2D3K (Triple strength) effected by all other exporters of Singapore during the period of investigation works out as US \$ *** per kg. The weighted average ex-works export price has been determined after taking 0.97% as ocean freight, 0.18% as marine insurance charges, 5% as commission amount, 1.49% as inland transportation and 3.21% as port expenses. After adjustments on these accounts for US \$ *** per kg. against the total quantity of exports of 10000 kg; the weighted average ex-works export price works out to US \$ *** per kg.

DUMPING MARGIN

6.69 The Rule relating to fair comparison provides comparison of normal Value and export Price as follows:

6.70 "While arriving at margin of dumping Designated Authority shall make a fair comparison between the export Price and the normal Value. A comparison shall be made at the same level of trade, normally at ex-works level and in respect of sales made and as 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 and sales, taxation, levels of trade, quantities, physical characteristics, and any other differences which are demonstrated to affect price comparability".

A. European Union(All producers / exporters)

6.71 For Vitamin AB2D3K (Triple strength) considering the ex-works normal value at US \$ *** per kg and the ex-works export price at US \$ *** per kg after adjustments on account of ocean freight (2.19%), marine insurance charges (0.18%), commission (5%), inland transportation (5.20%) and port expenses (3.74%); the dumping margin comes to US \$ *** per kg (which is 202 % of export price).

B. Thailand

M/s BASF (Thai) Limited, Bangkok, Thailand.

6.72 For Vitamin AB2D3K (Single strength) considering the ex-works normal value at US \$ *** per kg and the ex-works export price at US \$ *** per kg after adjustments on account of freight (2.39 %), insurance charges (0.38%), commission (4%), and other expenses (0.95%); the dumping margin comes to US \$ *** per kg (which is 98% of export price).

6.73 For Vitamin AB2D3K (Triple strength) considering the ex-works normal value at US \$ *** per kg and the ex-works export price at US \$ *** per kg after adjustments on account of freight (1.03%), insurance charges (0.39%), commission (4%), and other expenses (0.46%); the dumping margin comes to US \$ *** per kg (which is 79% of export price).

All other exporters

6.74 For Vitamin AB2D3K (Single strength) considering the ex-works normal value at US \$ *** per kg and the ex-works export price at US \$ *** per kg after adjustments on account of ocean freight (2.59%), marine insurance charges (0.18%), commission (5%), inland transportation (4.26%) and port expenses (9.58%); the dumping margin comes to US \$ *** per kg (which is 124% of export price).

6.75 For Vitamin AB2D3K (Triple strength) considering the ex-works normal value at US \$ *** per kg and the ex-works export price at US \$ *** per kg after adjustments on account of ocean freight (1.13%), marine insurance charges (0.18%), commission (5%), inland transportation (1.86%) and port expenses (4.19%); the dumping margin comes to US \$ *** per kg (which is 111% of export price).

C. Singapore

M/s Aventis Animal Nutrition, Singapore

6.76 For Vitamin AB2D3K (Single strength) considering the ex-works normal value at US \$ *** per kg and the ex-works export price at US \$ *** per kg after adjustments on account of ocean freight (2.11%), marine insurance charges (0.18%), commission (5%), inland transportation (3.25%) and port expenses (6.99%); the dumping margin comes to US \$ *** per kg (which is 128% of export price).

6.77 For Vitamin AB2D3K (Triple strength) considering the ex-works normal value at US \$ *** per kg and the ex-works export price at US \$ *** per kg after adjustments

on account of ocean freight (0.77%), marine insurance charges (0.18%), commission (5%), inland transportation (1.19%) and port expenses (2.56%); the dumping margin comes to US \$ *** per kg (which is 83% of export price)

All other exporters

6.78 For Vitamin AB2D3K (Single strength) considering the ex-works normal value at US \$ *** per kg and the ex-works export price at US \$ *** per kg after adjustments on account of ocean freight (2.91%), marine insurance charges (0.18%), commission (5%), inland transportation (4.48%) and port expenses (9.64%); the dumping margin comes to US \$ *** per kg (which is 233% of export price).

6.79 For Vitamin AB2D3K (Triple strength) considering the ex-works normal value at US \$ *** per kg and the ex-works export price at US \$ *** per kg after adjustments on account of ocean freight (0.97%), marine insurance charges (0.18%), commission (5%), inland transportation (1.49%) and port expenses (3.21%); the dumping margin comes to US \$ *** per kg (which is 132% of export price).

6.80 Comparing the Normal value and Export price, the dumping margin for Vitamin AB2 D3K (Single strength) works out as under: -

US \$ per Kg.	Thailand (M/s BASF (Thai) Limited.)	Thailand (All other exporters)	Singapore (M/s Aventis Animal Nutrition,)	Singapore (All other exporters)
Normal Value	***	***	***	***
Export Price	***	***	***	***
Dumping Margin %	98%	124%	128%	233%

6.81 Comparing the Normal value and Export price, the dumping margin for Vitamin AB2D3K (Triple strength) works out as under: -

US \$ per Kg.	European Union	Thailand (M/s BASF (Thai) Limited.)	Thailand (All other exporters)	Singapore (M/s Aventis Animal Nutrition,)	Singapore (All other exporters)
Normal Value	***	***	***	***	***
Export Price	***	***	***	***	***
Dumping Margin %	202%	79%	111%	83%	132%

6.82 For the purpose of fair comparison between Normal Value and Export Price the Authority took into account the information furnished by the Petitioner and other information available with the Authority. The Normal Value and Export Prices determined as detailed above are at ex-works level.

