

GOVERNMENT OF INDIA
MINISTRY OF COMMERCE & INDUSTRY
(DEPARTMENT OF COMMERCE)

FINAL FINDINGS NOTIFICATION

New Delhi, the. 10 th July, 2003

Subject:- Anti-dumping investigation concerning imports of Vitamin C from USA and Canada –Final Findings.

No.14/25/2002-DGAD. - The Government of India having regard to the Customs Tariff Act, 1975 as amended in 1995 and the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, thereof:

A. PROCEDURE:

1. The procedure described below has been allowed with regard to the investigation:
 - i. The Designated Authority (herein after referred to as Authority), under the Rules, received written application from M/s. Sarabhai M. Chemicals, a unit of M/s. Ambalal Sarabhai Enterprises, Baroda Gujarat for and on behalf of domestic industry, alleging dumping of Vitamin -C originating in or exported from USA and Canada.
 - ii. The Authority issued a public notice dated 14 August, 2002 published in the Gazette of India, Extraordinary, initiating anti dumping investigations concerning imports of Vitamin-C originating in or exported from USA and Canada classified under heading 2936.27.00 of the Custom Tariff Act.
 - iii. The Authority forwarded copy of the initiation notification, non confidential petition filed by the domestic industry and questionnaire proforma to known exporters, importers, users and embassies of subject countries in India, requesting them to advise the producers and exporters in their country to respond to the initiation notification in the prescribed proforma within the time limits prescribed.
 - iv. Except M/s Roche, Mumbai, representing M/s Roche, USA, none of the producers/exporters from subject countries responded to the Designated Authority.
 - v. The Authority issued a public notice (Preliminary Findings) dated 1st November 2002 published in the Gazette of India, Extraordinary, recommending imposition of Anti Dumping Duty – provisionally- pending

further investigation. The imposition of provisional anti dumping duty by Department of Revenue was issued vide Notification No.143/2003 dated 27th December 2002.

- vi. The Authority forwarded a copy of the preliminary findings to the known interested parties who were requested to furnish their views, if any, on the preliminary findings within forty days of the date of the letter;
- vii. The Authority also forwarded a copy of preliminary findings to the Embassies of USA and Canada, New Delhi with a request that exporters and producers in their countries may be advised to furnish their views on the preliminary findings.
- viii. The Authority provided an opportunity to all interested parties to present their views orally on 15th January 2003. All parties presenting views orally were requested to file written submissions, of the views expressed orally. The parties were advised to collect copies of the views expressed by the opposing parties and offer rebuttals, if any.
- ix. 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 have been considered in the preliminary findings and/or are proposed to be considered in Final Findings.
- x. In accordance with Rule 16 of The Rule supra, the essential facts/ basis considered for these findings are being disclosed to known interested parties and comments received on the same would also duly is considered in Final Findings.
- xi. The Authority made available non-confidential version of the evidence presented by various interested parties in the form of a public file kept open for inspection by all interested parties.
- xii. The Authority also conducted cost investigation and worked out optimum cost of production/ cost to make and sell in India on the basis of Generally Accepted Accounting Principles.
- xiii. The investigation covered the period 1st April 2001 to 31st march 2002 (12 Months)
- xiv. *** in this notification represents information furnished by an interested party on confidential basis and so considered by the Authority under the Rules;

B. Petitioner's Views:

2.1 Submissions made by the domestic industry:

(a) Dumping from Japan, China, European Union and Russia.:

The domestic industry was earlier suffering injury from severe dumping by the exporters from Japan, China, European Union and Russia. The Designated Authority conducted investigations into dumping from these countries, which have resulted in imposition of anti-dumping duty. The imports from these countries are already attracting anti-dumping duties. The Directorate is already investigating the review (sunset) of antidumping duty in case of Vitamin-C from China and Japan.

After imposition of anti-dumping duty against these countries/territories, exporters from USA & Canada started resorting to dumping of subject goods in the Indian market, taking advantage of the imposition of anti-dumping duties on other countries, resulting in injury to the domestic industry.

In view of the above, it is submitted that while examining injury to the domestic industry in the present case, existence of dumping from China, Japan, European Union and Russia causing injury to the domestic industry is required to be considered, particularly in terms of economic parameters affecting domestic industry and impacts of dumped imports on the prices in the market.

(b) Cumulative assessment of injury: -

The parameters laid down under the Rules for cumulative assessment of injury are well met in this case, as (a) quantum of imports from each of the subject countries is more than de-minimus; (b) dumping margin from each of the subject countries is more than de-minimus; and (c) cumulative assessment of the effect of imports is appropriate in light of the conditions of competition between the imported article and the like domestic articles.

