

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

New Delhi the 18th March 2002

FINAL FINDINGS

Subject: Anti-Dumping investigation concerning imports of Vitamin AD3 500/100 originating in or exported from European Union and Singapore --- Final Findings.

16/1/2001-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 AD3 500/100(hereinafter also referred to as subject goods) originating in or exported from European Union cumulatively and individually from Germany,France, Israel, People's Republic of China 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 AD3 500/100 originating in or exported from European Union 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. It was decided to exclude Israel and the People's Republic of China from the scope of these investigations, as imports of the subject goods did not take place during the 'POI' as per the data made available by the Petitioner. The Authority notified the Delegation of the European

- Commission 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 19th March, 2001, published in the Gazette of India Extraordinary initiating anti-dumping investigations concerning imports of Vitamin AD3 500/100 being cleared under Chapter 23 and 29 of the Customs Tariff Act, 1975, (as it is not specifically mentioned in any one sub-heading of the Customs tariff) originating in or exported from territory of European Union and Singapore. No specific data is available with DGCI&S on the import and export of this product, as the same has not been imported under one custom heading. Data is collected from secondary sources (two private data collecting agencies) namely M/s Informant and M/s International Publishing House.
 - v. The Authority notified preliminary findings dated 06.6.2001 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 22.8.2001. 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 28.02.2002. 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.

C. PRODUCT UNDER CONSIDERATION

3.1 The product under consideration in the present investigation is Vitamin AD3 500/100. It is a light brown coloured fine granular powder. The individual particles contain Vitamin A Acetate and Vitamin D3 microencapsulated in gelatin and sucrose. EMQ is added as an anti oxidant.

Each gram of Vitamin AD3 500/100 contains

Vitamin A 500000 IU

Vitamin D3 100000 IU

3.2 Vitamin AD3 500/100 falls under Chapter 23 of the Custom Tariff Act. However, the product has not been categorised precisely under single dedicated Customs sub-heading, but it has been covered under the category of others preparations of a kind used in animal feeding. Some imports of the Vitamin AD3 500/100 have also being

done under Customs sub-heading no. 29.36. Present investigation covers all forms of Vitamin AD3 500/100.

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

3.4 The Authority confirms the Preliminary Findings on product under consideration.

D. LIKE ARTICLES

4.1 The Vitamin AD3 500/100 is used in animal/poultry/prawn feed to provide required Vitamin Level for better nutrition. The pharmaceutical companies having veterinary divisions use this product to manufacture animal health dry products. On the basis of the 'facts available' with the Authority, it notes that the subject goods i.e. Vitamin AD3 500/100 is of feed grade quality only.

Submission made by various interested parties.

M/s Amarchand Mangaldass & CO, Solicitors on behalf of M/s BASF, Germany and M/s BASF South East Asia Pte Ltd, Singapore.

4.2 It was contended that there was significant difference in the quality of product being manufactured by the domestic industry and the one being imported from M/s BASF South East Asia Pte. Ltd., Singapore. In this regard it was claimed that their clients product, Lutavit Brand Product has a significant advantage in shelf life as well as further processing for reasons of so-called cross-linking and that there are various formulation steps involved in this. It was stated that the result of these advantages was the positive effect on account of higher activity of around 20-30%, which will definitely be influencing the market price of the superior and the inferior products of supply such as that of the domestic industry. It was stated that the said information and the details could be verified by the Authorities in the closed-door meeting and investigated at the spot verification at the Units of their client. It was therefore contended that any comparison with the imported Vitamin AD3 and that of the subject goods produced by the domestic industry, was not desirable as there were differences in quality and the process of manufacture.

M/s Chokhani Pharma Vet

4.3 Referring to Para 8.17 of the preliminary findings, It was stated that Custom prices data and Bill of entries were provided in their reply to the Authority in which it was clearly mentioned that the subject goods are imported under Chapter 23.09.

M/s Nicholas Piramal India Ltd. (the Petitioner)

4.4 Since the products are identical and are used interchangeably, the Designated Authority has rightly considered them as Like Products. In one of the CEGAT judgements (Automotive tyre Manufacturers Association v/s Designated Authority. Final Order No. 37-40/2000 AD, dated 6.11.2000) it has been clearly held that the Process of manufacture and the quality are not the relevant factors under anti dumping laws.

Examination by the Authority

4.5 The Authority noted in the preliminary findings that some imports of the subject goods are also being done under Custom sub-heading No. 29.36. It was clearly mentioned in Para 8.17 of the preliminary findings that while arriving at the volume and value of the subject goods imported into India from the subject countries has been 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.

4.6 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.

4.7 No argument has been raised disputing that Vitamin AD3 500/100 produced by the domestic industry has characteristics closely resembling the imported Vitamin AD3 500/100 and is substitutable both commercially and technically. Vitamin AD3 500/100 produced by the domestic industry has been therefore treated as like article to the product exported from European Union and Singapore, within the meaning of Rule 2(d).

4.8 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 present petition.

5.2 M/s Kerala State Drugs & Pharmaceuticals Ltd, the other known manufacturer of the subject goods has stated that their sales of Vitamin AD3 500/100 had been very badly affected because of the dumping of cheaper imports and they were forced to

pull out from the open market sales because of the non-remunerative prices and has expressed support to the petition.