G. INJURY AND CAUSAL LINK

Submissions made by various interested parties

M/s BASF

7.1 Dissatisfaction was expressed with respect to the indexed data relating to some of the injury parameters submitted by the Petitioner in the Non-confidential version of the Petition.

7.2 It has also been requested that the Authority should also examine any known factors other than the dumped imports, which at the same time were injuring the domestic industry. Attention has also been drawn to para 12.7 of the Preliminary Findings relating to "optimum costs of production and optimum level of capacity utilisation for the domestic industry".

7.3 It was stated that the alleged injury on the domestic industry is self-inflicted and a result of obsolete technology and manufacturing process resulting in substantially high fixed cost. This, in turn, has resulted in an unrealistic and extremely high cost of production thereby making the product manufactured by the domestic industry uneconomical and commercially unviable.

7.4 It was stated that within the part "Basic Facts" the Petitioner refers to "a huge profit margin at the same import price". This means that the selling price of the imported products on the market for the feed industry was at the same level as the price of Piramal. How Piramal can claim any injury before April, 2000? On behalf of BASF Group of Companies, they requested therefore for a separate analysis of the development by index of the market price, the import price and the profit development. Additionally, they requested for the index development of the cost of raw material, where Piramal claims an increase. It was stated that only by a meaningful non-confidential injury summary they can analyze the allegations in a better way. It was stated that non-confidential version of the petition regarding injury was not meaningful.

7.5 A request was made to the Authority to look into the petitioner's cost calculation for AB2D3K, which shows the allocation of costs to the other products produced in the plant. It was stated that if 14.67% utilization of capacity is enough, which production volume is dedicated to AB2D3K. The Authority was requested to seek evidence from the petitioner. It was stated that the more different brands one produces in a plant, the more shifting time (cost of empty capacity) one has to cover. Which is the normal volume per batch. It has also been stated that the capacity utilisation of Piramal before the alleged dumping started was 14.67% and is extremely low and that

the injury is not caused mainly by dumped imports but itself inflicted by an unrealistic high capacity. It has been stated that the Authority in the Preliminary Findings has stated that " sufficient data was not available before the authority to assess any significant impact..." and therefore the Authority accepts that the alleged injury is caused by dumped imports without having sufficient data.

7.6 It was stated that it is understandable that despite the increase in production and sales volume of Vitamin AB2D3K during the period of investigation, the losses of the petitioner company have not declined", because even 17.37 % is far away from the economies of scale.

7.7 As regards the "Optimum costs of production and optimum level of capacity utilisation for the domestic industry", they sought to know the rate of the optimum level of capacity utilisation for a company, which produced below 20% capacity utilisation before the alleged dumping has started.

7.8 It was stated that Piramal has a profitable business with Vitamin A but has allocated all 400 workers to AB2D3K, it is not unlikely that they were "creative" in the same way with the cost allocation of their multi-purpose plant.

7.9 As regards "Causal Link", doubts were expressed regarding "the material injury to the domestic industry has been caused by the dumped imports from the EU, Thailand and Singapore cumulatively." They requested that in line with Art. 3.5 of the GATT Anti-Dumping Codex, the Authority to examine any known factors other than the dumped imports which at the same times are injuring the domestic injury especially with respect to the productivity of the domestic industry.

M/s Rhodia Chemicals on behalf of M/s Aventis Animal Nutrition's Ltd, Singapore

7.10 It was stated that the Petitioner has mentioned that as a result of "so called" dumping, 400 workers in his plant might loose their jobs. It was stated that the same reason was put forth in case of Vitamin AD3 500/100 case and secondly hardly 18-20 people are required in a premix plant, which the Petitioner is having.

7.11 It was stated that the Petitioner has an age-old plant not conforming to the ISO Standards unlike their premix plant in Singapore. Secondly, Petitioner's technology is very old whereas they are using latest technology, as a result of which their production is very efficient.

7.12 It was stated that as anti-dumping duty is already imposed on Vitamin AD3 500/100, anti-dumping duty should not be imposed on Vitamin AB2D3K since it is manufactured mainly by using Vitamin AD3 500/100

CLFMA

7.13 It has been stated that the Authority has failed to take note that the petitioner is not the manufacturer of Vitamin B2, D3. The petitioner manufactures only Vitamin A and in the same product he has made a profit of Rs.400 lacs as per the annual report of the petitioner published for the year ended 31.03.2000. It was contended that when the petitioner is making enough profit in Vitamin A, which constitutes 80% of the product under reference, then how could he lose money when he adds Vitamin B2, D3, K, which is 20% of the product of Vitamin AB2D3K (Single/Triple).

7.14 It was stated that the product AB2D3K was coming in to the country starting from 1992 at a price starting from US \$ 3.50/KG. The prices in June 98 was US \$ 6.00/kg and the same was steadily falling. The price in March 2000 gradually fell to US \$ 4.50. It was pointed out that the prices of Vitamins world wide, i.e. Vitamin C, E, A, D3, B2 – all were falling since 1998 and this is not for dumping in India. This is the market situation, which has forced all manufacturers to decrease the price.

7.15 It was further stated that, all the exporters like Aventis, BASF, Roche are also manufacturing the raw material of Vitamin A i.e. Pseudoionone / Betaionone. In the case of the petitioner, he is importing these raw materials. As such, the price of AB2D3K will have to be higher than that of the exporters.