(c) Petitioner has provided detailed information to the Designated Authority clearly establishing that the domestic industry has suffered severe injury and the same is relied upon. Petitioner submits that the following parameters summarize injury to the domestic industry.

1. Imports of subject goods from the subject countries have increased significantly in absolute terms.
2. The share of imports from the subject countries in relation to imports of subject goods in India has increased significantly.
3. The share of imports from subject countries in relation to demand in India has increased significantly.

(d) Various Economic Parameters affecting domestic industry

1. Production, capacity utilization of the domestic industry which had been increasing till 2000-01 declined in period of investigation.
2. The sales volume of the industry has also declined inspite of reduction in selling price.
3. The imports forced the domestic industry to sell the product below its fair value, since the domestic industry was forced to match the prices. Thus, the imports forced the domestic industry to undersell the product.
4. The landed value of imported material was significantly below the selling price of the domestic industry causing price undercutting in the Indian market.
5. The level of stocks, which had been declining and became zero in 2000-01, increased significantly in POI.
6. The landed value of imported material is significantly below the cost of production and fair selling price of the domestic industry causing severe price undercutting and price suppression in the Indian market.
7. The domestic industry continues to incur significant financial losses as a result of continued dumping in the Indian Market. The financial position of the domestic industry should have improved after imposition of anti-dumping duties on a number of countries. However, the domestic industry continued to face severe financial losses.
8. The domestic industry is not able to raise fresh capital or plan new investments as the domestic industry is loosing heavily in their operations.
9. The dumping margin are not only more than de-minimus, but also very significant. Significant dumping margins have very adversely affected the performance of the domestic industry.
10. Due to financial losses, cash flow of the domestic industry for the product concern remains negative.
11. Employment level of the domestic industry has declined. Continued losses to the domestic industry have resulted into unsafe feeling in the minds of the employees.
12. Reduction in employees has also resulted into reduction in total wage being paid on account of employees. However, average wage per employee has increased in accordance to the prevailing law in the country.
13. Productivity per employee has increased mainly due to reduction in employees and due to increase in production due to imposition of Anti Dumping duty against certain countries.

(e) Duty in US \$:

Though the Designated Authority has already recommended anti-dumping duty in terms of US \$, it is submitted that the final duties may also be recommended in terms of US \$ only, so that erosion in the quantum of protection does not take place on

account of changes in the exchange rate. However, the duties may please be recommended in terms of reference price.

(f) On Product under Consideration

Submissions made by the domestic industry

- i. The product involved in the present investigation is Vitamin-C in all its form and derivatives. It is also known as ascorbic acid. It is classified under customs sub-heading no. 2936.27 under the Customs Tariff Act. It is also known by various synonyms such as L-Xyloascorbic Acid, 3-oxo L-gulofuranolactone (enol form), L-3-Ketothreohexuronic Acid Lactone etc., as described under entry number "867 of MERCK INDEX".
- ii. The product under consideration in the present investigation is Vitamin-C, originating and exported from USA and Canada. Vitamin - C is classified under Chapter 29 of the Custom Tariff and the Customs subheading no. 2936.27 in the Custom Tariff Act, 1975. The classification is, however, indicative only and in no way binding on the scope of the present investigation.

(g) On Like Article

Submissions made by the domestic industry

- i. There is no significant difference between the product imported from subject countries and produced by the Indian industry in terms of physical & technical characteristics (or product specifications), manufacturing process, plant & equipment, technology, function and uses, marketing, pricing, tariff classification and customer perception. The goods produced by the petitioners and the product under consideration are substitutable with each other.
- ii. Rule 2(d) of the Anti dumping Rules specifies "Like Article" means an article, which is identical or alike in respects to the product under investigation or in the absence of such an Article, another article, having characteristics closely resembling those of the articles under examination;
- iii. The petitioner has claimed that there is no known difference in the goods produced by the domestic industry & Vitamin-C exported from the subject countries.. Vitamin-C produced by Indian industry and imported from subject countries are similar in terms of characteristics such as physical & chemical characteristics, manufacturing process & technology, functions & uses, product specification pricing distribution & marketing and tariff classification of the goods. The two are technically and commercially substitutable. The consumers have used and are using the Vitamin-C produced by the domestic industry interchangeably.