Submissions made by various interested parties

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

5.3 It was stated that examination by the Authority that M/s. Kerala State Drugs & Pharmaceuticals Ltd., another known manufacturer of subject goods has been badly affected because of dumping of cheaper imports and were forced to pull out, is unfounded allegation, because they had stopped their business much before the investigation period.

Examination by the Authority

5.4 The petitioner is the only surviving producer of Vitamin AD3 500/100 in India. The Authority therefore notes that the Petitioner constitutes 'domestic industry' and has the required standing to file the present petition under the Rules.

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 and Singapore responded to the questionnaire but the same was not deemed sufficient in terms of the format prescribed for this purpose. Despite opportunity being provided to them to furnish relevant information/ documents in the extended period, the exporters failed to submit the sufficient relevant and necessary information/ documents.

6.3 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.

6.4 Initially M/s BASF, Aktiengesellschaft, Germany did not furnish certain material information on the grounds that the data as provided is sufficient. Besides, certain information was considered as highly confidential and suggested that the same could be made available during the on the spot verification. However, the data furnished was examined and found insufficient, inconsistent and hence, disregarded in the Preliminary Findings. M/s BSEA, Singapore' data was also examined. It was stated in the Preliminary Findings that the response received from M/s BSEA, Singapore revealed certain discrepancies in the documents furnished.

6.5 Since, M/s BSEA, Singapore did not manufacture the subject goods exported to India and the same were procured from M/s BASF, Germany; as per the laws and the rules, the Normal value was determined with reference to its price in the country of origin.

Submissions made by various interested parties

M/s BASF, Germany

6.6 M/s Amarchand Mangaldas, solicitors on behalf of M/s BASF in their written submissions expressed their client's willingness to cooperate in the investigation proceedings and that they were willing to furnish all reasonable information that the Authority may require further to what was already submitted and supplied. It was further requested that the Authority should not treat their clients as non-cooperative

exporters as they were willing to furnish the information and produce before the Authority the necessary documents as and when required.

6.7 It was stated that the product was so price-sensitive that it was just like supplying the beverage base for the manufacture of the whole drink to others, which was not in the commercial interest of their clients. It was stated that their client was willing to produce the said documents in a one to one meeting with the Authority and produce all the necessary documents in order to satisfy the Authority that the information furnished by them in response to the Questionnaire was true, correct and authenticated.

6.8 It was stated that while arriving at the dumping margin, export price and the Normal Value the Authorities have taken into account the data furnished by the Petitioner. It was requested that the authority while giving out the final finding should consider taking into account the information supplied by them for arriving at the Dumping Margin and the quantum of duty

6.9 It was stated on behalf of M/s BASF that no exports to India of the subject goods were made below their cost of production and the same can be verified by the Authority during the visit to the Units for verification of the data as already submitted. It was thus claimed that the issue of levying Anti-dumping duty on the subject goods exported from M/s BASF South East Asia Pte, Singapore does not arise.

Submission made by The European Commission

6.10 It was stated that the information provided by M/s BASF should have been sufficient for the level of the normal values and export prices to have been determined to a reasonable degree. It was stated that it was excessive for an authority to demand for the purpose of a provisional determination, that all information provided is supported by accompanying evidence. In cases such as this where confidentiality is an issue (and the petitioner was granted full rights in this respect) it surely is not necessary for a party to provide detailed evidence (names of customers and some line by line details on manufacturing costs) if such party guarantees that these data can be confirmed and verified during an on spot verification.

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

M/s BASF

6.11 M/s BASF expressed their happiness to the Designated Authority for sending its team of officers for on the spot verification at Ludwigshafen and Singapore. The

representative of European Union Commission was present at Ludwigshafen during the investigation and representative of the Singapore Trade Development Board was present at Singapore.

6.12 It has been stated by them that the verification was conducted in compliance with Annexure I to the paragraph 7 of the Article 6 of the Part I of Agreement on implementation of Article 6 of GATT 1994. The investigation was carried out to the full satisfaction of M/s BASF as well as the representatives of the European Union and Singapore Trade Development Board. It has been further stated that they are happy to learn that the data submitted by them during the course of investigation has been accepted by the Designated Authority.

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

6.13 CLFMA in their response appreciated that the petitioner have not filed the petition to ask that the imports should be banned but it required 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. It was stated that this change in the attitude and philosophy of petitioner coupled with the right and just findings of the Designated Authority would help to reach a conscious decision in the interest of the total industry.

The following comments were made by CLFMA:

6.14 They do not concur with the views of the Designated Authority that exporters have not furnished complete information, which is deemed necessary by them. They feel that the exporters had already submitted the necessary information to the Designated authority and that they have not suppressed any material fact, which affected the investigation to arrive at the proper findings. They expressed their unhappiness regarding the rejection of the data submitted by M/s. Aventis Animal Nutrition, Singapore and M/s. Aventis Animal Nutrition, France as unreliable information.

6.15 It was stated that the decline in prices was a global phenomenon during last 2-3 years and nothing to do with export price to India in particular. This point was repeatedly brought to the notice of the Designated Authority during the hearing and in written submission that the local price in the country of origin was lower than the export price, which was substantiated with evidences.

M/s RHODIA

16. It was stated that AD3 500/100 imports has increased over the years for the simple reason that the Indian Poultry Industry is growing every year by 12-14% and the Domestic Industry is unable to meet country's demand.