7.16 It was contended that the technology with the petitioner is very obsolete, and therefore the cost of production of intermediates is more. The petitioner does not have the facility to manufacture the final product right from the basis stage. He has to import this raw material for manufacturing Vitamin A. Moreover, he is importing this intermediate from their principals M/s. HLR (Switzerland) and their price is always much higher than the international price for the reason known only to them, which adds to their cost of production. They should be competitive, or should make way for competition. They should not be allowed to make the user-industries suffer from quality and price of their raw material, as the latter will have to be competitive in the market.

7.17 It was stated that the Government had been kind enough to reduce the duty of the raw material i.e. Pseudoionone/Betaionone from 35% to 5% and still the petitioner pleads that he is losing money and dumping is being done.

7.18 In their written submissions subsequent to the public hearing CLFMA stated that the Petitioner is asking today for favour to increase their selling price by way of imposing anti-dumping duty on Vitamin AB2D3K, which they are selling @ Rs.380-Rs.410/- per kg and saying that they are not making profit. It was stated that during late 90's, when the cost of production was much lower, compared to that of today and

selling price was Rs.700-Rs.750/- per kg, exact to the extent of landed cost (includes 65% duty applicable at that time) of imported product; the petitioner was making huge profit on this product. At that time, the Petitioner did not feel like supporting the user industry or farmers by selling the product at reasonable profit and not allow the users to get tempted to import Vitamin AB2D3K.

7.19 It was stated that to reduce manpower adding to the unemployment figure of 400 is just an emotional statement and has no relevance with the business.

7.20 It was stated that the Petitioner claims 62% of the market share. It was stated why other 38% are not joining the petitioner or applying for easy route of anti-dumping to make more money.

7.21 As regards the decline in the price because of withdrawal of advance licenses, it was stated that the decline in the prices of Vitamins during the last 2 years is an international phenomenon and has nothing to do with anything else.

It was stated that that the Petitioner losses are on account of the following:-

1. Old Plant & Technology
2. Excess Staff
3. High Overheads
4. Inefficient Management etc.

It was stated that the Petitioners so called losses should not be protected by imposing anti-dumping duty on import of Vitamin AB2D3K Premix.

7.22 It was alleged that the raw material was purchased by the petitioner from their parent company at very high price that pushes up their cost of production. It was further stated that their Vitamin A plant is more than 40 years old and is obsolete which can never be anywhere near the versatile, modern and state of the art plants of overseas manufacturers in terms of both quality and cost. The petitioner therefore wanted anti-dumping duty on Vitamin AB2D3K as a cushion against their own inefficiency and to profit themselves and their parent company at the total cost of Indian consumers.

Poultry federation of India

7.23 It was stated that the Petitioner is manufacturing only one item, i.e. Vitamin A and hence their request for Anti-Dumping is not proper.

7.24 They contended that the plant, which is used by the Petitioner, is more than 40 years old. The technology is old and the Petitioner has not bothered to put in money to upgrade the plant and the technology. It was further stated that the already the Petitioner has made huge profits during the high duty structure, which was prevailing 5 years back and in which he has got the capital returned from the same. Now as the import duties have come down, he is unable to compete and has now approached the Authority for a duty cover in the form of anti-dumping duty to hide disadvantage of the outdated plant and technology.

7.25 It was stated that the product here is a premix product, which does not require more than 20 workers even in a most outdated plant available on this earth. The 400 workers mentioned by him are employed in the whole group plant of the Petitioner, which has bulk product of other formulations of pharmaceuticals, related to human products. It was suggested that in fact the Authority should look at more than 40 millions poor Indian families who will be the victim of the profiteering tactics of the Petitioner who wants to increase his profit under the cover of anti-dumping duty, when the fact remains in the Petitioner's own balance sheet of 1999-2000 which is a public document states that the petitioner has made additional profit of Rs.400 lacs. It was stated that when the Petitioner is making such good profits, then why he requires anti-dumping duty from the Authority.

7.26 It was stated that the already the Authority has imposed anti-dumping duty on Vitamin AD3, which consists of 75% to 80% of Vitamin AD3B2K.

7.27 It was stated that the contention of the Petitioner that 400 families of employees will be on the road is just an emotional gimmick.

7.28 It was stated that the contention regarding the burden per tonne of feed, if there is anti-dumping on one item, is not relevant. As slowly there is Anti-Dumping Duty on Choline Chloride, Vitamin AD3, Vitamin AB2D3K and may be more in coming.

The Petitioner

7.29 It was stated that post POI, that is, during the year 2001, the injury to the petitioner has further intensified. The production and capacity utilisation have declined further from 17% in 2000 to 13% in 2001. The net sales realisation per kg of Vitamin AB2D3K single strength has come down from Rs. *** per kg during the POI to Rs. ***per kg during the current year, 2001, i.e. a decline of 17%. Similarly net sales realisation of Vitamin AB2D3K triple strength has come down from Rs. ***per kg during the POI to Rs. *** per kg during the current year, 2001, i.e. a decline of 7%. Resultantly, losses have further mounted putting extra pressure on the finances of the company. It was stated that if this situation continues then the company would have to

consider reducing its manpower adding further the unemployment figures of the country.

7.30 It was stated that M/s Nicholas Piramal India Ltd, the Petitioner in this case is the major producer of Vitamin AB2D3K in India and accounts for nearly 62% of the total production in India.

7.31 The import of various feed grade Vitamins and Vitamin Premixes like Vitamin AB2D3K were being wrongly done earlier, to evade the custom duty. It was stated that misinterpretation and misdeclaration was the crux of the game and that the following routes were followed for importing food grade Vitamins and Vitamin premixes.