(h) On Domestic Industry

Submissions made by the domestic industry

The petition was filed by M/s. Ambalal Sarabhai Enterprises Limited. There are two other producers of Vitamin-C in India. M/s. Amoli Organics Limited is the other producer of the product. M/s. Jayant Vitamin Limited had also created capacity for production of subject goods. However the company has suspended production long back. Two producers namely M/s New S-chem Search Ltd & M/s Kerbs Bio Chemicals Ltd. have commenced their production after period of investigation, albeit in small volumes. There are other units, namely M/s Cardinals Drugs Ltd. & M/s Tonira Pharma which are producing Vitamin-C for export purposes, after the investigation period. The petitioner accounts for major proportion of Indian production and thus satisfies the standing under anti dumping duty rules.

2.2 Submissions made by New S Chem Search Ltd.

- a. They would like to bring kind notice of the Authority that we have multi-purpose bulk drug facilities in our plant situated at Savli (District Vadodara) wherein we manufacture number of Bulk Drugs, Intermediates and Specialty Chemicals. In order to expand our activities and also to utilize our manufacturing capacities, they had already established commercial production of Vitamin C from the intermediate stage during the current year. However, we find that imported Vitamin C in the market still exist and is available at a lower price in spite of imposition of Anti Dumping duty. In view of this, their own production has been limited. They have also offered our facilities for contract manufacture to other parties.
- b. They, therefore, request the Authority to kindly initiate investigations and to complete the procedure of imposition of Anti Dumping duty as has been envisaged in the recent notifications. This will provide a platform to the indigenous manufacturers of Vitamin C to get a fair and just opportunity to compete with the prices of imported materials.

2.3 Submissions made by Krebs Biochemicals Limited, Hyderabad.

- a. They have come to know that Ministry has initiated proceedings for levying Anti Dumping Duty on imports of Vitamin C. They wish to inform you that they are a major producer of Bulk Drugs based on fermentation process and having presence in domestic as well as export market. Vitamin C is one of the products where a fermentation stage is involved and therefore, we have been undertaking production of this item starting from fermentation stage. We have obtained some experimental production during the current year. However, we

find that it is difficult to sustain this on regular basis unless we establish our plan for producing this item by manufacturing intermediate 2 Keto Gulonoc Acid by fermentation indigenously. This is because of import of Vitamin C continue to come through various channels in spite of the imposition of Anti Dumping Duty. They, therefore, request Authority to kindly take steps to levy suitable Anti Dumping Duty against all such countries which are exporting this material at dumping prices and also initiate suitable enforcement procedure. This will definitely help them to develop the technology and encourage them to make suitable investment for making vitamin C from basic stage.

2.4 M/s. Anglo French Drugs & Industries Ltd., Bangalore:

1. They have stated that they are one of the latest consumers of Vitamin 'C' plain, using their own form formulations.
2. Local manufacturers of Vitamin 'C' are not in a position to offer the material to actual user due to their own problems and reasons.
3. Provisional anti dumping duty on Vitamin 'C' has resulted in substantial hike in fixed prices.
4. Domestic industry is not in a position to meet the demand of Vitamin 'C' in the country.
5. Authority may consider and take suitable decision to remove the anti dumping duty on imported Vitamin 'C' from USA & Canada with immediate effect in the interest of health care industry of the country.

Other Issues

2.5 Submissions made by M/s. Bajaj Healthcare Pvt. Limited

Incomplete Petition :

1.0 They have drawn attention to para 1 under the Heading "GENERAL" page 2 of the Application Proforma, with regard to documented petition.

1.1 The imported product information furnished at PART – I of the petition relates to Vitamin C conforming to BP/USP Specification, and Vitamin C Type A coated. However, the subsequent, information furnished relates only to Vitamin C conforming to BP/USP specification. No information has been furnished relating to VITAMIN C Type "A" coated.

1.2 The Petition Part II does not contain the names and addresses of all the Indian producers alongwith the production (volume and value) of subject goods during the last two years, and the current year. This information is essential to determine the

standing of the petitioner in terms Rule 5 (3) of Anti Dumping Rules. However, the petitioner has deliberately concealed the information to wrongly justify their standing to file the petition.

1.3 The Petitioners has not furnished information relating to Normal Value of Vitamin C in USA and Chinese Taipei, and marked as confidential.

2.0 Initiation of anti dumping investigation without examination of the accuracy and adequacy of the evidence

3.0 Inadequate information in initiation notification

4.0 Preliminary findings contrary to provisions of rules

5.0 Anti Dumping Duty Is Exporter Specific

6.0 Misuse Of Confidentiality Provisio

7.0 Notification No.143/2002 – Cus. Dated 27.12.2002 Contrary to Provisions of Law

8.0 Termination Of Investigation

In view of the above, they have requested that the anti dumping investigation should be terminated under Rule 14(b) & 14 (e) of the Anti Dumping Rules.

