

GOVERNMENT OF INDIA
MINISTRY OF COMMERCE & INDUSTRY
(DEPARTMENT OF COMMERCE)
DIRECTORATE GENERAL OF ANTI DUMPING &
ALLIED DUTIES

New Delhi, the 22 August 2003

FINAL FINDINGS

Subject: - Anti-dumping investigation concerning imports of Vitamin-E originating in or exported from the China PR

No. 14/32/2002-DGAD - Having regard to the Customs Tariff Act, 1975 as amended in 1995 and the Customs Tariff (Identification, Assessment and Collection of Anti Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, thereof;

A. PROCEDURE:

2. 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 Merck Ltd, Mumbai on behalf of the domestic industry, alleging dumping of Vitamin –E originating in and exported from China PR (hereinafter referred to as subject country.
 - ii. The Authority notified the Embassy of subject country about the receipt of fully documented petition application made by the petitioner before proceeding to initiate the investigation in accordance with sub-rule (5) of Rule 5 supra;
 - iii. The Authority issued a Public Notice dated 27th August 2002 published in the Gazette of India, Extraordinary, initiating anti dumping proceedings concerning imports of Vitamin-E falling under Chapter heading 293628 and 230990 of Schedule I of the Customs Tariff Act. The Authority forwarded copy of the initiation notification, non confidential petition filed by the domestic industry and questionnaire proforma to known exporters, importers and embassy of subject country 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. Only M/s Zhejing Nhu company Ltd. China has responded to the Authority from among the exporters to whom Exporters Questionnaire had been sent. The

Embassy of China PR in New Delhi was also informed about the initiation of investigation and requested to advise the exporters/producers from their countries to respond to the questionnaire within the prescribed time; M/s. Zhejiang Medicine Company Ltd, Zhejiang, China PR has responded to the petition.

- v. The Authority issued a Preliminary Findings dated 2nd December 2002 published in the Gazette of India, Extraordinary, recommending imposition of Anti Dumping Duty – provisionally – pending further investigation.
- 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. None of the users/ importers has responded the importer questionnaire except M/s CLFMA, Mumbai which is an Association of live stock industry.
- viii. The Authority also forwarded a copy of preliminary findings to the Embassy of China, New Delhi with a request that exporters and producers in their country may be advised to furnish their views on the preliminary findings.
- ix. The Authority provided an opportunity to all interested parties to present their views orally during 17th April 2003. All parties presenting views orally were requested to file written submissions, of the views expressed orally. The parties were advised to collect copies of the views expressed by the opposing parties and offer rebuttals, if any.
- x. Arguments raised by the interested parties 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 are considered in Final Findings.
- xi. In accordance with Rule 16 of The Rule supra, the essential facts/ basis considered for these findings have been disclosed to known interested parties and comments received on the same have been considered in Final Findings.
- xii. The Authority made available non-confidential version of the evidence presented by various interested parties in the form of a public file kept open for inspection by all interested parties.
- xiii. The Authority also conducted cost investigation and worked out optimum cost of production/ cost to make and sell in India on the basis of Generally Accepted Accounting Principles.
- xiv. The period of Investigation for the purpose of present investigation was from 1st January 2001 to 31st March 2002 (15 Months)

B. Product under Consideration and Like Article

3. Submissions made by the domestic industry

The product under consideration is Vitamin-E, which is produced in the acetate form, and is then known as Vitamin-E Acetate. It can either be used as it is or further processed to obtain the different types, which includes, pure or IP grade (96% and above) and Animal Grade (Feed Grade or dry powder) Vitamin E 50%. In the Acetate grade, IP grade (96% and above) is used for pharmaceutical purposes and Vitamin -E (93%) grade is used for making feed grade. It is classified under the Customs subheading no. 2936.28 in the Custom Tariff Act, 1975. The petitioner has claimed that the Vitamin-E both Acetate as well as the feed grade which are manufactured by domestic industry are like article to the Vitamin-E imported from the subject country.

Examination by Authority

4. The submission made by the various interested parties have been examined and considered while arriving at these findings and wherever appropriate have been dealt. The product under consideration is Vitamin E, which is produced in the acetate form, and is then known as vitamin –E Acetate. It can either be used as it is or further processed to obtain the different types, which includes, pure or IP grade (96% and above) and Animal Grade (Feed Grade or dry powder) Vitamin E (50%). In the Acetate grade, IP grade (96% and above) is used for pharmaceutical purposes and Vitamin E (93%) Grade is used for making feed grade. The Authority has accepted the submission of exporter that selling prices of Vitamin E (50%) feed grade and Vitamin E Acetate Grade (96% and 93%) are varied substantially primarily due to the cost components which gives rise to different level of purity. The Authority has accepted the exporter's submission to make a proper comparison on the basis of different purities. Thus, the Authority confirms that the product under consideration is Vitamin-E (both Acetate (96% and 93%) as well as feed grade (also known as (50%) dry powder grade) (hereinafter referred to as subject goods).

5. All types of Vitamin E-Acetate (96% and 93%) are classified in Chapter 293628 and Vitamin-E (50% dry powder) feed grade is classified in terms of 230990 as preparations of a kind used in animal feeding. The investigation is against the product under consideration irrespective of the classification under which it is imported. Customs classification is indicative only and is in no way binding on the scope of the present investigation.

6. Rule 2(d) of the Anti Dumping rule specifies that Like Article is an article, which is identical and alike in all respects to the product under investigation or in absence of such an article, another article having characteristics closely resembling those of the articles under examination.

7. The Petitioner has claimed that the goods produced by them are like articles to the goods originating in or exported from subject country. No dispute has been raised on

the definition of the product under consideration and like article by any interested party in the investigation. The Authority notes that Vitamin E (Acetate as well as feed grade or dry powder) produced by domestic industry has characteristics, which are similar to those of the Vitamin-E (Acetate as well as the feed grade or dry powder) imported from subject country. In view of the above, the Authority holds that Vitamin-E (Acetate as well as the feed grade) produced by the domestic industry and those being imported from the subject country are Like Articles within the meaning of the Anti Dumping Rules. In this regard the Authority confirms the provisional findings.

De Minimus Limits:

8. The Authority has examined the data of imports of the subject goods from the subject country as made available by DGCIS and IBIS (secondary source) for the POI. The data gathered from these sources indicate that the import of subject goods from China PR during the POI is above de-minimus levels.

DOMESTIC INDUSTRY:

9. The petition has been filed by M/s. Merck Ltd. Mumbai. The petitioner is the sole producer of the subject goods in India. There are arguments that Merck Ltd is also importing the intermediates from China, which are much cheaper. CLFMA has further added that they do not know whether E-Merck, Germany has filed a similar petition on anti-dumping of Vitamin E in Europe. It is further stated that in the light of the above information, E-Merck (I) Ltd., Mumbai does not hold good petitioning to the Authority on anti-dumping duty on Vitamin-E.

10. The Authority has considered the submissions made by various interested parties. The Authority has determined that the Domestic industry and any of the exporters of the subject goods from the subject country are not related or affiliated within the meaning of Ant Dumping Rules. Also, the petitioner has not imported the subject goods from the subject country during the POI and is therefore not excluded from the definition of the Domestic Industry. The Authority has determined that the petitioner is a domestic industry in terms of Rule 2 (b) of the Anti Dumping Rules and the petitioner satisfies the criteria of standing to file the petition on behalf of the Domestic Industry in terms of Rule 5(3) (a) of the Rules supra. The Authority, therefore, confirms its provisional findings with respect to Domestic Industry standing.