1. The imports were made against advance licensing issued by the DGFT. The norms fixed for the issues of these licenses were very high. The importers were allowed to import 227 kg of Vitamin AB2D3K against 1 mt of prawn exports. This was highly lopsided as the quantity of Vitamin AB2D3K required to manufacture 1.5mt to 2mt of prawn feed was only 4kg to 5kg. Thus, large quantities of Vitamin AB2D3K were imported without paying any duty. On a representation made to the Government, the norms were revised when the quantities to be imported against advance licensing were substantially reduced to a required level of 4 to 5 kg.
2. Then a new route plan was decided and they started importing the subject goods by wrongly declaring them as prawn feed where the custom duty was just 5%. Hundreds of tons were being cleared and thereby was a massive evasion of duty. This too came to a halt, after the concerned authority realised their mistake and corrective action was taken.

7.32 It was claimed that during this whole period from 1996-97 till 1999-2000 the exporters did not reduce their prices as steeply as they did during the Period of Investigation. After the notification in April, 2000 when imports of Vitamin AB2D3K as prawn feed was completely stopped the exporters resorted to dumping and lowered their prices by almost 30%. This was so because it was no longer beneficial for the importers to sell the subject goods at a huge profit margins at the same import price. Hence, the exporters reduced their prices substantially fearing losing their market share.

7.33 Thus, the phenomenal growth in imports during the Period of Investigation is directly a result of lowering prices.

7.34 It was stated that as a result of the above the petitioner was left with no choice but to once again approach the government but this time it was not against the

Importers, it was against the Exporters through anti-dumping procedures by filing the petition for imposing anti-dumping duty on the imports of Vitamin AB2D3K.

7.35 It was stated that it has come to their notice that the importers have still not stopped from finding new routes by misdeclaring the subject goods under other chapters. It was stated that through a letter from the Directorate of Revenue Intelligence they have come to know that Vitamin AB2D3K is getting imported by various importers as Veterinary Drugs. In the customs tariff under general exemption 36 products have been identified under chapter 23,28,29,30 and 38 for the benefit of concessional duty of 15% which otherwise would have attracted a higher duty of 35%. Though Vitamin AB2D3K is not mentioned in the list of 36 products, the same is cleared as Veterinary Drug and cleared with 15% duty only. This will further accentuate the injury to the domestic industry, as they are already able to sell the product at below the fair market price. However, since the matter is under active consideration of the DRI, they hope that this new route will also be plugged soon.

7.36 It was stated that due to dumping of the subject goods at abnormally low prices the petitioner have suffered injury on account of the following factors:

1. Significant Increase in the quantum of imports:

The total demand for Vitamin AB2D3K in India during 98-99,99-00 and POI was 313 MT, 350 MT and 387 MT (Annualized) respectively. The total import of this product from countries alleged to be dumping this product during 98-99,99-00 and during POI was 75 MT, 100 MT and 123 MT (Annualized) respectively. Thus, the quantum of imports has gone up significantly during the period of investigation.

2. Significant increase in the market share of Imports:

The increased imports during the period of investigation have led to increase in the market share of Imports. The market share of imports from the countries alleged to be dumping during the POI increased significantly from 29% in 99-00 to 32% with a corresponding decline in the market share of the domestic industry.

3. Significant decline in Import Price

The substantial increase in imports were the direct result of substantial decline of 43% in CIF import price of Vitamin AB2D3K single strength and 32% in CIF import price of Vitamin AB2D3K triple strength during the POI. The substantial decline in import price during POI prevented price increase in the market inspite of increase in demand. It prompted the importers to suppress the sales price by resorting to price undercutting in order to achieve higher sales volumes.

1. Significant decline in the Domestic Selling price:

In order to retain its market share the petitioners were forced to reduce their selling prices by almost 13%. This resulted in further losses for the Petitioner Company.

Petitioner's reply to issues raised by other interested parties

7.37 As regards the issue regarding the quality of complaint is extremely low because the production, sales and capacity utilisation has increased by 2% in 99-2000 as compared to 98-99 but the losses have increased by 183% in 99-00 as compared to 98-99; and that in 2000, the production went down by 13%, whereas the capacity utilisation increased by 16%.which is difficult to understand; --- the Petitioner stated that during 99-2000, besides decline in selling price by 2% there was corresponding increase in cost by 5%. Hence, the losses in 99-2000 were the cumulative effect of decline in selling price on one hand and increase in cost on the other hand.

7.38 It was stated that the figure for Year 2000- unto December 2000 should be read as the figures of 9 months and not 12 months. In India, the financial year starts from April 1 and ends on March 31 each year as compared to calendar year being followed in European Union.

7.39 As regards the issue that the product Vitamin AB2D3K (Triple strength) is the product used as essential nutrient for feeding the poultry by breeders and the farmers even in remote areas and that by imposing this anti-dumping duty the Indian farmers will stand no competition against the foreign poultry suppliers; the Petitioner stated that the ratio of Vitamin AB2D3K in the total cost of the animal / poultry feed is approximately 0.68% of the total cost of the feed. The evidence in this respect has already been submitted to the Honorable Designated Authority. Hence, the imposition of anti-dumping duty on Vitamin AB2D3K would not materially affect the feed price. To protect the Indian farmers from vagaries of international competition the Indian government has imposed a bound duty of 110 % on import of chicken legs.