2.7 Submissions made by the domestic industry

Preliminary Submissions:

At the out set, petitioner submits that

- The written submissions filed by the opposing interested parties are delayed and not filed within the limits prescribed by the Designated Authority and should not be considered by the Designated Authority.
- The opposing interested party has not filed any questionnaire response, which is sufficient to show mallafied intention of opposing interested party.
- There are a number of irrelevant issues and allegations made by the opposing interested party upon the whole proceeding as well as on the procedure being followed by the Designated Authority.
- Without prejudice to their submissions that the written submissions made by the opposing interested party are beyond the time limits and should be disregarded by the Designated Authority. Para wise comments are:

Domestic industry's comments on the views expressed by M/s Bajaj Health Care Pvt. Limited have been discussed in the Disclosure Statement;

2.8 Views of the Authority:

1. The Designated Authority has considered all relevant arguments for determination of final finding.
2. On M/s Bajaj Health Care submissions:
 - i. Authority notes that M/s Bajaj Health Care has not furnished the information in the questionnaire in the form and manner prescribed.
 - ii. Authority notes that the request for copy of non-confidential version of petition was provided to them for offering comments;
 - iii. The allegation of the opposing interested party is without consideration of the facts on records. Perhaps, opposing interested party has referred to various confidential documents of the petition filed by the Petitioners, with regard to domestic selling price, cost of production of subject goods, claimed as confidential and accepted so by the Authority;
 - iv. As regards to number of manufacturers of subject goods in the country, it is mentioned in the petition, that there are two other manufacturers of Vitamin C in India. M/s. Amoli Organics has also supported the petition. Regarding other producers, which shows that production made by them is negligible or beyond the investigation period and for export purposes. Further, some of these parties have supported the petition.
 - v. It is practice of the Designated Authority not to disclose the correspondence with the domestic industry made before the initiation of the investigation, nor there is any necessity for the same, as the petitioner filed updated and fully documented petition prior to initiation, which covered all the issues which had come up prior to initiation.
 - vi. It is very clearly mentioned in the initiation notification that there was prima-facie evidence of dumping, injury and causal link. Thus, there is no violation of Rule 5(2). Authority notes that the purpose of 'initiation' is 'investigation'. It can not be argued that the Designated Authority should investigate the matter before initiation.
 - vii. The methodology used in determination of normal value and export price is given in the preliminary finding, under para H.
 - viii. Rule 17 (3), merely states that the Designated Authority should determine separate dumping margin for individual exporter. However, such specific duty can only be determined in respect of co-operative exporters. Specific / Individual duty can not be demanded in respect of non-cooperative exporters. And in the present case, none of the exporters have cooperated with the investigation.

C. VIEW OF EXPORTERS, IMPORTERS AND OTHER INTERESTED PARTIES

3.0 Views of Exporters:

3.1 M/s Roche Scientific Co. (I) Pvt Ltd, Vitamins & Fine Chemicals Division, Mumbai

M/s. Roche, Mumbai, representing the producer M/s Roche, have indicated that neither the exporter nor its affiliated have received communication regarding the petition and primary investigation for anti dumping duty on Vitamin 'C' of USA origin. They requested the Authority to give at least one month extended period for contesting the case to respond to the initiation notice.

Authority notes that the information furnished vide submission dated 25.10.2002 was examined and found deficient. This was communicated vide DGAD Letter dated 26.11.2002

1. The information vide fax dated 25th October,2002 doesn't contain all enclosure as stated. Encl 11 – 'copy of Annual publication by IDMA for the year ended 2002 not enclosed. The hard copy of the response not yet received;
2. As per the submission the main Entity M/s Roche USA is the producer. Only M/s Roche Singapore seem to have furnished information;
3. Many transaction listed under domestic sales (ref Annexure 1) pertain to post period of investigation. May furnish all domestic sales made during the period of investigation;
4. Please furnish information as per Exporters Questionnaire para B to H ;
5. Furnish Appendix A , B alongwith Appendix 3,5,7,8,&9 ;
6. Furnish company's Balance Sheet , Profit & Loss Account for period of investigation and previous three years;
7. May elaborate on the company's related arm in India and with regard to marketing and sales arrangements to India;
8. Please furnish the hard copy of the response in duplicate and should invariably accompany with a soft copy (on Floppy Diskette / Compact Disc);

The exporters were requested to remove these deficiencies and furnish additional information latest by 20.12.2002. However, no response was received by the Authority, from the exporter.