Other Issues raised by M/s Zhejiang Medicine Co Ltd. (JMC) China PR

11. The exporter has represented that the examination by the Authority has serious procedural defects which are in breach of the customs tariff Act and the Indian anti

dumping Regulations or IADR, as amended and its obligation under the WTO. They have further represented that they had submitted to the Authority full and complete information as requested in the standard form of questionnaire within the prescribed time-limit. They have submitted that the authority did not conduct an inquiry or procedure to obtain clarification on any data that was unclear to it nor by means of any communication. They also submit that investigation conducted by the authority based on a flawed procedure has led to provisional anti dumping duty being imposed without providing any legitimate right or opportunity to JMC to safeguard in interests in the proceedings. They further submit that the authority has blatantly rejected the request of JMC for granting market economy status to China. They have further stated that till date, no procedures and no detailed guidelines/instructions have ever been given by the authority, which constitute a breach of WTO obligations. They have further represented that the petitioner's major production of the product allegedly like the alleged dumped article is destined for captive consumption, which commercially speaking shields any competition in an open market. It is further stated that the petitioner imported some key raw materials in order to produce the product allegedly like the alleged dumped article. It has also a different production process from the one used by ZMC.

12. It is submitted that the petitioner must have assumed high import customs duties. Further, the above stated two (or even any other type) imported raw materials, Isophytol and Trimethydroquinone, make up about 60% and 20% respectively of the manufacturing cost. It is, therefore, seriously disputed and questionable if the petitioner was truly suffering from alleged injurious dumping, as it is clear that it cannot compete in a real market economy market due to its production structure that resulted in high cost.

13. It is incorrect for the Designated Authority to state that Trimethylphenol and Isophytol are major raw materials. This statement by itself is not sufficient since it depends upon the stage of the production process from which the product allegedly similar to the alleged dumped article is being manufactured. It is well know and asserted that there are several additional raw material used in the production process. From a technical point of view, the very starting point is 3-Cresol and Isovaleraldehyde. It the petitioner contends and as stated by the Designated Authority that Trimethylphenol and Isophytol are major materials then, this means that the petitioner's production process has indeed started from "compounding process" – which itself explains that the petitioner counted on purchasing/importing raw materials before the stage of Isovaleraldehyde and Isophytol. In this context, if the petitioner claims to have suffered from injurious dumping, it is submitted that the production process, directly influenced by the international prices of raw materials

and the high import customs duties, caused the petitioner to be in difficulty for the redressal of which, the remedy does not lie with the Designated Authority.

13A Submissions made by ZMC, China PR after the disclosure statement:

- i. As DGAD is aware that ZMC has been acting to the best of their ability to cooperate with the Indian investigating authority, supplying all the requisite information, documentation and clarifications, impeding no investigation conducted by the Indian investigating authority, observing each procedural requirements during the course of the investigation. However, when examining the Disclosure Statement, in particular at paragraph 2.4, 2.5 and 2.6, ZMC is appalled to read statements of "non cooperation" alleged by the Indian investigating authority, and extremely disappointed at the conclusion made thereby. ZMC's right to a fair hearing was not procedurally safeguarded.
- ii. Admittedly, written rules concerning market economy treatment were enacted by the Indian investigating authority, however, those rules are simply served as "criteria", which are not accompanied by a clear set of procedural rules, such as to what extent, on what basis, by which supporting documents a company shall present to the Indian authority in order to meet with the "criteria" is unclear. This is precisely what ZMC stated to the Indian investigating authority in its comments on the provisional findings.
- iii. In the current proceeding, ZMC submits that the Indian investigating authority has failed to observe the procedural requirements, in particular on how to meaningfully guide and properly instruct ZMC to go through the test of "criteria". As a result, ZMC had no legitimate legal expectation and no legal certainty.
- iv. ZMC has noted that the Disclosure Statement indicated that ZMC had not responded "within stipulated time period". Further, If the Indian investigating authority dispatched further questions in relation to the market economy status, neither counsel nor ZMC received such questions, despite of the assertion made by the Indian investigating authority. Unfortunately, ZMC including its 3 nominated counsel did not receive such claimed questions by the Indian investigating authority. Regarding another serious defect in communication about the agreement to on-site verification, counsel recalled that the Indian investigating authority requested for verification orally, and ZMC also replied orally to willingly agree to have on-site verification. In this regard, except for two sides' oral communication, no written request and confirmation was eventually followed.

Submissions by Association of Livestock Industry (CLFMA of India)

14. The petitioner i.e. Merck Ltd, Mumbai mentioned during the hearing that they have currently suspended the production of Vitamin E 50 powder. This may lead to acute shortage of this vital ingredient. This may lead to substandard products being used by the industry in order to make quality product available. We strongly recommend that anti-dumping duty should not be imposed since petitioner enjoys hardly 22-25% of market share. They have also submitted that M/s. E Merck is manufacturing Vitamin-E in India and the company has its headquarter in Germany. The company is manufacturing Vitamin-E in 30 years old plant, which was initially exporting to the then USSR. Vitamin E was under the DPCO, but the same was sold by M/s. E. Merck below DPCO price for number of years. To manufacture vitamin E intermediate are required, which are being imported from Europe. The same intermediates are also manufactured by the People's Republic of China. It is learnt that E- Merck is also importing the intermediates from China

Submissions made by Domestic Industry.

15. The percentage of captive consumption to gross production increased from 35% (2000) to 45% (2002). It may be noted that the percentage increased due to dumping of the product in the country which lead to decline the sales of the domestic industry (and thus higher percentage of captive consumption). This further substantiates material injury to the domestic industry..

16. The share of import raw materials in raw materials consumed is more than 90%. Please note that there are multiple sources for these raw materials. We request the Designated Authority to kindly direct the Chinese exporter to disclose (a) the associated investments in producing these raw materials (Isophytol and Trimethyl Phenol); (b) whether the exporter is producing both these materials (Isophytol and Trimethyl Phenol captively); (c) whether the exporter is selling these raw materials in addition to captive consumption, and if so, whether the exporter has considered cost of production for these raw materials or selling price in its cost of production.

17. The process adopted by the petitioner is confidential and cannot be disclosed. However, it is confirmed that the petitioner starts its production process from Isophytol and Trimethyl Phenol. Petitioner has some exports of the subject goods, which varied from 0% to less than 5%. The Domestic industry has further submitted the data with regards to gross production, sales of Acetate and feed grade, export sales, captive consumption and its proportion to the total sales and share of domestic sales to total utilization.

18. The Domestic industry has represented that Vitamin-E is first produced in higher concentration and the sold in lower concentration (also called feed grade). Concentration of the subject goods can be altered to suit customer's requirement. The

domestic industry adds that it is quite feasible to consume Vitamin-E 40% or 45% concentration in case 50% is not available. Therefore, should the duty be restricted to 50% feed grade, it would easily result in the circumvention of duties. They have referred to the final findings notified by the Authority in various cases where pro rata duties have been recommended in case the concentration of the imported material is reported different then the concentration for which the duties have been recommended. They have requested the Authority to confirm the duties on all forms of vitamin-E and in case concentration of the imported product is reported different then the concentration for which the Anti Dumping duty has been determined, Anti Dumping duty on pro rata basis would apply.