17. It was stated that globally prices of various vitamins have gone down. This view has been reinforced by M/s Venkateshwara Hatcheries, which is mentioned in the disclosure statement.

Petitioner

6.18 The Petitioner has expressed its surprise at the basis adopted by the authority for verifying the cost of manufacturing the subject goods in Germany and accepting that the domestic selling price in Germany as in the ordinary course of trade. The Petitioner has further stated that one of the major raw materials used in the manufacturing of subject goods is "Citral". Based on the CIF import price of US \$ 6.20 per kg for Citral from Germany, the ex-factory export price of Citral in Germany should be US \$ 4.50 per kg. Excluding the element of profit from that at 20%, cost of sales in Germany comes to US \$ 3.60 per kg. It has been further stated that in accordance with the international norms, the cost component of Citral in the total raw material cost of subject goods is around 8%. Therefore, the raw material cost of subject goods in Germany should be around US \$ 45 per kg (i.e. $3.60/0.08$). This raw material cost plus administrative, selling, general cost and plus profit will exceed the ceiling price as fixed by the Authority in the preliminary findings at US \$ 41.13 per kg.

6.19 It has been stated that the authority therefore, should have compared the prices of raw materials consumed in the manufacturing of subject goods with the prices prevailing in the international market before arriving at the conclusion that the cost of sales for the subject goods and therefore the domestic selling price in Germany is in the ordinary course of trade.

6.20 It has been stated that as per Section 9A (b) of the Custom Tariff Act, an export price means the price of an article exported from the exporting country or territory and not means the export price from the country of origin. In the instant case, though there is no export of subject goods from M/s BASF, Germany to India, the Authority intends to calculate the ex-factory export price for M/s BASF, Germany by taking export price of M/s BSEA, Singapore and then working backwards to determine the ex-factory export price from Germany. Article 2.5 of GATT provides for the comparison between the price at which the product is sold from the country of export with the comparable price in the country of export. The Article further states that the comparison may be made with the price in the country of origin if, for example, the products are merely transshipped through the country of export, or such products are

not produced in the country of export, or there is no comparable price for them in the country of export. The Authority has stated that since the subject goods are merely transhipped through Singapore and that the subject goods are not produced in the country of export, therefore it intends to use the price in the country of origin for making comparison. The Authority went on to compare the price in the country of origin with the export price in the country of origin and has suggested determining the export price in the country of origin by working backwards from the export price in Singapore. We differ with this observation of the Authority as it is contrary to the provisions of Article 2.5 of GATT.

6.21 It was stated that the acceptance of domestic selling price in Germany by the Authority to be in the ordinary course of trade is incorrect. Therefore the transaction between M/s BASF, Germany and M/s BSEA, Singapore cannot also be considered at an arm's length price and in the ordinary course of trade contrary to the observation made by the Authority. Since, domestic selling price in Singapore cannot be considered to be in the ordinary course of trade, the Authority should disregard the data furnished by M/s BSEA, Singapore and determine the dumping margin for all exporters from Singapore on the basis of facts available as has been done rightly by it in the Preliminary Findings.

6.22 It was stated that the Authority has not disclosed the various adjustments that it intends to make for arriving at the ex-factory export price from M/s BASF, Germany. As have been stated above the export price cannot be constructed for M/s BASF, Germany when there were no actual export of subject goods by them to India. The authority has stated in Para 2.17 of the Disclosure Statement that the adjustments claimed were verified during the verification visit and it is proposed to allow the same. They sought to understand as to what sort of adjustments the authority has verified when there were no exports of subject goods being made by M/s BASF, Germany to India. How can the authority presume the cost incurred for exports from Germany to Singapore and then to India to be the same as the cost incurred for exports made from Germany to India? In the absence of any exports being made by M/s BASF, Germany to India, there is neither any export price to India available for subject goods nor the details of adjustments to be made for arriving at the ex-factory export price.

Examination by the Authority

COOPERATIVE EXPORTERS

M/s BASF, Aktiengesellschaft, Germany through M/s BSEA, Singapore

6.23 The Authority in its disclosure statement has already stated that it fails to understand the reasons advanced by M/s BASF for not disclosing the relevant information as the information supplied on confidential basis upon good cause shown would have been treated as confidential and the question of the same being mis-utilised by other interested parties does not arise. 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.

6.24 It may be recalled that M/s BASF, Aktiengesellschaft, Germany had not furnished certain material information on the grounds that the data as provided is sufficient. Besides, certain information was considered as highly confidential and suggested that the same could be made available during the on the spot verification. The Authority, therefore, conducted the spot verification at the BASF facility in Ludwigshafen, Germany during 17th -18th January 2002 and at the premises of M/s BSEA, Singapore on 25th January 2002.

6.25 The Authority has noted the various submissions made by M/s BASF Aktiengesellschaft, Germany and M/s BSEA, Singapore. The Authority has taken note of the data as provided by M/s BASF Aktiengesellschaft, Germany and M/s BSEA, Singapore to the verification team during the verification visit.