7.40 As regards the issue that the Petitioner only manufactures Vitamin A hence, he has to buy these vitamins from the open market at the prevailing prices leading to higher cost of production of Vitamin AB2D3K; the Petitioner stated that the major component in Vitamin AB2D3K premix is Vitamin A both in terms of quantity and as well as in value. Vitamin A is manufactured by the petitioner from the basic stage. As regards the issue that the product manufactured by the petitioner is just the mixture, and the imported product is a specially designed product which has a gelatin coating on the product Vitamin A, due to which at the time of feeding the animal, the same is not wasted. Due to this coating, the shelf life of the imported product is 18 months whereas in case of the petitioner's product, the shelf life is hardly 9-12 months due to

outdated technology and that the petitioner has failed to upgrade the technology, which is going worldwide and due to the outdated technology the yields are low and the production cost is high; the Petitioner has stated that the product manufactured by the petitioner contains Vitamin A, which is Gelatin encapsulated to ensure full availability of Vitamin A at the time of feeding. The Indian law does not require product shelf life to be mentioned on the label and the product is as good as any international brands. The petitioner's stability studies show that the product is stable and complies with label specifications for even 24 months. The Petitioner further stated that they follow plan of continuous technology upgradation and cost reduction through yield and labour productivity improvements and energy conservation. The petitioner manufacturing facilities are accredited with ISO9001 and ISO 14001 certifications HACCP (Hazard Analysis of Critical Control Points).

7.41 As regards the issue that the capacity utilisation of the Petitioner is extremely low and that as such it is likely that it is multipurpose plant where one can allocate cost and capacity in a flexible way and a capacity utilisation of 14.67% is far away from any economies of scale and the injury is self-inflicted by an unrealistic high capacity; the Petitioner stated that the capacity utilisation of the Petitioner is though low yet it is cost effective, as it is a multipurpose plant. It is only when the plant is dedicated for one product and the capacity is abnormally high then only it is said to be vulnerable to the price change. It was stated that though the plant of the petitioner is a multipurpose plant but it would be wrong to say that it is not cost effective as several other products/premixes are also manufactured with it, which increases the overall capacity utilisation of the plant. During the course of investigation, the petitioner has given the relevant data to the Authority in this regard.

7.42 With respect to the issue relating to other manufacturers in the country who are buying Vitamin A from the petitioner are not effected by the imports then how is the petitioner getting effected and that the petitioner is trying to use this method for increasing the profits; the Petitioner has stated that the market share of other local manufacturers in the market is quite insignificant and as a prudent businessman they would not like to contest the case when they know that individually they do not have the standing to file the petition. If increasing profit is the only consideration for the petitioner then they are sure the other local manufacturers would not mind joining the petitioner in defending the imposition of anti-dumping duty.

7.43 The Petitioner states that in one of the CEGAT judgment it has been held "Process of manufacture is not a relevant factor under anti-dumping law. Quality difference is also not material. The imported goods and domestically produced goods have the same use and have been correctly held to be 'like article' by the Designated Authority." Automotive tyre Manufacturers Association vs Designated Authority. Final Order Nos. 37-40/2000-AD, dated 6-11-2000.

7.44 With respect to the issue that after the imposition of anti dumping duty the petitioner will surely take undue advantage of the virtual monopolistic situation vested in him and raise the price of this product steeply to the detriment of the user industry and farmers; the Petitioner has stated that the petitioners have not filed the petition to ask that the imports should be banned but it requires that the unfair dumping by the exporters should be eliminated 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. They further stated that even after the imposition of anti dumping duty and resulting increase in selling price of the subject goods, the selling prices of the feed to the farmers is not going to be materially affected as it constitutes a very small portion of the total feed cost.

7.45 As regards the issue that in the Annual Report of 1999-2000 that the petitioner has claimed under the heading "Vitamin A and its Premixes", that they have made an additional profit of Rs.400 lacs than the earlier year and that the petitioner is making profit in the same and now they are resorting to anti dumping to make additional profits; the Petitioner has stated that the selling price of Vitamin A is controlled under the Drug Price control order. As per the Annual report the government has revised the DPCO price of Vitamin A Palmitate (Used for Pharmaceutical products and not feed grade products) as a result of which the company's profitability of Vitamin A division has improved by Rs.400 lacs on an annualised basis. This does not mean that the profitability of Vitamin AB2D3K has improved as a result of increase in DPCO price of Vitamin A Palmitate because Vitamin A Palmitate is not used in its manufacturing. Moreover, the selling price of Vitamin AB2D3K is not based on the selling price of Vitamin A but on its cost and while working out the cost of Vitamin AB2D3K the consumption of Vitamin A is taken on cost basis and not on selling price basis.

7.46 As regards the issue that the goods are being manufactured by multinationals worldwide and that the prices for all the vitamins have been falling worldwide since last three years; the Petitioner has stated that Six of the best known Vitamin makers in the world (including the exporters referred to in the petition) have been accused of a global conspiracy to fix Vitamin Prices by artificially hiking the prices of wide range of Vitamins including Vitamin A during the period prior to the decline in prices. It was stated that by talk of decline in prices worldwide in the last three years, do we mean to say in comparison to the prices before that, if so then the comparison is totally wrong. The prices in the last three years have declined not because of any changed market situation but because the prices, which were artificially increased earlier, have now stabilized after the conspiracy was hatched. Thus, decline in prices worldwide was not a result of any significant decline in cost but because of the above reasons. This is further evidenced by the fact that BASF in their annual report of 2000 has accepted having paid settlements associated with the violations of antitrust laws in

Vitamin business and this was one of the factors for their losses in the health and Nutrition business segment during 2000

7.47 As regards the issue that the petitioner is importing Pseudoionone/ Betaionone whereas the same are manufactured by Aventis, BASF and Roche due to which their cost of production is more and that the petitioner is importing this intermediate from their principals in M/s HLR, Switzerland and their price is always much higher than the international price for the reasons known only to them which adds to their cost of production etc; the Petitioner has stated that the petitioner does not import Betaionone and the percentage cost of Pseudoionone in total cost of vitamin AB2D3K is less than 4 %. It was further stated that they have during the course of investigation given to the Authority the copy of purchase documents of Pseudoionone for 1998-99, 1999-2000 and for the POI wherein it can be seen that the petitioner has never purchased Pseudoionone from M/s HLR, Switzerland at more than the international market price.