Submissions made by the Domestic Industry after the Disclosure statement

(18A) The arguments advanced by the sole responding exporter with regard to rejection of information provided are worthy of rejection, as the exporter has failed to establish that it deserve market economy treatment. The various arguments advanced by the exporter in this regard are also are also worthy of rejection. Petitioner earlier filed detailed submissions in this regard and the same are relied upon.

(ii) Petitioner has already provided sufficient information (on confidential and non-confidential basis) which shows that the domestic industry has suffered material injury due to dumping of subject goods from subject country. We rely upon the same. Petitioner earlier provided information showing therein the impact of high cost of raw materials in the earlier years on the profitability of the Company. It would be seen from that information that the Company would have made significant profits in the past, had the raw materials been sourced at the prices at which it is being sourced now. The injury to the domestic industry in earlier years was due to high price of raw materials and dumped imports. While the domestic industry first took concrete steps to mitigate its injury by taking steps to reduce the raw materials costs and the same yielded positive impact on the profitability, the performance got worsened once again due to dumping subsequently, which is quite prominent within the investigation period itself. In other words, had the Company continued to source the raw materials in the investigation period at same price as it had been earlier, the losses to the domestic industry would have further increased. At the same time, had the injury to the domestic industry not worsened due to dumping, the performance of the domestic industry would have been quite satisfactory.

(iii) Details of captive consumption of the product for the petitioner has been provided earlier. It was shown that captive consumption forms a very significant part of the petitioner's production and sales. Therefore, any adverse impact on the domestic market would very adversely impact the captive consumption also. As regards the prices of the end products, it is submitted that the same is not relevant, as the

Company has transferred the cost of captively sourced input on the basis of DPCO price of the product.

(iv) With regard to the argument that the Company has substantial captive consumption and, therefore, domestic industry could not have suffered material injury, it is submitted that while the same is true, it may be seen that the Company has substantial merchant sales also.

(v) With regard to the argument that the petitioner is importing the principal raw materials, it is submitted that the issue is irrelevant. Raw materials and finished goods have to be distinguished for the present purpose. In fact, there are several cases completed by the Designated Authority wherein the principal raw material is imported. For instance, acrylic fibre (acrylonitrile), NBR (acrylonitrile and butadiene), metcoke (in fact, the justification given for "ability to produce" by the domestic industry was that it can produce the goods by importing coal) are few examples wherein the domestic industry imports the principal raw material. Petitioner also wish to refer to and rely upon final findings notified by the Designated Authority in the following cases, wherein it is found that the duties have not been restricted to particular concentration imported. Either the duties have been levied on the "product under investigation" or prorata duties have been recommended in case the concentration of the imported material is reported different than the concentration for which duties were determined.

1. Choline chloride (prorata duties);
2. Zinc oxide (prorata duties);

(vi) In view of the above, petitioner requests that the preliminary findings may kindly be confirmed with the modification that the anti dumping duty is on all forms of Vitamin-E and in case concentration of imported product is reported different than the concentration for which anti dumping duty has been determined, anti dumping duty on prorata basis would apply.

Submission by M/s Soham organics Ltd, Nashik

19. They represent that they are the first Indian company manufacturing the subject goods and they are most interested party as far as imposition of the Anti Duty on the product is concerned. They further represented that though they were not the manufacturers during the POI, now they have commenced the production and are most worried about the material and cost injury to be faced even after the proposed anti dumping duty. They have represented that the total capacity of the Indian consumers of Vitamin –E is not more than the total manufacturing capacity of the Indian manufacturers. They have requested the Authority to review the rates of the

Anti Dumping duty on the China PR and other countries so that it would remove the injury caused to the domestic industry, displace the demand of the domestically produced Vitamin-E and help to maintain the availability of the wider choice in the market.

Examination by the Authority

20. (i) It has been argued by the exporter that complete information was provided by the exporter and still the same has been rejected and the exporter is being treated as Non Market Economy. The Authority notes that the question of accepting questionnaire response arises when the exporter submits the response in the form and manner as asked in the exporters questionnaire and also satisfies the criteria laid down under para "8" of Annexure 1 to the Rules. The said para and the conditions laid down therein are self-explanatory. It would therefore not be appropriate to argue that the conditions for granting MET (Market Economy Treatment) were not specified.

(ii) It is incorrect that no procedure or detailed guideline/ instruction have been prescribed with regard to granting of a MET (Market economy treatment). The obligation under the rules is to specify the criteria which the exporter must fulfill in order to seek MET. In addition to the specific criteria prescribed under the rules , the Authority recalls that subsequent to the public hearing, specific information was sought from the exporter with regards to the rebutting presumptions laid down under 8(3) of the Anti Dumping Rules with regards to market economy treatment. The Authority had dispatched the letter dated 6th June 2003 to the legal counsel for the exporter in Delhi vide speed post bearing file number 14/32/2002 and the exporter was asked to respond to the letter within 15 days. Moreover the receipt of the said letter was reconfirmed with the legal counsel orally. Further the Authority had specifically asked the exporter to submit the response with regards to the deficiencies pointed out in the preliminary findings and had also asked to confirm their willingness for the verification visit . It is also mentioned that the correspondence was made through their legal counsel in Delhi as the company had appointed them to receive all communications from the authority, to make submissions on their behalf and to appear for and on their behalf. It is also confirmed that their legal counsel in Delhi had made previous correspondences with the Authority on behalf of the exporter and they also have appeared in the public hearing before the Authority. A copy of the said letter written to the exporter is available in the public file and the copy of the correspondence made with the legal counsel including the dispatch details are also available in the public file. . The Authority, therefore is constrained to reject the submissions made by the exporter with regards to the non-receipt of the letter dated 6th June 2003.

(iii) Averment of ZMC that petitioner's major production is destined for captive consumption is incorrect. It is seen that the captive consumption of the petitioner and Merchant sales of the petitioner constitute two significant markets for the petitioner and petitioner is fully entitled to seek redressal for the injury caused in the merchant market, particularly when such merchant market constitute a major proportion of total production and, more importantly, petitioner satisfies the requirement of standing under the Rules. From the information submitted on the captive sales and merchant sales, it does not appear that the company is shifting from merchant sales to captive consumption.

(iv) As regards difference in starting raw materials and incidence and implications of high customs duties, the Authority notes that the industry is required to be examined under existing circumstances only.

(v) CLFMA has argued that the petitioner has currently suspended production of Vitamin E 50 powder and the same may lead to shortage of this vital invariant. The Authority notes that this perhaps substantiates the claim of the domestic industry with regards to injury.

NORMAL VALUE, EXPORT PRICE AND DUMPING MARGIN:

21. Under Section 9A(1) (c) of the Customs Tariff Act 1975, 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 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: -
 - a. 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
 - b. 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.