6.26 The examination of the response by M/s BASF, Aktiengesellschaft, Germany shows that no direct sales to India were effected by them during the period of Investigation. All exports to India were handled via BASF South East Asia (BSEA), Singapore during the POI. M/s BASF South East Asia Pte. Ltd stated that they do not produce Vitamin AD3 500/100 and all exports of the subject goods to India were handled on behalf of M/s BASF Aktiengesellschaft, Germany during the period of investigation. The Authority notes the claim of M/s BASF and M/s BSEA that the subject goods were transacted between them at an arm's length basis.

6.27 As per the provisions of Section 9A (c) of the Custom Tariff Act, 1975 and also as per Article 2.5 of Agreement on implementation of Article VI of the GATT 1994, in the case where the products are not imported directly from the country of origin but are exported to the importing country from an intermediate country, the price at which the products are sold from the country of export to the importing country shall normally be compared with the comparable price in the country of export. However, comparison may be made with the price in the country of origin, if, the products are merely transshipped through the country of export, or such products are not produced in the country of exports, or there is no comparable price for them in the country of export. In the instant case, M/s BSEA did not manufacture the subject goods but sold the same as an agent of M/s BASF, Aktiengesellschaft Germany.

6.28 In view of the above, the Authority considers that it would be appropriate in the instant case to make a fair comparison between the normal value and the export price at ex-factory basis in European Union. The Authority also notes that the weighted average domestic selling price of the subject goods in European Union by M/s BASF was in the ordinary course of trade. Adjustments claimed were verified during the verification visit and have been allowed and the same have been claimed as confidential by the party and treated so by the Authority. The weighted average ex-factory export price of the subject goods exported to India by M/s BASF Aktiengesellschaft Germany through M/s BSEA Singapore comes to US \$ *** per kg. The weighted average ex-factory domestic selling price of the subject goods by M/s BASF Aktiengesellschaft in European Union comes to US \$ *** per kg. Hence, on the basis of the above, the Authority holds that during the Period of investigation, the subject goods exported by M/s BASF Aktiengesellschaft Germany through M/s BSEA Singapore were exported at non-dumped prices.

NON-COOPERATIVE EXPORTERS

European Union

6.29 The Authority recalls its Preliminary Findings wherein it was stated that information / data furnished by the M/s Aventis Animal Nutrition, France was incomplete, insufficient and inconsistent as per the format prescribed. Despite an opportunity provided to the exporter, no meaningful response was received. M/s Aventis Animal Nutrition, France in their response to the Preliminary Findings and the Public hearing/ oral hearing held on 22nd August 2001 did not furnish any fresh evidence with regards to the information provided by them in the exporters questionnaire.

6.30 In the absence of any further relevant information; the Normal value, export price and dumping margin for all other producers/exporters except M/s BASF Aktiengesellschaft, Germany has been calculated on the basis of the 'facts available' in terms of Rule 6(8) of Anti Dumping Rules.

Singapore

6.31 The Authority recalls its Preliminary Findings wherein it was stated that M/s Aventis Animal Nutrition, Singapore responded to the questionnaire with insufficient / unreliable information and documents thereby making it impossible to arrive at Normal value on the basis of their data. Hence, Normal value in their case was determined on the basis of 'facts available'. Subsequent to the Preliminary findings neither any rectification in their exporter questionnaire was made nor any fresh evidence given.

6.32 Thus, the Authority for determination of normal Value, export price and dumping Margin proposes to rely upon on 'facts available' in terms of Rule 6(8) of Anti Dumping Rules as far as the export of subject goods from all other exporters from Singapore except M/s BSEA, Singapore as an agent of M/s BASF Aktiengesellschaft, Germany is concerned.

NORMAL VALUE

M/s BASF, Aktiengesellschaft, Germany through M/s BSEA, Singapore

6.33 As already stated the normal value has been worked out on the basis of weighted average domestic selling price of the subject goods in European Union by M/s BASF Aktiengesellschaft, Germany. The same was found to be in the ordinary course of trade. Adjustments claimed were verified during the verification visit and have been allowed

European Union (All other producers /exporters)

6.34 As regards the normal value of the subject goods from all other producers / exporters of European Union is concerned, none of them furnished sufficient information in the prescribed questionnaire. Representatives of the exporters who responded have also not submitted the relevant information in spite of opportunity provided to them. M/s Aventis Animal Nutrition, France also did not respond to the questionnaire in the prescribed format despite an opportunity provided to them. Therefore, the Authority notes that these producers / exporters of European Union either did not respond or responded to the questionnaire with insufficient/unreliable information and documents thereby making it impossible to arrive at Normal Value on the basis of their data.

6.35 Under the circumstances, Normal value under the rules is determined on the basis of 'facts available'. Therefore, as per 'facts available', the Normal value of the subject goods for all other producers / exporters of European Union works out as US \$ *** per Kg.

SINGAPORE (All other producers /exporters)

6.36 As regards the normal value of the subject goods from all other producers / exporters of Singapore is concerned, none of them furnished sufficient information in the prescribed questionnaire. Representatives of the exporters who responded have also not submitted the relevant information in spite of opportunity provided to them. Therefore, the Authority notes that these producers / exporters of Singapore either did not respond or responded to the questionnaire with insufficient/unreliable information

and documents thereby making it impossible to arrive at Normal Value on the basis of their data.

6.37 Under the circumstances, Normal value under the rules is determined on the basis of 'facts available'. Therefore, as per 'facts available', the Normal value of the subject goods for all other producers / exporters of Singapore works out as US \$ *** per Kg.