7.48 With respect to the issue that the government has been kind enough to reduce the duty of the raw material i.e. Pseudoionone/ Betaionone from 35% to 5% and still the petitioner pleads that he is losing money and dumping is being done; the Petitioner has stated that the Basic custom duty rate was reduced from 35% to 25% and not 5%. The import of Pseudoionone falls under Chapter 2914 where besides the Basic duty, 16% additional duty and 4% special duty is also payable. This in all comes to 33% as against 46% earlier and that the effect of reduction in custom duty has been taken into account in the costing of the product submitted to the Authority.

Submissions made by various interested parties in response to the Disclosure Statement

M/s. BASF

7.49 As regards Capacity utilization, it was claimed that a capacity utilization of 14.67% is extremely low. This figure refers to the situation before the alleged dumping started. After the "phenomenal growth in imports" the figure went down to 13%). However, BASF accepted the statement of the Designated Authority in the disclosure statement in this respect. Nevertheless, it was contended that they see a chance of allocation of certain costs in a multipurpose plant to show the economic situation more negative as it is. It was stated that the Authorities should probe into the costing details as claimed by the Petitioner.

Examination by the Authority

7.50 None of the parties challenging the petition and the Preliminary Findings produced any material evidence to substantiate their claim, which would have a bearing on this case.

7.51 The index figures relating to various injury parameters as procured from the petitioner was duly made available to M/s BASF and also placed in the public file for inspection by an interested party.

7.52 In establishing that the material injury to the domestic industry has been caused by the imports from the subject countries, the Authority in the Preliminary Findings noted that the quantum of imports from Thailand and Singapore has increased in absolute terms whereas in case of European Union it has declined. However, it was observed that the imports from European Union, Thailand and Singapore have adversely affected the domestic industry cumulatively; it was further noted that the domestic industry was forced to sell at reduced prices that resulted in losses or low returns on investments; and that the imports were significantly undercutting the prices of the domestic industry. It was also noted that the increase in production, sales and capacity utilisation during the period of investigation is marginal and at declining sales prices, resulting in increased losses for the petitioner.

7.53 With respect to the capacity utilisation, it is submitted that the observation of M/s BASF is incorrect as the petitioner has a multi-purpose plant and this fact was and is being taken into account during the investigations.

7.54 With respect to the issue regarding Authority's Preliminary Findings on Page 33 that " sufficient data was not available before the authority to assess any significant impact...". It is noted that it has been quoted out of context as the Authority while examining and evaluating the various injury parameters as mentioned in para 4 of Annexure II of the Anti-dumping Rules, made the observation only with respect to the impact of dumped imports on factors such as actual and potential negative effects on Cash flow, Growth and ability to raise capital investments of the domestic industry. The Authority notes that it is not imperative that injury must be proved on each of the parameters mentioned in para 4 of the Annexure II. Sufficient data proving injury to the domestic industry was available before the Authority to come to preliminary findings.

7.55 In respect of issue relating to the percentage of AB2D3K being produced by the Petitioner, it is reiterated that it is not imperative for the petitioner to produce all raw materials / inputs which go into the manufacture of the 'product under consideration'.

7.56 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.

7.57 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 in the Indian market will not be reduced by the anti-dumping measures, particularly if the levy of the anti-dumping duty is restricted to an amount necessary to redress the injury to the domestic industry. On the contrary, imposition of anti-dumping measures would remove the unfair advantages gained by dumping practices, would prevent the decline of the domestic industry and help maintain availability of wider choice to the consumers of Vitamin AB2D3K. 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.

7.58 To ascertain the extent of anti-dumping duty necessary to remove the injury to the domestic industry, the Authority relied upon reasonable selling price of Vitamin AB2D3K in India for the domestic industry, by considering the optimum cost of production at optimum level of capacity utilisation for the domestic industry.

7.59 The Authority notes that the market share of the petitioner is low not because the petitioner does not have the capacities to produce more but because they are not able to sell the subject goods at fair selling price due to dumping of subject goods by the exporter at unreasonable low price. Moreover, it is not incumbent upon the petitioner to meet the entire demand of the subject goods in the country.

7.60 The Authority has taken note of and accepted the contention of the Petitioner that the selling price of Vitamin A Palmitate is controlled under the Drug Price control order and that as per the Annual report the government has revised the DPCO price of Vitamin A Palmitate as a result of which the company's profitability of Vitamin A division has improved by Rs.400 lacs on an annualised basis. The profitability of Vitamin AB2D3K does not improve as a result of increase in DPCO price of Vitamin A Palmitate as the selling price of Vitamin AB2D3K is not based on the selling price of Vitamin A but on its cost. Moreover, the Authority notes that Vitamin A Palmitate is not used in the manufacturing of the subject goods.

7.61 As regards the farmers interests / interests of the user industry is concerned, it has been noted that Vitamin AB2D3K constitutes approximately only 0.68% of the total cost of the feed and therefore would have minimal effect on the end users. Such miniscule is the impact of the proposed measures that it can hardly be argued that there could be any adverse impact on the consumers.