Submission by Exporter M/s. ZMC, China PR

22. The exporter has submitted that preliminary findings simply rejected all the information supplied by ZMC and the authority has determined normal value for ZMC on the basis of facts available. They have submitted that facts available contention used by the Authority in determining the normal value is an improper invocation of the said Rule. They have requested the Authority to rectify the error. They have also submitted that the Authority has failed to respect the IADR as clause 7 of the Annexure I of the IADR provides the order in which options for determining the normal value may be exercised. They have submitted that priority should be given to the one appearing first and if this proves not applicable, then the second option should be considered. The Authority has perhaps adopted the most convenient way, while completing brushing aside the provisions of IADR and determining the normal value on the basis of estimated cost of production in China plus SGA expenses. They have requested for a full disclosure on the calculation of dumping margin, transaction-by-transaction with all necessary data may be provided to the ZMC.

Submissions made by the domestic industry

23 The Domestic industry has submitted that since the investigations have been initiated in accordance with Para 7 and 8 of the Annexure I, the response of the exporter can be admitted only if the company can establish that it was operating under market economy parameter as laid down under 8(3) of the Annexure-1 of the Anti Dumping rules.

It is evident that response of a company can be admitted only if provides information and evidence to establish that it operated under market economy principles on the following 15 parameters:-

A. Whether the followings are in response to market signals and without significant State Interference

1. Selling Price
2. Costs
3. Inputs – Raw Materials
4. Technology

5. Labor
6. Output – production
7. Sales – volumes
8. Investments

B. Whether followings are applicable to such company

9. Depreciation of assets
10. Write offs
11. Barter trade
12. Payment via compensation of debts
13. Bankruptcy law
14. Property laws

C. Whether following is factually so in respect of the company

Exchange conversions at market rate – both for purchases and sales

In the instant case, the company can not be granted at the threshold itself for the reason that majority shareholders in the company are from the State. We are enclosing herewith relevant extracts from the response filed by the company. It would be seen that a number of shareholders are having State entity. Such being the case, the company can not establish that it is operating without significant State Interference. Furthermore, there is no evidence in the information filed that the factors of production substantially reflect market values.

Petitioner submits that Rule 8 puts the obligation and onus on the exporter concerned. However, in the instant case, the exporter has failed to establish itself market economy company. Such being the case, the normal value in case of the exporter has to be determined in accordance with Rule 7. Petitioner had considered normal value based on price actually paid in India, duly adjusted for profit margin. The Authority has considered normal value on the basis of constructed cost of production in the country of origin plus selling administrative and general expenses and a reasonable amount of profit after making reasonable adjustments in the preliminary findings.

In view of the above, petitioner requests the Designated Authority to confirm the preliminary finding in this regard.

Examination by the Authority

24. The Authority sent questionnaires to all the known exporters for the purpose of determination of normal value in accordance with Section 9A(1)(c). Only one of the

exporters from China PR i.e. M/s. Zhejiang Medicine Co.(JMC) Ltd., China PR., responded to the Authority with replies to all the appendices mentioned in the Exporter's Questionnaire. The authority recalls that it had made an observation on page 36 of the findings that they had not given an account of sales price structure for exports to India in Appendix 4, they have not given an account of inland insurance, storage, handling (charges after ex-factory and before f.o.b.), and shipping charges duty, clearance and handling charges after f.o.b. As per appendix 7 of the exporters' questionnaire, they have not given the licensed capacity for other products manufactured in the plant. As regards factory cost and profit of exports to India, they have not mentioned about the rate at which the utilities have been consumed for the production of subject goods. As the company appears to be a multi product company, full information regarding basis of allocation of costs for manufacture of subject goods needs to be explained which is required as per general information part D. As the domestic sales should be in the ordinary course of trade i.e. these should be a price to recover the cost of production and selling, general and administrative expenses. Though they have submitted the replies to the appendices 8,9 and 10, they have not commented upon direct and indirect subsidy given by the Government, if any, on production, procurement, sale and transportation of raw material, utilities, finances, etc. They have also not submitted the Profit and Loss account and balance sheet for the complete POI.

25. The Exporter had represented vide letter dated January 14th 2003 in their comments to the preliminary findings about the procedural defects in the initiation, burden of checking the information and requesting supporting documentation, market economy status, high reliance of the imports by the petitioner at high cost, determination of normal value in breach of Indian Anti Dumping Rules and no clear evidence of the injury to the domestic industry (described in detail as per the other issues in the Annexure 1). However, the exporter did not reply back to the specific query as regards to the observations made by the Authority in the preliminary findings with regards to the replied to the exporters questionnaire and also about the market economy status. Following the public hearing on 17th April 2003, the exporter did not submit the written submissions in time and they have not submitted any rejoinder too. Further, a letter was sent to the exporter requesting them to submit to the specific information as mentioned in the sub-para 3 of the para 8 of the Annexure 1 of the Anti-Dumping Rules to enable the Designated Authority to consider the following criteria as to whether

- a. the decisions of concerned firms in such country regarding prices, costs and inputs, including raw materials, cost of technology and labour, output, sales and investment, are made in response to market signals reflecting supply and

- demand and without significant State interference in this regard, and whether costs of major inputs substantially reflect market values ;
- b. the production costs and financial situation of such firms are subject to significant distortions carried over from the former non-market economy system, in particular in relation to depreciation of assets, other write-offs, barter trade and payment via compensation of debts;
 - c. such firms are subject to bankruptcy and property laws which guarantee legal certainty and stability for the operation of the firms; and
 - d. the exchange rate conversions are carried out at the market rate:

The exporter was requested to furnish the following data.

- i. How the raw materials and other relevant inputs for manufacturing the product concerned are procured (short or long term contracts, spot market, number of suppliers for the various raw materials, purchased locally or abroad etc.).
- ii. For each item of raw material, information about the name and address of the supplier. whether the supplier is a private person, a company, the State or a local/regional authority :
 - if it is a private person, whether this person has Chinese nationality or any other nationality;
 - if it is a company, whether it is a Chinese company, a foreign-owned company or a joint-venture with a foreign-owned company;
 - if it is a Chinese company, whether it is a privately owned company, a State-owned company or a company owned by local/regional authorities. If it is a company part-owned by the State or local/regional authorities, specify to what extent State or local/regional authorities are involved;
 - if it is a local/regional etc. authority, details to be given.
- iii. For each item of utility i.e. coal, electricity, water and oil, the names/addresses of the suppliers may be given. Whether these utilities are charged at normal rates or whether any special or subsidized rate is charged. What are the rates charged during the POI for each of the utility?
- iv. Whether there are any restrictions or conditions, either direct or indirect, on imports of raw materials used by the producer. If so, these restrictions or conditions may be described.
- v. It may be described how labour is organized for production purposes. How many skilled workers, unskilled workers, managers etc. are employed? What is the average wage paid to each of these categories in the POI ?
- vi. How company employees are remunerated (i.e. indicating in detail all elements of remuneration including salary, overtime pay, company car, holiday allowance etc.). What is the frequency of the remuneration? Which legal entity

is the final payer? Do the employees of the company or their families benefit from other facilities such as housing, medical care, pension, education etc.? It may be specified who pays for these facilities. If the company employs foreign staff, and if so to mention separately where the final payer is located.