Export Price

Submissions made by various interested parties

M/s Chokhani Pharma Vet

6.38 In Para 8.22 Page 21 of the preliminary findings the rule for fair comparison says, "While arriving at margin---to affect price comparability". The price sold by the exporters like Aventis is US. 18-20/- in neighboring countries and that also in place of production. However the authority has come to approx. CIF to US.29.00 approx. (US.41.15/kg less basic duty 35% and SAD 4%).

6.39 It was stated that the data of the exporter i.e. M/s Aventis has not been taken nor has the importers data (i.e. bill of entries) being taken as the base data and the authority have relied on outside data.

Examination by the Authority

6.40 As regards the Export Price, the Authority notes that Vitamin AD3 500/100 was imported under different headings of the Customs Tariff Act. The subject goods are not categorised precisely under single dedicated Customs sub-heading, but covered under the category of others preparations of a kind used in animal feeding. Some imports of the subject goods are also being done under Custom sub-heading No. 29.36.

6.41 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 has been 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.

6.42 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.

M/s BASF, Aktiengesellschaft, Germany through M/s BSEA, Singapore

6.43 The weighted average ex-works export price has been determined after accepting the various adjustments claimed. After adjustments on these accounts for US \$ *** per kg.; the weighted average ex-works export price works out to US \$ *** per kg.

NON-COOPERATIVE EXPORTERS

All other producers / exporters of European Union

6.44 The weighted average c.i.f. price per kg. of exports of the subject goods effected during the period of investigation by all other producers / exporters of the European Union works out as US \$ ***. The weighted average ex-works export price has been determined after taking 1.08% as ocean freight, 0.18% as marine insurance charges, 5% as commission amount, 2.54% as inland transportation and 1.8% as loading, unloading and port expenses. After adjustments on these accounts for US \$ *** per kg.; the weighted average ex-works export price works out to US \$ *** per kg.

All other producers / exporters of Singapore

6.45 The weighted average c.i.f. price per kg. of exports of the subject goods effected during the period of investigation by all other producers / exporters of Singapore works out as US \$ ***. The weighted average ex-works export price has been determined after taking 0.69% as ocean freight, 0.18% as marine insurance charges, 5% as commission amount, 1.06% as inland transportation and 2.28% as loading, unloading and port expenses. After adjustments on these accounts for US \$ *** per kg.; the weighted average ex-works export price works out to US \$ *** per kg.

DUMPING MARGIN

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

6.47 "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".

M/s BASF, Aktiengesellschaft, Germany through M/s BSEA, Singapore

6.48 Considering the ex-works normal value at US \$ *** per kg and the ex-works export price at US \$ ***per kg; the Authority holds that there is a negative dumping margin.

NON-COOPERATIVE EXPORTERS

All other producers / exporters of European Union

6.49 The Authority holds that considering the ex-works normal value at US \$ *** per kg and the ex-works export price at US \$ *** kg after adjustments on account of ocean freight (1.08%), marine insurance charges (0.18%), commission (5%), inland transportation (2.54%) and loading, unloading and port expenses (1.80 %); the dumping margin comes to US \$*** per kg (which is 105 % of export price).

All other producers / exporters of Singapore

6.50 The Authority holds that 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 (0.69%), marine insurance charges (0.18%), commission (5%), inland transportation (1.06%) and loading, unloading and port expenses (2.28%); the dumping margin comes to US \$*** per kg (which is 140 % of export price).

6.51 Comparing the Normal value and Export price, the dumping margin works out as under: -

US \$ per Kg.	European Union (M/s BASF, Aktiengesellschaft, Germany) through M/s BSEA, Singapore	All other producers / exporters of European Union)	All other producers / exporters of Singapore
Normal Value	***	***	***
Export Price	***	***	***
Dumping Margin %	No Dumping	105%	140%

G. INJURY AND CAUSAL LINK

Submissions made by various interested parties

M/s BASF

7.1 Attention was drawn to the views expressed by the Compound Livestock Feed Manufactures' Association of India. It was stated that the association knows the Indian market situation very well and that M/s Nicholas Piramal is using outdated technology. The statement relating to profitability of this Association is in contrast to the profit and loss situation shown in the index table. The Association stresses that the worldwide decline of the prices is in line with the Indian price. Therefore the import prices reflect only a worldwide trend.

The European Commission

7.2 It was stated that there may be imports coming through third party traders and third party countries. Since these companies were separate legal entities, M/s BASF cannot be made responsible for their actions. According to them this activity in fact shows that there is a margin to be earned for traders buying the product in Europe and then selling in India.

M/s Chokhani Pharma Vet

7.3 While referring to Para 2.3 of the preliminary findings, It was stated that the imports under the advance license is always done for the replenishment of the home stocks, which has been used in the export product. However, when export obligations are completed these advance licenses are freely transferable. Since these licenses were sold in the market at a premium to the importers by the concerned exporters, there is no point in the petitioners argument that the importers did not pay custom duty. The custom duty was paid in term of the premium on the license paid at time of purchase of the license. As such the petitioners argument on the import through advance license route does not hold any good on the same.

7.4 Referring to Para 8.17, It was stated that Custom prices data and Bill of entries were provided in their reply to the authority in which it was clear mentioned that the subject goods are imported under Chapter 23.09.