7.62 It has been alleged that the manufacturers/exporters have same pricing for all the South Asian countries or the prices of vitamins are falling globally. However, the Authority notes that the export prices to third countries may also be dumped and may, therefore, be not reliable.

7.63 Since the fair selling price has been worked out on normative basis, injury to the domestic industry on account of other factors, if any, is nullified.

The Authority therefore observes the following:-

7.64 Under Rule 11 and Annexure-II of the Anti-dumping Rules, 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 article...". 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 increase, which otherwise would have occurred, to a significant degree.

7.65 Annexure II (iii) under Rule 11 supra further provides that in case where imports of a product from more than one country are being simultaneously subjected to anti-dumping investigation, the Designated Authority will cumulatively assess the effect of such imports, only when it determines that the margin of dumping established in relation to the imports from each country is more than two per cent expressed as a percentage of export price and the volume of the imports from each country is three per cent of the imports of the like article or where the export of the individual countries is less than three per cent, the imports cumulatively account for more than seven per cent of the imports of the like article, and cumulative assessment of the effect of imports is appropriate in light of the conditions of competition between the imported article and the like domestic article.

7.66 The Authority notes that the margin of dumping and quantum of imports from European Union, Thailand and Singapore are more than the limits prescribed above. The cumulative assessment of the effect of imports of Vitamin AB2D3K (single strength and triple strength) is appropriate in the light of the conditions of competition between the imported subject goods and the conditions of competition between the imported subject goods and the like domestic article.

7.67 For the examination of the impact of imports on the domestic industry in India, the Authority has considered such further indices having a bearing on the state of the

industry as production, capacity utilisation, quantum of sales, profitability, net sales realisation, the magnitude and margin of dumping etc. in accordance with Annexure II (iv) of the rules supra.

(a) **Quantum of Imports.:** {The quantity of triple strength has been converted to single strength by multiplying with factor 3}.

The total imports of Vitamin AB2D3K were 78 Mt in 1998-99, 100 Mt in 1999-2000 (as per the data in the Petition) and 114.86 Mt during 1st April 2000 – 31st December 2000, the period of investigation. (As per the data in the Petition from the secondary sources and data made available by some of the importers and exporters). Thus, the increase was 28.2% in 1999-2000 over 1998-99 and 53.15% (annualised) in POI over 1999-2000. The increase was 96.35% (annualised) in POI over 1998-99. Thus, the quantum of imports has gone up significantly during the period of investigation.

The quantum of imports from European Union was 72.25 Mt in 1998-99, 76.54 Mt in 1999-2000 (as per the data in the Petition) and 3.15 Mt during the POI (as per the data in the Petition from the secondary sources and data made available by some of the importers and exporters) respectively. Imports from European Union increased by 5.93 % in 1999-2000 over 1998-99 and decreased drastically by 94.52 % (annualised) in POI over 1999-2000. The decrease was 94.19% (annualised) in POI over 1998-99. Thus, the quantum of imports from European Union has declined significantly during the period of investigation.

The quantum of imports from Thailand was 11 Mt in 1999-2000 (as per the data in the Petition) and 56.7 Mt during the POI (as available from the statistics from secondary sources and data made available by some of the importers and exporters) respectively. The imports from Thailand increased by 587% (annualised) in the POI over 1999-2000. Thus, the quantum of imports from Thailand has gone up significantly during the period of investigation.

The quantum of imports from Singapore was 3 Mt in 1999-2000 (as per the data in the Petition) and 55 Mt during the POI (as available from the statistics from secondary sources and data made available by some of the importers and exporters) respectively. The imports from Singapore increased by 2344% (annualised) in the POI over 1999-2000. Thus, the quantum of imports from Singapore has gone up significantly during the period of investigation.

The quantum of imports from other countries was 2.5 Mt in 1998-99, 0.5 Mt in 1999-2000 and Nil during the POI (as available from the Petition) respectively.

(b) **Production, Capacity Utilisation and Impact on Inventories**

The Authority notes that the production capacity, production and capacity utilisation of the petitioner company (viz., M/s. Nicholas Piramal India Limited, Mumbai) was as under:

Year Capacity (KG) Production (KG) Capacity

(per annum) Utilisation

1998-99 891000 130718 14.67%

1999-00 891000 133650 15.00%

2000 891000 116086 17.37%

(POI) (Annualised)

The capacity utilisation of the petitioner was 14.67% in 1998-99, 15.00% in 1999-00 and during the POI, it was 17.37% (Annualised). It is noted that the capacity utilisation of the Petitioner Company has increased marginally during the period of investigation but the same has been achieved at low sales realisation. In order to keep the costs to the minimum, the petitioner have been forced to reduce on to their working capital requirements by keeping the inventories to the bare minimum.

(c) Sales and Market Share

The Authority notes that the total consumption of Vitamin AB2D3K in the Indian Market was 313 Mt in 1998-99, 350 Mt in 1999-2000 (as per the data made available in the petition) and 313 Mt during the nine months of the POI (as per the data made available in the petition and some of the exporters & importers) respectively. The share of imports in total consumption was 25% in 1998-99, 29% in 1999-2000 and 36.7% during the POI respectively. The share of the Petitioner Company was 44%, 41% and 39% respectively during 1998-99, 1999-2000 and POI respectively. Thus, the share of imports has risen in the total consumption whereas the share of domestic industry has declined.