- vii. Whether any local / regional authority or State is involved in setting prices / quantities. Provide a copy of the documents (together with an English translation) in which those involvements are set out and indicate the relevant provisions.
- viii. Which accounting documentation has to be registered for official purposes each year? Which authorities are involved in the official registration of these documents?
- ix. The methods of depreciation and amortisation used for the main fixed and intangible assets needs to be explained. The acquisition value and the current book value may be specified. It may be explained in each case how the asset was obtained (e.g. bought on the open market, transferred to the company by a shareholder, given for free or at a discount by the State or a third company). If the valuation of the above-mentioned assets has been changed during the last 10 years it may be explained on what basis and to give the reasons for the change in valuation. The impact on the current book value may also be given.
- x. List of all facilities used for the production and/or commercial purposes that are not owned by the company (land, buildings and machines). The contracts for lease or rent to be furnished.
- xi. A list of current loans held by the company as at 31st March 2002 may be provided giving details of the amounts, repayment instalments and interest rates. It may be explained whether the company benefits from special loan or subsidy schemes (e.g. preferential interest rates and extended payback periods, subsidized energy supply etc.).
- xii. It may be explained how foreign exchange rate(s) used for purchase of inputs, conversion of the proceeds of export sales and repatriation of profits are set? Is there only one rate, which can be used? Explain if there are any limits applicable to the company for the use/conversion of foreign currencies. If the company has a foreign exchange account, the approval of the application (together with an English translation) by the relevant authority may be submitted.
- xiii. Has the company been involved in barter-trade or counter-trade at any time in the last five years involving the exchange of goods or commodities for (foreign) equipment, services or commodities? Provide details and explain the accounting methods used.
- xiv. Explain whether the company has been involved in compensation trade (also known as product buy-back) at any time in the past five years whereby a (foreign) company provides machinery and equipment for which it receives

payment-in-kind, usually in the form of goods produced. Explain if such payments were structured as loans or as instalment sales. Explain the accounting methods used.

- xv. The profit distribution policy of the company for the last three years may be specified.

26. The exporter was requested to submit the reply on the above-mentioned points within a stipulated period. They were also requested to submit the replies with regard to the observations made in the preliminary findings on page 35-37 at para 10 of the Preliminary Findings dated December 2, 2002. They were also requested to confirm their willingness with regards to the on the spot verification of the data submitted by them to the Authority in this investigation. The Authority did not receive any replies to the letter till date.

27. As communicated to the known exporters and to the Embassy of China PR the Authority proposed to examine the claim of the petitioner in the light of Para 7 and 8 of the Annexure I of the Anti dumping Rules as amended. The Authority notes that the exporter has not submitted complete information as indicated in the above-mentioned paragraph, the test of domestic sales in the ordinary course of trade is not possible in the given circumstances and a determination of normal value as per provisions contained in Section 9A(i) c (i) & (ii) read with rule 2 (i) and (ii) of the Annexure I of the Anti dumping rules can not be made. The Authority also notes that the exporter has not furnished necessary information/sufficient evidence as mentioned in the sub paragraph (3) of the paragraph 8 of Annexure I of Anti Dumping Rules to enable the Designated Authority to consider the following criteria as to whether;

"(i) – (iv) the decision of concerned firms the exchange rate conversions are carried out at the market rate"

28. The Authority notes that in the absence of information as mentioned above, determination of normal value as per provisions contained in Section 9A(i) c (i) & (ii) read with rule 2 (i) and (ii) of the Annexure I of the Anti dumping rules can not be made. The Authority is therefore unable to apply the principles set out in the paragraph 1 to 6 and is constrained to proceed as per the facts available.

29. Under the circumstances Normal value under the rules is determined on the basis of facts available as per rules 6 (8). Therefore the information available on the estimated costs of the production in the country of origin plus selling, administrative and general expenses and a reasonable amount of profit after making reasonable adjustments has been taken as the basis for working out the normal value of the subject goods in China PR.

30. The Normal value determined by the Authority for M/s. Zhejiang Medicine Co. Ltd., China PR. comes to US\$ **** per Kg and US\$ **** per Kg for Vitamin-E Acetate grade 96% and 93% respectively.

EXPORT PRICE:

31. The Authority has taken into account the DGCI&S data for all the transactions during the POI for the Acetate Grade. As regards Feed Grade, the Authority has relied on the data furnished from secondary sources i.e. IBIS, Mumbai for calculating the quantum of exports and their value from China PR to India as no transaction wise data was made available by the DGCI&S. However the data submitted by the exporter corresponds with the information culled out from the IBIS (Secondary sources) data, which are based on transaction wise statements of imports from the subject country. The Authority notes that 53931 Kgs of Vitamin E-Acetate (96% and above), 9040 kgs. of Vitamin-E (93%) Acetate Grade and 24750 kgs. of Vitamin E – Feed Grade (50%) have been exported to India during the POI from China PR for Rs. 33645825, 4147975 and Rs. 702990 and the weighted average export price per kgs. of exports for the grades mentioned above come to US \$ 13.17, US \$ 9.69, and US\$ 6.00.

However, the Authority notes that M/s. Zhejiang Medicine Co. Ltd., China PR has exported **** kg of Vitamin E-Acetate (96%) and **** kg of Vitamin E Acetate (93%) to India during the POI for a value of US\$ **** and US \$ **** with the unit price of US \$ **** per kg and US \$ **** per kg respectively. The Authority has made adjustments towards inland freight and insurance and overseas freight and insurance as suggested by the exporter. Discounts mentioned in the Annexure have also been accepted by the Authority for arriving at the export price at the Ex factory level. After adjustments, the net export price at ex factory level comes to US \$ ****/kg for Vitamin-E Acetate Grade (96% and above) and US \$ ****/Kg (For Vitamin-E Acetate 93% Grade);

DUMPING MARGIN:

32. The principles governing the determination of normal value, export price and the dumping margin as laid down in the Custom Tariff Act and the Anti Dumping Rules are elaborated in Annexure I to the Rules. The dumping margin for exports of the subject goods from M/s. Zhejiang Medicine Co. Ltd. China PR is assessed by the Authority at US ****/kg or 78.8% of the export Price for Vitamin E - Acetate Grade (96% and above) and US \$****/kg or 139% of the export price for Vitamin-E Acetate Grade (93%).

Other Exporters from China PR

33. The Authority provided opportunity to the known exporters from China PR to furnish information relevant to the investigations and offer comments, if any, in accordance with the Section cited above. The Authority wrote to the Embassy of China in India also. However, no other exporters from China have responded to the Authority's request for information. The claim made by the petitioner with regard to the determination of normal value has also not been disputed by the other interested party (ies). Under the circumstances Normal value under the rules is determined on the basis of facts available as per rules 6 (8). Therefore the information available on the estimated costs of the production in the country of origin plus selling, administrative and general expenses and a reasonable amount of profit after making reasonable adjustments has been taken as the basis for working out the normal value of the subject goods in China PR.