7.5 In Para 8.22 Page 21 of the preliminary findings the rule for fair comparison says, "While arriving at margin----to affect price comparability". The price sold by the exporters like Aventis is US. 18-20/- in neighboring countries and that also in place of production. However the authority has come to approx. CIF to US.29.00 approx. (US.41.15/kg less basic duty 35% and SAD 4%).

7.5 It was stated that due to this anti-dumping, the imports are likely to stop in total which will put the petitioner in a very advantageous situation. The government would

lose the 40.5% duty, which is prevalent, as there will be no import and the entire benefit of the duty 40.5% along with the antidumping duty around Rs. 650/- will go to the petitioner.

7.6 It was also stated that the petitioner is a sole manufacture and as such a monopolistic situation is created. The petitioner has already increased the prices on the basis of the above inquiry and the poor Indian farmers who are the weakest in the society will be highly affected by this levy of anti dumping duty.

7.7 It was stated that the data of the exporter i.e. M/s Aventis has been not taken nor has the importers data (i.e. bill of entries) being taken as the base data and the authority have relied on outside data.

M/s Venkateshwara Hatcheries Ltd & National Egg Co-ordination Committee.

7.8 M/s Venkateshwara Hatcheries limited & National Egg Co-ordination Committee in their submission stated that the petitioner's contention (Para 2.2 of the preliminary findings) that the product started coming into the country from the late 1996, is factually incorrect as the product was being imported for a number of years. It was further stated that the petitioner's contention (Para 2.2) that the exporters have "suddenly dropped their prices very substantially after March 2000", is also factually incorrect. Internationally, the prices have been falling since 1998, as indicated below:

1. \$30.54 per Kg.
2. \$24.84 per kg.
3. \$23.24 per kg.
4. \$20.00 per kg.

7.9 The drop in international prices was a result of reduced cost of production due to better production technologies. Also the reduction was applicable to export to all countries – and is not country – specific to India alone.

7.10 It was stated that the petitioner states (para 2.5) that Vitamin AD3 500/100 is highly price sensitive: even a small difference in price may result in loss of sales. While this may be true, conversely, it also means that even a small difference in the selling price would adversely affect the user industry i.e. feed manufacturers – and more importantly, the end users i.e. poultry farmers and dairy farmers. The poultry feed manufacturers operate on a very slender margin of profit – i.e. about 1%. The price of layer (egg type) feed is around Rs. 5,500/- and the price of broiler (meat type) chicken feed is about Rs. 7,500/- per ton. Thus, the profit margin in the feed industry ranges between Rs. 55 to Rs. 75/- per ton. If the landed value is determined at \$ 41.13- as recommended in the preliminary finding – as compared to the current

international price of \$ 18.19, the additional burden on feed manufacturing industry would be about Rs. 50 per ton. That would virtually wipe out the entire profit margin of feed manufacturers; the only alternative being to pass on the burden to the poultry farmers. There are more than 1.5 Lac poultry farmers – and over 1.6 million persons dependant on the poultry sector for their livelihood. An overwhelming majority of the farmers are small and marginal farmers, for whom poultry farming is the only means of livelihood. Their economy is under severe pressure due to high cost of feed and other inputs; exploitative trade practices of middle men and the resultant unremunerative prices for eggs and broilers: and other inherent risks of livestock industry like disease outbreaks etc. These poor farmers can ill afford to absorb the additional burden which will be thrust on them, due to the proposed Anti-dumping duty.

7.11 There is also the danger that is deterred by the high price of Vit AD3, feed manufacturers/farmers may compromise on the feed quality and reduce or altogether stop including this crucial nutrient in poultry feed. In such an eventuality, millions of birds will be exposed to immuno-suppression and hazardous diseases-resulting in heavy mortality of birds, drop in egg production etc. Apart from financial losses to farmers, the loss of food production would be an enormous national waste.

7.12 It was stated that it is difficult to arrive at the cost of production, as the manufacturers in the exporting countries consider it a confidential information. However, it is reliably learnt from the trade that the product was sold by M/s BASF, Germany, during the POI, in Europe at US\$ 16.5 to 17.5-and it was exported to India during the same period at about US\$ 18/- and above. Considering a loading factor of approximately 20% by way of freight, duties etc, the landed cost gets sealed up to atleast to US\$ 21.6 per kg. Hence, the export of the product at the price at which it was exported, cannot, under no stretch of imagination, be considered as "dumping". And it follows, logically, that if "dumping" did not occur, then there can be no cause for Anti-dumping duty.

7.13 It was further stated that now that it is shown that comparative international prices were actually lower than the price at which it was exported to India, they earnestly hope that the Authority would reconsider its recommendations.

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

7.14 CLFMA in a written submission reiterated their claim that the decline in price for export to India during was impacted by the international phenomenon. It was stated that Indian consumers have been paying approximately 50% more as compared to those in other countries by way of import duty. Therefore, there is absolutely no dumping at all in India.

7.15 It was stated that local producer never produced the product both in quality and quantity to meet the requirement of the industry, and only the gap was met by importing Vitamin A, Vitamin AD3 and also Vitamin AB2D3K from Roche, BASF and RPAN.