(d) Price undercutting and price depression

The Authority notes that the petitioner had to decrease their selling prices to match the prices offered by the exporters and importers. The imports from the European Union, Thailand and Singapore cumulatively have significantly depressed the prices of the Vitamin AB2D3K being sold by the domestic producers and have prevented the increase of prices in the local market in spite of the fact that there was continuous

increase in demand for the product. Therefore, the dumped imports from the European Union, Thailand and Singapore cumulatively have caused significant price undercutting and caused losses to the petitioner. The average realisation per kg of Vitamin AB2D3K (Single strength) in 1998-99 was Rs ***/- per kg, which dropped to Rs ***/- per kg in 1999-2000 and to Rs ***/- per kg, during the POI. Likewise, the petitioner could not even realise its costs in case of Vitamin AB2D3K (Triple strength).

(e) Profitability & impact on employment.

The Authority notes that inspite of the increase in production and sales volume of Vitamin AB2D3K during the period of investigation, the losses of the petitioner company have not declined.

The petitioner has not yet laid off employees but it has been mentioned that they may be forced to lay off employees if corrective measures to check dumping are not taken. It is noted that the Petitioner Company is a multi-product Company and involved in production of various products. Therefore, no significant change in employment level of the domestic industry due to poor operating levels is observed.

(f) Impact on Cash Flow & Growth

It has been claimed by the Petitioner that constant reduction in the prices of Vitamin AB2D3K in the domestic Market on account of dumped imports has affected the profitability of the petitioner consequently adversely affecting the cash flow of the company.

However, the Authority notes that no significant impact of the factors such as actual and potential negative effects on cash flow, growth and ability to raise capital investments could be shown by the petitioner.

CONCLUSION ON INJURY

7.68 In view of the foregoing, the Authority holds that: -

- a. the quantum of imports from Thailand and Singapore has increased in absolute terms whereas in case of European Union it has declined. However, it is observed that the imports from European Union, Thailand and Singapore have adversely affected the domestic industry cumulatively;
- b. the market share of the Petitioner Company has gone down;
- c. the domestic industry has been forced to sell at reduced prices that have resulted in losses or low returns on investments;

- d. imports are significantly undercutting the prices of the domestic industry;
- e. The increase in production, sales and capacity utilisation during the period of investigation is marginal and at declining sales prices, resulting in increased losses for the petitioner.

7.69 The above factors collectively and cumulatively indicate that the dumped imports have kept the domestic prices depressed in the Indian market thereby causing material injury to the domestic Industry by way of depressed Net Sales Realisation leading to financial losses. The Authority therefore concludes that the domestic industry has suffered material injury.

H. CAUSAL LINK

8.1 In establishing that the material injury to the domestic industry has been caused by the imports from the European Union, Thailand and Singapore cumulatively, the Authority holds that the increase in market share of imports from the European Union, Thailand and Singapore cumulatively has resulted in decline in the market share of the petitioner. Hence, the dumped imports have had the volume effect on the domestic industry. In examining the price effect, the Authority notes that these imports significantly undercut the prices of the domestic product forcing the domestic industry to sell at unremunerative prices. Resultantly, the domestic industry incurred losses. The material injury to the domestic industry was, therefore, caused by the dumped imports from the European Union, Thailand and Singapore cumulatively.

8.2 On the basis of the 'facts available', it is observed that the imports of the subject goods from "other countries " are below the de-minimis level during the period of investigation.

8.3 Contraction of demand is not apparent and no technological development in the industry or any other such factor, which could have resulted in injury to the domestic industry, has been noticed.

I. Anti-Dumping Duty Recommended:-

9 The Authority has carefully evaluated the injury caused to the domestic industry on account of dumping of the subject goods and therefore recommends the amount of anti-dumping duty equivalent to the dumping margin or less, which if levied, would remove injury to the domestic industry. For this purpose, the Authority has compared the non-injurious selling price of the domestic industry with the landed value of imports from the subject countries.

J. FINAL FINDINGS:

10.1 The Authority after considering the foregoing, concludes that:

- a. Vitamin AB2D3K (Single strength and Triple Strength) described under Para 3 originating in or exported from European Union, Thailand and Singapore 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 to the domestic industry by dumping of the subject goods originating in or exported from the European Union, Thailand and Singapore cumulatively.

10.2 The Authority recommends imposition of definitive anti-dumping duty on all imports of the subject goods falling under Chapter 23 of the Customs Tariff Act, originating in or exported from European Union, Thailand and Singapore. The Anti dumping duty shall be the difference between the amount mentioned in Col.3 below and the landed value of imports of the subject goods in US \$ per KG.

Vitamin AB2 D3K (Single strength)

Countries /Territory	Name of the Producers / Exporters	(US \$/ Kg.)
1.	2.	3.
Thailand	M/s BASF (Thai) Ltd.	11.56
	All other Exporters	11.56
Singapore	M/s Aventis Animal Nutrition, Singapore	11.56
	All other Exporters	11.56

Vitamin AB2 D3K (Triple strength)

Countries /Territory	Name of the Producers/Exporters	(US \$/ Kg.)
1.	2.	3.
European Union	All Exporters	27.74
Thailand	M/s BASF (Thai) Ltd.	27.74
	All other Exporters	27.74
Singapore	M/s Aventis Animal Nutrition, Singapore	27.74
	All other Exporters	27.74

K. LANDED VALUE

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

12 Subject to above, the Authority confirms the preliminary findings dated 25.9.2001

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

(L V SAPTHARISHI)
DESIGNATED AUTHORITY & ADDITIONAL SECRETARY