34. The normal value for China P.R. based on the best information available works out to US\$ **** per Kg for Vitamin-E Acetate (96% and above), US \$ **** per kg for Vitamin-E Acetate (93%) and US \$ **** per Kg for Vitamin-E dry powder (50% feed grade). The Export price at the Ex factory level has been calculated by taking the weighted average export price of the from the subject goods from China PR during POI. The net ex-factory export price worked out on these parameters and allowing adjustments as made in the case of cooperating exporter works out to US\$ **** per Kg, for Vitamin E Acetate Grade (96% and above), and US \$ **** per kg for Vitamin E Acetate Grade (93%). The net export price for Non-cooperative exporters for feed grade has been as weighted average export price as per transaction wise data made available through IBIS, Mumbai. The dumping margin for exports of the subject goods from China PR is assessed by the Authority at US \$ ****/kg or 86.6% of the export Price for Vitamin E - Acetate Grade (96% and above), US \$ ****/kg for Vitamin-E Acetate Grade (93%) or 183% of the export price and US \$ ****/kg or 95.9% of the export price for Vitamin E (50%) Feed Grade respectively.

Dumping Margin:

Dumping Margin Calculation for Vitamin-E for imports from China PR (US\$)						
Zhejiang Medicine	Description		NV	EP	DM	DM%
Co. Ltd, China PR	Vit -E Acetate	96%	****	****	****	78.82
	Vit -E Acetate	93%	****	****	****	139.31
Other Exporters, China PR	Vit-E Acetate	96%	****	****	****	86.7%
	Vit -E Acetate	93%	****	****	****	183.8%
	Vit-E Dry Powder	50%	****	****	****	95.9%

35. INJURY:

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 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.

36. For the examination of the impact of the imports on the domestic industry in India, the Authority considered such indices having a bearing on the state of the industry as production, capacity utilization, sales quantum, stock, profitability, net sales realization, the magnitude and margin of dumping, etc. in accordance with Annexure II (iv) of the Rules supra.

Views of the Petitioners:

37. Vitamin-E is covered under Drug Price Control Order. Thus, the prices of the product are controlled by the Govt. of India. Such being the case, the petitioner has no option but to sell its goods at the prices notified by the Govt. of India.

1. Petitioner makes a number of products using Vitamin-E. Petitioner competes with other producers of these goods. While the petitioner is forced to transfer its goods at its higher cost of production, the other producers are getting an undue advantage from such unfairly priced imports. Thus, the petitioner is suffering not only on its merchant sales but also on its captive consumption.
2. Market for Vitamin-E where the imports are reported in huge volumes can be divided in two parts – Acetate Grade and Feed Grade. Cost and price of Feed Grade is almost half of Acetate Grade, as it contains 50% Vitamin-E and some additives in small value.
3. Performance of the domestic industry has very materially changed in the proposed investigation period (January 2001 – March 2002). Petitioner requests that the injury analysis may kindly be carried out on quarter-to-quarter or month-to-month basis in the investigation period.
4. Imports from China have increased in absolute terms and the share of China PR in total imports of Vitamin E has increased significantly. As a direct consequence, the share of domestic industry has declined significantly.
5. The decline in export prices has directly resulted in decline of landed value of imports. Analysis of quarterly trends particular in feed grade further shows that

the share of the domestic industry declined significantly until such time the domestic industry reduced its prices.

6. Though the overall production and capacity utilization of the domestic industry in respect of acetate grade increased up to 2001, the quarter-wise information shows that the production declined during the POI.
7. Since the company has substantial captive consumption, the impact of dumping is not very visible in terms of loss of production of acetate grade. The petitioner adds that their merchant sales volume have declined significantly during the POI and is faced with increasing stocks of the subject goods in spite of significant captive consumption and reduction in production.
8. In the feed grade, the petitioner has reduced the prices significantly. The petitioner adds that within the proposed investigation period, till such time, the petitioner was not reducing its selling prices, its volumes declined. However, reduction in the selling prices resulted in some increase in the sales volumes, which, however, remained sub-optimal.
9. In acetate grade, the petitioner has been able to improve its profitability due to the cost cutting measures taken by the petitioner. At the same time, the petitioner had to bear the burnt of not reducing the prices in this segment in terms of significant loss of volumes. In feed grade, the profitability of the petitioner has suffered very adversely. The petitioner, which was earlier making profits, has not turned into severely losses.

Subsequent to the public hearing, they have submitted that

38. Subsequent to the preliminary findings and public hearing, they submitted that they had already provided sufficient information (on confidential and non confidential basis) which shows that the domestic industry has suffered material injury due to dumping of subject goods from subject country. Following parameters shows the injury to the domestic industry.

1. Imports from China have increased in absolute terms. The increase is more prominent in case the investigation period is analyzed on quarter-to-quarter basis;
2. Share of China in total imports of Vitamin-E has increased significantly;
3. Share of China in demand of Vitamin-E has increased significantly. As a direct consequence, share of domestic industry has declined significantly;
4. Export prices from China declined significantly.
5. The decline in export price has directly resulted in decline in landed value of imports;
6. Analysis of quarterly trends (particularly in Feed Grade) would further show that the share of the domestic industry declined significantly until such time the

domestic industry reduced its prices. Once domestic industry reduced its prices, sales volumes increased again (which were still sub-optimal).

It is evident that the imports from China are clearly showing adverse volume effect on the domestic industry.

Submissions made by the exporter M/s. ZMC Ltd., China PR

39. The exporter has requested the authority to disclose meaningful information with regard to percentage of sales on an open market of 96%, 93% and 50%, the percentage of these grades in the petitioner's turnover, evaluation of commercial activities exposed to the open market and an export trend over the last 10 years. They have further requested the authority to make a separate analysis in detail concerning the cash flow, inventories, employment, wages, growth, ability to raise capital investment, productivity, capacity utilization, return on investment and profitability. They have further contended that there is no established evidence to prove that the petitioner is suffering from any real injury. They have further represented that the authority has failed to present analysis and issue of causal link. They have submitted that it is the investigating authority obligation to evaluate whether factors other than the alleged import of the allegedly dumped article are actual responsible for the injury.

EXAMINATION BY THE AUTHORITY

40. Analysis of Injury to the domestic industry has been done on the basis of the information available on record and the verification done by the officials of Directorate of Anti-Dumping & Allied Duties. The following parameters have been analyzed for the purpose of assessment of injury to the domestic industry

(i) Quantum of Imports:

To ascertain the quantum of imports, the Authority has considered the import statistics of the subject goods made available by DGCI&S, Calcutta for the POI and secondary information sources namely IBIS, Mumbai by taking transaction wise analysis of imports from the subject country and country other than China PR. The Authority has also examined the export statistics given by cooperating exporters from China PR and the secondary sources information (transaction wise information from IBIS, Mumbai) made available by the petitioner for Vitamin-E (Both for Acetate as well as Feed Grade). After examining this data, the Authority notes that the volumes shown by secondary sources data and the exporter's data broadly corresponds during the POI and previous years.

The domestic industry has claimed that imports from China PR have increased in absolute terms and their share has also increased significantly. The Authority has examined the import statistics during the POI and two years prior to it for both acetate and feed grade and conclude that there has been a rapid increase of imports from China PR in absolute terms and increase is more prominent in case the quantum of imports are analyzed from quarter to quarter basis. The Authority observes that imports have increased more than 300% during the POI over previous year in Acetate grade and 900% in Feed grade. The imports during first quarter (Q1, 2002) from subject country is more than 60% and 900% from Q-1 2001 for Acetate grade and feed grade respectively. Thus, the authority concludes that there has been a very significant increase in imports from China PR for the subject goods during the POI as compared to the previous years and also during the POI when analyzed quarter wise. As compared to the base year, the imports during the POI represent an increase of 467% while for other countries; it has increased by 350%. The Authority concludes that the imports from the subject countries have increased significantly in absolute terms as compared to previous years and also within the POI when compared quarter wise.