7.16 It was further stated that the petitioner, though claimed to be having idle capacity, and be able to meet the total requirement of the industry, is really not capable of it. It was stated that the Designated Authority was very right in demanding a committed reply from the Domestic Industry during the course of oral hearing, as to when and at what price the petitioners can meet the total requirements of the industry, which was most appropriate and salutary. It was stressed that some compelling strictures should be made mandatory for ensuring the compliance by the domestic industry and daunting penalties should be imposed for non-compliance.

Petitioner

7.17 The ratio of Vitamin AD3 in the total cost of the animal/ poultry feed is approximately 0.37% of the total cost of the feed. The evidence in this respect is already submitted with the Honorable Designated Authority. Hence the imposition of anti dumping duty on Vitamin AD3 would not materially affect the feed price.

7.18 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 in the last ten years. When we 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 because of the hatching of this conspiracy and because Japan & China started selling these products at a much cheaper price. 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.

7.19 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

7.20 The perusal of the written submissions made by the exporters reveals that they have not submitted complete information to the Designated Authority within the time frame given to them in accordance with the Anti Dumping Rules because of the fear of losing the confidentiality of information. This point of view is against the very spirit of the Anti Dumping Investigation wherein all the interested parties are required to submit the information (both confidential and Non Confidential) to enable the Designated Authority to arrive at the correct decision. The Exporters in their submission have insisted for closed door meeting with the Designated Authority and spot verification of information to be submitted by them at that point of time. Since they have failed to furnish the desired information within the specified time, further opportunity should not be granted to them.

Submissions made by interested parties in response to the Disclosure statement

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

7.21 It was emphasized by CLFMA on several occasions that the local producer never produced both in quality and quantity to meet the requirement of the industry and only the gap was met by importing Vitamin A, Vitamin AD3 and also Vitamin AB2D3K from Roche, BASF and RPAN. It was further stated that the petitioner, though claimed to be having idle capacity, and be able to meet the total requirement of the industry, is really not capable of it. CLFMA suggested that the permission be given for import of 30-35% of the total requirement of Vitamin AD3 by the industry in the country at normal CIF price and applicable import duty.

7.22 It was stated that the European Commission stated that no technology development in the Indian Industry has taken place. Further it was stated that plant technology of the complaining party is archaic and outdated. Hence, anti-dumping duty is not causing injury to the industry. The alleged injury was self-inflicted. That the petitioner manufactures only Vitamin A and premixes and in the same the petitioner has made an additional profit of Rs.400 lacs over the earlier years as per the annual report of the petitioner which was submitted to the authority. Thus, they fail to understand the petitioner's plea that they are losing money in this business.

7.23 It was stated that the petitioner has a virtual monopoly in India, the duty recommended is sufficient to prevent the injury and not to give him an edge. What makes the Designated Authority to believe that the cost of US Dollar 41.13 per kg which is equivalent to Rs.2100.00 per kg is merely to prevent the injury and not to give an edge to the petitioner ---What about the petitioner's actual selling price at an average of Rs.1400-1500 per kg for last 4-5 years and reporting the profit of over 400 lacs in a year?

7.24 It was stated that the logic that Vitamin AD3 500/100 in the feed is only 0.37 % is surprising as the product like Vitamin AD3 which is absolutely essential to make a balanced feed which improves the production of the livestock and poultry and is a basis for animal health products, cannot be compared in terms of percentage in the feed as in the case of salt and sugar etc. Thus, they advocated that the anti-dumping duty be abolished, which is in the interest of millions of farmers of this country.

Examination by the Authority

7.25 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.

7.26 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 AD3 500/100. 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.

7.27 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 AD3 500/100 in India for the domestic industry, by considering the optimum cost of production at optimum level of capacity utilisation for the domestic industry.

7.28 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.

7.29 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 AD3 does not improve as a result of increase in DPCO price of Vitamin A

Palmitate as the selling price of Vitamin AD3 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.

7.30 The issue regarding Petitioner's monopoly position is also irrelevant in the present proceedings as the right of a single producer cannot be restricted under the Anti-dumping Rules so long as the Petitioner satisfies the criteria of 'Domestic Industry'. Even though the Petitioner has a virtual monopoly in India, the duty recommended has been restricted to prevent the injury and not to give him an edge.

7.31 As regards the farmers interests / interests of the user industry is concerned, it has been noted that Vitamin AD3 500/100 constitutes approximately only 0.37% 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.

7.32 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.

7.33 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:-

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

7.35 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.

7.36 The Authority notes that the margin of dumping and quantum of imports from European Union and Singapore are more than the limits prescribed above. The cumulative assessment of the effect of imports of Vitamin AD3 500/100 is appropriate in 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.

7.37 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

7.38 The Authority notes that the total imports of Vitamin AD3 500/100 were 38.7 Mt in 1998-99, 46 Mt in 1999-2000 and 57.09 Mt during 1st April, 2000 – 31st December, 2000, the period of investigation as per 'facts available'. Thus, the Authority notes that the increase was 18.9% in 1999-2000 over 1998-99 and 65.5% (annualised) in POI over 1999-2000. The increase was 96.7% (annualised) in POI over 1998-99. Therefore, the Authority holds that the quantum of imports has significantly went up during the period of investigation.