3.2 M/s Vita Health Products,150,Beghin Avenue, Winnipeg, Manitoba R 21 3w2

They have informed that they will not be completing the questionnaire as M/s. Vita Health Products Inc. has not exported Vitamin 'C' to India during the period of investigation. They have also indicated that M/s. Stanley Pharmaceuticals (owned by Vita Health Products since the year 2000) have not exported Vitamin 'C' to any organisation in India.

3.3 M/s Tech International, Johnstown, OH 43031.

They have stated that Tech International is a manufacturer of Rubber Tubes and Tyres repairs. Tech products are widely used in tyre industry, passenger vehicles, trucks and buses. They have indicated that they are not in the business of Vitamin 'C' and its derivatives and have not exported Vitamin C in any form to India.

3.4 M/s. Watford Chemicals Co.Ltd.

The exporters have indicated that they have not exported Vitamin C to India directly or indirectly. They have stated that they have exported to North America and Europe only.

3.5 Canadian High Commission, New Delhi

They have stated that they have contacted exporters identified in the complaint and have confirmed that there were no exports of Vitamin 'C' made by Canadian exporters to India. The Canadian export statistics and World Trade Atlas, (a data bank on global exports and imports) shows nil exports during the period of investigation. In the circumstances, they have requested the Authority to terminate the investigation.

3.6 M/s Novopharm Limited, Ontario , Canada

They have stated that they did not manufacture Vitamin C and have not made any sale to India during the period of investigation;

3.7 Views of Importers/ Users:-

M/s Gandhi Parmaxeuticals, Chennai

M/s Bajaj Health Care, Mumbai

M/s The Chemists & Druggists Association , Bombay

M/s Kawarlal & Sons, Chennai,

- a. Domestic Industry is importing the final stage intermediate 2 – Ketogluonic Acid from China and their cost of production is substantially lower than the producer in exporting countries.
- b. There is difference between the technologies adopted by the petitioner and by produced by the subject countries.
- c. The cost of production from 2 – Ketogluonic Acid is much less. If the same cost of production is assumed for China Taipei, the normal value of Manufacturer in China Taipei can not be USD 11.66/Kg. This clearly shows that the data have been fabricated by the petitioners.
- d. Amoli Organics Limited is a new entrants in the market and having much lesser production share as stated in the petition. However, imports have not caused any injury to them as well as to us. This shows that they are inefficient and incapable due to which they are suffering injury. They have deliberately withheld information about other manufacturer of the product such as M/s. New - S - Chem Search Limited, M/s. Kerbs Biochemicals Limited, M/s. Cardinals Drugs Limited, M/s. Lachem Pharmaceuticals Limited. M/s. Tonira Pharma Limited, M/s. Lacure Pharmaceuticals Limited etc. to whom no injury is caused due to imports.

3.8 Authority's Position

As regards to extension of time sought by M/s Roche it is noted that the company has failed to give sufficient reasons while seeking extension of time as envisaged in the Rules, hence no extension was allowed. Further, exporters were requested to remove the deficiencies pointed out in their response to the questionnaire and furnish additional information latested by 20.12.02. However, no response was received by the Authority from the exporter.

As regards to claims of nil export from subject country Canada, it is noted that substantial imports have been reported by Directorate General of Commercial Intelligence and Statistics (DGCI & S), Kolkatta. Further, DGCI&S, Kolkatta, furnished transaction wise details of imports for the period of investigation from Canada. As major imports have been effected through Chennai and Mumbai ports, respective Commissioner Customs, were requested to furnish details of imports of subject goods from Canada. Chennai Customs, vide their letter no.S58/7/2003 Appg (Main) dated 17.6.2003 reported that a quantum of 57.95Mt has been imported during the period of investigation, which constituted around 9.5% of total imports, well above the deminimus limit. Further, Authority notes that no comments has been received from Canadian Embassy on disclosure statement

Evidence of Imports submitted by the Petitioners as reported by 'Chemical Weekly', Mumbai, also indicate that there have been imports from Canada and USA;

In the circumstances, Authority hold that there has been substantial imports of subject goods from Canada during the period of investigation.

D. EXAMINATION OF ISSUES RAISED

4.0 The submissions made by the petitioner and other interested parties have been examined and issues with reference to the Rules and having a bearing on this case have been considered and dealt with at appropriate place in the notification.