Absolute increase in Quantum of Imports from China PR

	Unit	1998	1999	2000	POI Annul	
Acetate	kg	0	2000	15300	50376.8	
Feed	kg	0	13000	2000	19800	
Total China	kg	0	15000	17300	70176.8	
Other Coun	kg	18739	115112	40255	66342	
Total Imp	kg	18739	130112	57555	136518.8	
Quarter Wise Information relating to Imports (Absolute Values in kg) For POI						
Total China						
		Q12001	Q2	Q3	Q4	Q12002
Total China	Kg	11000	9750	16273	32998	17700
Others	Kg	5895	14773	18195	32710	11355
Total Imports	Kg	16895	24523	34468	65708	29055

(ii) Market share of Imports:

The Authority observes that the share of China PR in the total imports of Vitamin E has increased by 70% over the previous year and has a market share of 51% during the POI while imports from the other countries have declined from 69% in the previous year to 48% during the POI taking the import during the base year (1998) as 100.

Market Share of Imports from China PR in Total Imports (%)

Market share in Imports		98	99	2000	POI Ann
China	%	0	11.53	30.06	51.40
Other Countries	%	100	88.47	69.94	48.60
Total	%	100	100.00	100.00	100.00

Market Share in Total Imports during POI Q-Q(%)

	Q1 2001	Q2	Q3	Q4	Q12002
China	65.11	39.76	47.21	50.22	60.92
Others	34.89	60.24	52.79	49.78	39.08
Total	100	100	100	100	100

(iii) Share of imports from subject country as a proportion to demand.

The Authority has calculated the total demand in the country by adding the total imports to the sales of the domestic industry of the product under consideration. The Authority notes that the share of China PR in total demand of the subject goods has increased from 5.46% during year 1999 (Nil import for base year 1998) to 22% during the POI Annualized while the share of other imports has increased marginally from 19.7% to 21.6%. The share of the domestic industry in the total demand has decreased from 87% during 1998 to 55% during POI annualized. Thus, the Authority concludes that there has been a significant rise in the market share of imports of the subject countries as a share of total demand and it has increased significantly during the POI as compared to previous years.

Market Share of Imports in total Demand (Absolute and Percentage share)

Demand	Unit	1998	1999	2000	POI (Ann)
Imp China	Kg	0	15000	17300	70176.8
Others	Kg	18739	115112	40255	66342
Total Imp	Kg	18739	130112	57555	136518.8
Demand	Kg	146695	274902	203669	306439.8

Share in Demand	1998	1999	2000	POI
China	0	5.46	8.49	22.90
Others	12.77	41.87	19.76	21.65
Total Imports	12.77	47.33	28.26	44.55
Domestic Industry	87.23	52.67	71.74	55.45

From the above data, the Authority concludes that share of the domestic industry has declined during the POI as compared to previous years in the total domestic market. The Authority further concludes that there has been a significant rise in the market

share of imports of the subject countries as a share of total demand and it has increased significantly during the POI as compared to previous years.

(iv) Natural and potential decline in sales:

For both the grades i.e. Acetate and Feed Grade, sales volume shows continuous improvement till Q2 2001. However, subsequent to Q2 to 2001, sales volume shows significant decline during the POI. At the same time, import shows increase from Q3 2001. The Authority notes that sales volume shows an increasing trend from the base year to Q2 and after that it shows declining trend during the later quarters of the POI

(v) Production, Sales Volume, Capacity Utilization:

The authority notes that though the overall production and capacity utilization of the domestic industry in respect of Acetate Grade has increased up to 2001, a Quarter-wise information suggests that the production and sales volume during the POI has decreased during the POI though the sales volume of the petitioner shows a marginal decline during POI annualized as compared to the year 2000. With regard to Feed Grade there has been a decline in the production and sales volume during the POI even though in absolute terms, it has increased as compared to previous years. It has been stated by the domestic industry that they had to suspend the production of the feed grade after the POI. The trend of the capacity utilization follows the same trend as of production as there is no change in the capacity created. It is noted that Acetate grade is produced for selling in the market and also for producing the feed grade and other material. It is noted further that the captive consumption of the domestic industry has not significantly changed. However, it is seen that the merchant sales volume of the petitioner has declined significantly and sales in Q1 2002 have declined as compared to sales volume in the same quarter of 2001. The Authority notes that the domestic industry has suffered volume injury during the POI with regards to subject goods.

(vi) Opening and Closing Stocks.

There is a marked rise in the closing stocks during POI indicating that there is a significant change in the inventory position of the domestic industry during the period of investigation. The authority notes that in spite of the significant captive consumption, the petitioner is affected with increasing stock of the subject goods. The Authority notes that the domestic industry has suffered injury on this parameter.

Finished Goods Closing stock as at		
	Vitamin E Acetate Kgs indexed	Vitamin E 50% Animal Kgs indexed
Jan-01	100.00	100.00

Mar-01	113.69	101.69
Jun-01	52.41	137.29
Sep-01	108.99	347.46
Dec-01	105.91	40.68
Mar-02	134.55	199.58
Raw Material Closing stock as on		
	Isophytol Kgs indexed	TMP Kgs indexed
Jan-01	100.00	100.00
Mar-01	134.58	80.00
Jun-01	159.45	80.00
Sep-01	109.85	176.67
Dec-01	175.75	184.68

(vii) Productivity and Employment

The Productivity of the domestic industry, measured in terms of the production of the subject goods per employee follows the same trend as that of production. However the productivity started deteriorating after Q2 2001. The Employment level with the domestic industry declined, which may have resulted in the increase of the productivity. However the productivity again declined during the POI after improving from 98 onwards. The Authority does not conclude injury to the domestic industry on this parameter.

(viii) Factors affecting the Domestic Prices

Price undercutting, price underselling and Price suppression

As regards the impact of the dumped imports on the domestic industry the principle (iv) of Annexure-II of the Anti-Dumping Rules states:

"The examination of the impact of the dumped imports on the domestic Industry concerned, shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including natural and potential decline in sales, profits, output, market share, productivity, return on investments or utilization of capacity; factors affecting domestic prices, the magnitude of margin of dumping; actual and potential negative effects on cash flow inventories, employment, wages, growth, ability to raise capital investments."

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 product in India, or whether the effect of such imports is otherwise to depress prices to a significant degree. The Authority has compared the landed value of imports of subject goods (both acetate grade and

feed grade)from subject countries during the POI with the net sales realization and has found that there has been a significant price under-cutting by the dumped imports. The landed value of imports has been found to be significantly lower than the domestic industry's net sales realization.

The Authority has also examined the claim of the petitioner that the domestic industry is suffering from the sale of Vitamin E Acetate as well as Feed Grade. The Authority notes that price underselling is an important indicator to make an assessment of the injury. The Authority has worked out the Non-injurious price for the product under consideration and compared the same with the landed value to arrive at the extent of price underselling. The analysis shows a significant level of incidence of price underselling causing injury to the domestic industry. Additionally, the imports were having significant suppressing/ depressing effect on the prices in the domestic market, as the domestic industry had not been able to raise its selling price in view of the dumped imports especially in the feed grade. Thus examination of the available evidence shows that the domestic industry as a whole has suffered injury on its sales of subject goods during POI. The Authority has determined the extent of price undercutting during the POI and concludes that the domestic industry has suffered significant price undercutting and price underselling during the POI because of import from the subject country.