7.39 The Authority notes that the quantum of imports from European Union was 12.66 Mt in 1998-99, 19.80 Mt in 1999-2000 and 40.09 Mt during the POI as per 'facts available'. Thus, the imports from European Union increased by 56.4 % in 1999-2000 over 1998-99 and increased by 170 % (annualised) in POI over 1999-2000. The increase was 322% (annualised) in POI over 1998-99. Therefore, the Authority holds that the quantum of imports from European Union significantly went up during the period of investigation.

7.40 The Authority notes that the quantum of imports from Singapore was 2 Mt in 1999-2000 and 16.5 Mt during the POI as per 'facts available'. Thus, the imports from Singapore increased by 1000% (annualised) in the POI over 1999-2000. Therefore,

the Authority holds that the quantum of imports from Singapore significantly went up during the period of investigation.

7.41 The Authority further notes that the quantum of imports from other countries was 10 Mt in 1998-99, 1 Mt in 1999-2000 and below the de-minimis threshold limit during the POI as per 'facts available'.

(b) Production, Capacity Utilisation and Impact on Inventories

7.42 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 (MT) Production (MT) Capacity

(per annum) Utilisation

1998-99 132 49.04 37.15%

1999-00 132 80.12 60.70%

2000 132 41.79 42.21%

(POI) (9 mths)

7.43 Thus, the Authority notes that the capacity utilisation of the Petitioner Company significantly went down during the period of investigation. In order to keep the inventories to the minimum, the petitioner was forced to sell the quantity produced even at low sales realisation.

(c) Sales and Market Share

7.44 The Authority notes that the total consumption of Vitamin AD3 500/100 in the Indian Market was 92 Mt in 1998-99, 126 Mt in 1999-2000 and 98 Mt as per 'facts available' during the nine months of the POI. The share of imports in total consumption was 42% in 1998-99, 37% in 1999-2000 and 58% during the POI respectively. The share of the Petitioner Company was 58%, 63% and 42% respectively during 1998-99, 1999-2000 and POI respectively.

7.45 Thus, the Authority notes that the share of imports has significantly risen in the total consumption whereas the share of Indian industry has significantly declined.

(d) Price undercutting and price depression

7.46 The Authority notes that imports from the subject countries have significantly depressed the prices of the Vitamin AD3 500/100 being sold by the domestic producers resultantly the petitioner was forced to offer discounts and decrease its list price in view of the fact of dumping. Therefore, the dumped imports from the subject countries have caused significant price undercutting and caused losses to the petitioner. The average realisation per kg of Vitamin AD3 500/100 in 1998-99 was Rs. ***/- per kg, which dropped to Rs. ***/- per kg in 1999-2000 and to Rs. ***/- per kg, during the POI.

(e) Profitability & impact on employment.

7.47 The Authority notes that the losses of the petitioner companies were Rs. ***Lacs during 1998-99. In 1999-2000, the petitioner company losses increased to Rs. ***Lacs. The Losses further increased to Rs. ***Lacs for nine months period of the POI. Therefore, the Authority holds that the sale of Vitamin AD3 500/100 has resulted in loss of profit to the petitioners. The average sales realisation in 1998-99 were Rs. *** per kg; in 1999-2000 it was Rs. *** per kg, and in the POI (Apr'2000-Dec'2000) Rs. *** per kg respectively.

7.48 The Authority notes that the petitioner did not lay off any of his employees but it was mentioned that they may be forced to lay off employees if corrective measures to check dumping are not taken. The Authority notes that the Petitioner Company is a multi-product Company and involved in production of various products and therefore, no significant change in employment level of the domestic industry due to poor operating levels is observed.

(f) Impact on Cash Flow & Growth

7.49 It has been claimed by the Petitioner that constant reduction in the prices of Vitamin AD3 500/100 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.

7.50 However, based on the data available before the Authority, it would be difficult to conclusively attribute any significant impact on the factors such as actual and potential negative effects on cash flow, growth and ability to raise capital investments on account of dumped imports.

CONCLUSION ON INJURY

7.51 In view of the foregoing, the authority holds that: -

- a. the quantum of imports from European Union and Singapore has increased in absolute terms;
- 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 Production of the Petitioner Company has gone down;
- f. there has been significant decline in the utilisation of capacity of the Petitioner Company.
- g. there has been significant decline in the Sales volume of the Petitioner Company

7.52 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 subject countries, the Authority holds that the increase in market share of imports from European Union and Singapore 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 un-remunerative prices. Resultantly, the domestic industry incurred losses. The material injury to the domestic industry was, therefore, caused by the dumped imports from the subject countries.

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. The subject goods in all forms originating in or exported from the subject countries have been exported to India below its normal value except in case of exports effected by M/s BASF Aktiengesellschaft, Germany through M/s BSEA, Singapore.
- b. The domestic 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 subject countries.

2. The Authority recommends imposition of definitive anti-dumping duty on all imports of the subject goods falling under Chapter 23 and 29 of the Customs Tariff Act, originating in or exported from the subject countries. The Anti dumping duty shall be the difference between the amount mentioned in Col.3 and the landed value of imports.

Territory / Country	Name of the Producer / Exporter	Amount of Duty (US \$/ Kg.)
European Union	M/s BASF Aktiengesellschaft, Germany through M/s BSEA, Singapore	Nil
European Union	All other exporters/producers	41.13
Singapore	All other exporters/producers	41.13

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

12 Subject to above, the Authority confirms the preliminary findings dated 06.6.2001

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