E. PRODUCT UNDER CONSIDERATION & SCOPE OF INVESTIGATION

5.0 The Product under Consideration in the present investigation is Vitamin C originating in or exported from USA and Canada. Vitamin C is classified under the Customs sub-heading no. 2936.27 in the Customs Tariff Act, 1975. The classification is, however, indicative only and in no way binding on the scope of the present investigation.

No arguments have been raised by any interested parties claiming that Vitamin -C produced by the petitioners and the Vitamin -C produced and exported by the exporters are different with regards to the product under consideration. The Designated Authority, therefore, confirms the preliminary finding in this regard.

F. LIKE ARTICLES:

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

The Authority notes that the Vitamin-C produced and sold by domestic industry and those imported from the subject countries have similar characteristics and should be treated as like articles. Petitioners have also claimed that there is no significant different in the technology adopted by petitioner and by the producers in these countries. Though, every manufacturer fine-tunes production process according to available facilities and necessities.

7.0 The Authority also finds that there is no argument disputing that Vitamin C produced by the domestic industry has characteristics closely resembling the imported material and is substitutable by Vitamin C imported from the subject countries both commercially and technically. Vitamin C produced by the domestic industry has been

treated as Like Article to the product exported from USA and Canada within the meaning of Rule 2(d). In view of the above, the Authority therefore confirms the preliminary findings in this regard.

G. DOMESTIC INDUSTRY

8.1 The petition has been filed by M/s. Ambalal Sarabhai Enterprises Limited having its Registered Office at Wadi, Baroda-390007. There are two producers of Vitamin C in India. M/s. Amoli Organics Limited, is the other producer of the product. Earlier, M/s. Jayant Vitamin Limited had also created capacity from production of Vitamin-C, however, the company is closed.

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

8.3 Authority holds that the petitioner accounts for major proportion of the Indian production and thus satisfies the standing, under the Rules.

H. DUMPING

9.0 Normal Value Export Price And Dumping Margin And Examination By The Authority Is Discussed Hereunder.

Normal value

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

- i. "the comparable price, in the ordinary course of trade, for the like article when meant for consumption in the exporting country or territory as determined in accordance with the rules made under sub-section (6); or
- ii. when there are no sales of the like article in the ordinary course of trade in the domestic market of the exporting country or territory, or when because of the particular mark situation or low volume of the sales in the domestic market of the exporting country or territory, such sales do not permit a proper comparison, the normal value shall be either-

- a. comparable representative price of the like article when exported from the exporting country or territory or an appropriate third country as determined in accordance with the rules made under sub-section (6); or
- b. the cost of production of the said article in the country of origin alongwith reasonable addition for administrative, selling and general costs, and for profits, as determined in accordance with the rules made under sub-section (6):

Provided that in the case of import of the article from a country other than the country of origin and where the article has been merely transshipped through the country of export or such article is not produced in the country of export 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".

9.2 The Authority sent questionnaires to all the known exporters and producers of Vitamin C in Subject Countries. However, none of the exporters except M/s Roche from subject countries responded to the Authority and have not furnished any information in the form and manner prescribed by the Authority.

9.3 The response filed by M/s Roche (M/s Roche Singapore) was grossly deficient as mentioned herein above. The exporter has not rectified the deficiency and has not responded in spite of sufficient time and opportunity provided for furnishing the information. Authority notes that the nature of missing information called for from the company entities is vital for the determination of normal value. Under the circumstances, authority is prevented from accepting the response for determining normal value.

9.4 The Authority, therefore, holds that none of the exporters from subject countries have co-operated with the Authority as envisaged under the rules. In the circumstances Normal Value has been based on the price information viz price list of one of the producer of subject goods in USA, provided by the domestic industry in accordance with Rule 6(8). For Canada normal value has been based on the price in same region/ continent (i.e. prevailing price in USA). The Normal Value for USA and Canada has been determined at US \$ *** per Kg.

Export Price:

9.5 None of the exporters from subject countries responded to the Authority and have not furnished any information. Vitamin C is classified under Customs sub-heading no. 2936.27. The export price has been determined on the basis of the information compiled by DGCI&S for the period of investigation.

The average export price has been adjusted for commissions, inland freight, overseas freight, packing & handling charges on the basis of best available information and in accordance with Rule 6(8). The export price has been determined at US\$ *** per Kg in respect of USA and at US \$ *** per Kg in respect of Canada respectively.

9.6 Dumping Margin:

The Rules relating to comparison provides comparison of normal value and export price provides as follows:

"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 possible the same time. Due allowance shall be made in each case on its merits, for differences which occur 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".

The authority has carried out weighted average ex-factory normal value comparison with the weighted average ex-factory export price in period of investigation, for evaluation of the dumping margin for all the exporter/ producers of the subject country wherever appropriate.

The dumping margin for exporter/ producer comes as under:

COUNTRY	Normal Value	Export Price	Dumping Margin	D M as a % of Export price
USA	***	***	***	97.80
CANADA	***	***	***	112.26

I INJURY:

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

Rule (iii) of the Annexure II to the Rules requires that "in case imports of a product from more than one country are being simultaneously subjected to anti-dumping investigation, The Authority will cumulatively assess the effect of such imports. Such assessment can be, however, made only if it is determined that:

- a. the margin of dumping in relation to the imports from each country is more than two percent expressed as percentage of export price and the volume of the imports from each country is three percent of the import of the like article in India, and
- b. the 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."

1. The Authority notes that the margin of dumping and quantum of imports from subject countries are more than the limit prescribed above. Cumulative assessment of the effect of the imports from subject countries is appropriate since the export prices from these countries were directly competing with the prices offered by the Domestic Industry in the Indian market and displacing domestic producers here.

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

The imports of Vitamin-C from the subject countries have increased in absolute terms. The Annexure-II (ii) of the Indian Anti-dumping rules provides as under: -

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

In the instant case, the imports of Vitamin-C from the subject countries have increased significantly in absolute terms, as may be seen from the table below:

Particulars	Unit	1998-99	1999-00	2000-01	2001-02
Imports					
Imports-China*	MT	405.54	227.73	290.67	130.97
Imports-Japan*	MT	312.70	239.70	49.50	1.70
Imports EU and Russia*	MT	267.20	631.60	43.54	16.84
Imports from - Countries attracting duty*	MT	985.45	1099.03	383.70	149.51
USA	MT	63.11	134.76	51.33	230.51
Canada	MT	0.00	7.00	27.40	152.08
USA, Canada	MT	63.11	141.76	78.72	382.58
Imports Other than above	MT	9.36	41.78	18.00	76.31
Total Imports	MT	1057.91	1282.57	480.43	608.41
* Countries already attracting Anti Dumping Duty.					

Total Domestic Production	MT	269.28	237.25	544.88	456.30
Demand in the Country	MT	1327.20	1519.82	1025.31	1064.71
Market share in Imports					
Countries attracting duty	%	93.15	85.69	79.87	24.57
USA	%	5.97	10.51	10.68	37.89
Canada	%	0	0.55	5.7	25.00
USA, Canada (Total Imports)	%	5.97	11.06	16.38	62.89
Imports from Other countries	%	0.88	3.26	3.75	12.54
Total	%	100.00	100.0	100.00	100.00

Import data *As per DGCI&S*

It may be seen from the above table that there is significant increase in imports of Vitamin-C in India from subject countries in the period of investigation.

3. Significant decline in export price:

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

Rs. Per KG	1998-99	1999-00	2000-01	2001-02
USA	280.64	271.80	263.60	244.77
CANADA	-	261.97	268.01	219.06

It is evident from the above, average export price from subject countries have declined.

4 Production of the domestic industry:

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

5. Sales volume of the petitioner (s)

Authority notes that the sales volume of the industry have declined over the period, the industry has been forced to reduce its prices significantly at the cost of its profitability in view of the dumped imports.

6. Selling price

The industry has been forced to reduce its selling prices as may be seen from the following table, in view of cheap imports in the market:

Year	Sales realization Rs. Per Kg.
1998-99	100
1999-2000	91.11
2000-2001	98.44
2001-2002	86.89

Note: Indexed figures

It is evident from the above that the selling price of the domestic industry have declined over the years. Selling price have increased marginally in 2000-01 over, 1999-00, however, the same declined again in the investigation period.

7. Price undercutting

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

8. Profitability

The Authority notes that the industry has been forced to keep its selling prices below its cost of production, resulting in continued financial losses to the domestic industry. The production of the domestic industry increased when compared to 1998-99, however, higher production did not help the domestic industry as the domestic industry is still making losses.

9. Price suppression/depression

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

10. Employment and wages

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

11. Inventories

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

12. Cash Flow

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

13. Productivity

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

14. Growth

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

15. Ability to raise fresh Investment

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

16. Conclusions:

- a. The dumping margins from the subject countries are significant and volume of imports are more than de-minimus;
- b. Imports from subject countries have increased significantly in absolute terms, as also relative to production and consumption in India;
- c. The export price from the subject countries has declined significantly.
- d. Selling price of the domestic industry have declined significantly.
- e. The imports were causing severe price undercutting and prevented the domestic industry from effecting legitimate price increases;
- f. The domestic industry has been forced to sell at prices significantly below cost of production. It may thus be seen that the industry has suffered material injury.

K. CAUSAL LINK:

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

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

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

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

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

- a. Landed price of imports from the subject countries was significantly lower than the selling price of the domestic industry, preventing the domestic industry from realizing fair prices after imposition of anti dumping duty on other sources earlier found to be dumping.
- b. Imports from the subject countries have increased significantly. As a direct consequence, sales of the domestic industry have declined.
- c. Market share of domestic industry in demand in the Country increased with imposition of anti dumping duty on a number of sources. However, the same declined again with fresh dumping from USA and Canada and continued dumping from other sources.

- d. In spite of imposition of anti dumping duty on a number of countries, the profitability of the domestic industry has not improved due to fresh dumping experienced from USA and Canada and continued dumping from a number of countries.

L. Indian Industry's Interest and other issues:

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

It is recognised that the imposition of anti dumping duties might affect the price levels of the products manufactured using the subject goods and consequently might have some influence on relative competitiveness of these products. However, fair competition on the Indian market will not be reduced by the anti dumping measures, particularly if the levy of the anti dumping duty is restricted to an amount necessary to redress the injury to the petitioner companies. On the country, imposition of anti dumping measures would remove the unfair advantages gained by dumping practices, would prevent the decline of the petitioner company(ies) and help maintain availability of wider choice to the consumers of Vitamin-C. Imposition of anti dumping measures would not restrict imports from the subject countries in any way, and therefore, would not affect the availability of the product to the consumers.

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

M. LANDED VALUE :-

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

N. CONCLUSIONS;

14.0 The Authority, after considering the foregoing, concludes that

- a. Vitamin-C (Ascorbic Acid) originating in or exported from USA, Canada and has been exported to India below normal value, resulting in dumping ;
- b. The Indian industry has suffered material injury ;

- c. The injury has been caused cumulatively by the imports from the subject countries.

It is considered necessary to impose definitive anti-dumping duty, on all imports of Vitamin-C originating in or exported from USA and Canada.

15.0 The Authority considered recommending the amount of Anti-Dumping Duty equal to the margin of dumping or less, which if levied, would remove the injury to domestic industry. The average landed price of the imports, for the purpose, was compared with the non-injurious selling price of the domestic industry, determined for the period of investigation. Wherever the difference was less than the dumping margin, a duty lower than the dumping margin is recommended. It is considered necessary to impose definitive antidumping duty, on all imports of Vitamin C originating in or exported from USA and Canada.

16.0 Accordingly, the Authority has therefore, decided to recommend definitive Anti-dumping Duty to be imposed, on all imports of Vitamin-C and most commonly used synonyms of Vitamin C like Ascorbic Acid, L-Xyloascorbic Acid, 3-Oxo-L-gulofuranolactone (enol form), L-3-Ketothreohexuronic Acid Lactone etc., as described under entry number" 867 of MERCK INDEX"(also referred as subject goods) falling under Custom Heading 2936 originating in or exported from USA and Canada. The Anti-Dumping duty shall be the difference between the amount mentioned in column (9) table below and the landed value of imports per kg to be imposed on all imports of subject goods falling under Chapter 29 of the Customs Tariff, originating in or exported from subject countries : -

Currency	(11)	US \$	US \$	US \$	US \$
Unit of Measurement	(10)	Kilogram	Kilogram	Kilogram	Kilogram
Amount	(9)	10.11	10.11	10.11	10.11
Exporter	(8)	Any Exporter	Any Exporter	Any Exporter	Any Exporter
Producer	(7)	Any Producer	Any Producer	Any Producer	Any Producer
Country of export	(6)	Any Country	Any Country	Any Country	Any Country
Country of Origin	(5)	United Sates of America	Any country except Canada	Canada	Any country except United States of America
Specification	(4)	Any Specification	Any Specification	Any Specification	Any Specification
Description of goods	(3)	Vitamin C & its synonyms	Vitamin C & its synonyms	Vitamin C & its synonyms	Vitamin C & its synonyms
Sub Heading	(2)	2936.27	2936.27	2936.27	2936.27
Sl. No	(1)	1.	2.	3.	4.

18. Landed value of imports for the purpose shall be the assessable value as determined by the customs under the Customs Act, 1962 and all duties of customs

except duties levied under Section 3, 3A, 8B and 9, 9A of the Customs Tariff Act, 1975.

19. Subject to above, the Authority confirms the preliminary findings dated 1.11.2002.

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

(LV Saptharishi)
Designated Authority