Price Undercutting in Acetate Grade (in Rs)

	1999	2000	Q1 2001	Q2	Q3	Q4	Q12002	POI Ann
CIF	****	****	****	****	****	****	****	****
Landed V	****	****	****	****	****	****	****	****
Sell Price	****	****	****	****	****	****	****	****
Price UC	****	****	****	****	****	****	****	****

Rs	Price Undercutting Feed Grade							
CIF	****	****	****	****		****	****	****
Landed V	****	****	****	****		****	****	****
Sell Pr	****	****	****	****		****	****	****
Pr UC	****	****	****	****		****	****	****

(ix) Selling Price & Profitability:

The Authority does not find any decline in the sales realization of the Acetate Grade. Their profitability with regard to acetate grade has improved during the POI as compared to previous year though there has been a significant loss of volumes during the different quarters of the POI and also as compared to previous years. As regards Feed Grade, the Authority observes that the petitioner has reduced its prices

significantly during the POI as per the Quarter wise information and also as compared to previous years. Their profitability with regard to feed grade has also suffered and the petitioner, which was earlier making profit, has turned into severe losses.

(x) Magnitude of the margin of dumping

The Dumping margin from China PR is not only more than de minimus but also very significant.

(xi) Return on Investments

The return on investments has improved from 98 onwards. However after improving from 98 to 2000, it has started deteriorating during the later quarters of the POI.

(xii) Actual and potential negative effects on cash flow

Cash profits from the production and sales of the subject goods show improvement from 98 to the POI. However analysis of the data for the quarter wise during the POI indicate that cash profit show a declining trend during the later POI. Therefore, cash flow shows deterioration after improving from 98 onwards.

(xiii) Wages

Total wages have shown marginal increase from 98 to the POI. However the Authority notes that it may be seen in the light of the reduction in the number of the employees and also the fact that it is a multi product company.

(xiv) Growth

While the demand of the subject goods have increased significantly from 98 to the POI, the growth of the domestic industry has been less than increase in the demand of the subject goods.

(xv) Ability to raise fresh investments

The domestic industry is a multi product company and this may not be relevant parameter with regard to the facts and circumstances of this case.

In view of significant change in the performance of the domestic industry during the investigation period and in view of past losses being suffered by the domestic industry (due to both high raw material costs and dumping), the Authority considered it appropriate to examine performance of the domestic industry in detail within the investigation period. This was done by comparing the performance of 2000 with

quarterly performance for the five quarters of the investigation period. It was found in respect of more relevant injury parameters that while the performance improved for the first 2/3 quarters, it steeply deteriorated in the next 3/2 quarters. This trend in performance was found in respect of production, capacity utilization, sales volume, profits, productivity, return on investments, cash flow, inventories, growth. For example, for both the grades, sales volumes, which showed continuous improvement till Q2, 2001, shows significant decline thereafter. At the same time, imports show significant increase from Q3, 2001.

Conclusions on Injury

41. From the foregoing, the following conclusions are made by the Authority regarding injury suffered by the domestic industry

1. Imports from the subject country of subject goods have increased significantly in absolute terms.
2. Imports from subject country have increased in relation to total imports of Vitamin-E in India.
3. Imports from the subject country have increased in relation to the demand of Vitamin-E in India.
4. Imports are significantly undercutting the selling prices of the domestic industry.
5. The petitioner is suffering from price underselling also as landed price of subject goods are below the Non Injurious price or fair selling price of the domestic industry.
6. The domestic industry has suffered losses on account of sales on feed grade. However they have improved their profitability in the Acetate grade though they suffered a loss on their sales volume.
7. The domestic Industry has suffered mainly volume injury in Acetate grade and Volume as well as price injury in Feed grade. On the whole, the domestic industry has suffered material injury.

CAUSAL LINK:

42. In determining whether injury to the domestic industry was caused by the dumped imports, the Authority took into account the following facts: -

- i. In establishing that the material injury to the domestic industry has been caused by the dumped imports from the subject country, the Authority holds that the increase in the quantum of import from the subject country resulted in the curtailment of market share of the petitioner. In considering the effect of dumped imports of Vitamin-E (Acetate as well as feed grade), the Authority

has found that based on the close resemblance of their chemical characteristics and usage these are like article to the domestically produced Vitamin-E (Acetate as well as feed grade). Import of Vitamin-E from the subject country had the effect to displace the demand of domestically produced Vitamin-E. The Authority holds that substantial increase in imports of subject goods have contributed to the increase in imports in absolute terms. This had the effect of undercutting the prices of domestic industry to sell below its fair selling price in the case of Feed grade and to reduce in sales volume in the case of Acetate grade. Thus the Authority has found that Substantial imports of subject goods from China PR at dumped prices forced the domestic industry to reduce its selling prices in Vitamin E Feed Grade to un-remunerative level, which has resulted in a situation of price undercutting in the Indian market. Also with respect to subject goods, the landed price of imports from subject country is below the selling price of the domestic industry, which is resulting in price undercutting in the Indian Market. The Authority has also examined the landed price of imports from countries other than the subject country and has found that landed price from Non subject country has been higher than the imports from China PR and their share in total imports have also decreased during the POI as compared to previous year.

- ii. The imports from China PR suppressed the prices of the product Vitamin-E 50% dry powder (Feed Grade) in the Indian market to such an extent that the domestic industry was prevented from recovering its full cost of production and earn a reasonable profit from the sale of subject goods in India.

The Authority, therefore, notes from the above that the imports of subject goods (Both Acetate as well as the feed grade) from the China PR have been at a price below the non-injurious price for the domestic industry. Imports from other countries have grown much less than the subject country and prices from these countries are higher than the subject country. The Authority could not find any evidence of contraction of demand, change in pattern of consumption, trade restrictive practices of and competition between the foreign and domestic producers. It is also noted that developments in technology has not been a cause for injury to the domestic industry. These parameters collectively and cumulatively indicate that the petitioner has suffered material injury due to the dumped imports from subject country.

43. For the purpose of determining injury, the landed value of imports is compared with the non-injurious price of the petitioner company determined for the period of investigation.

INDIAN INDUSTRY'S INTEREST:

44. 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.

The Authority recognizes that the imposition of anti dumping duties might affect the price levels of the products manufactured using 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. 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 subject goods.

The Authority notes that the imposition of anti dumping measures would not restrict imports from China PR in any way, and therefore, would not affect the availability of the product to the consumers.

CONCLUSIONS:

45. The Authority has, after considering the foregoing, come to the conclusion that:

- i. The subject goods have been exported to India from the subject country below its normal value.
- ii. The Domestic Industry has suffered material injury;
- iii. The injury has been caused by the dumped imports from Subject Country.

46. The Authority considers it necessary to impose a definitive anti dumping duty on all imports of Vitamin-E in order to remove the injury to the domestic industry. The margin of dumping determined by the Authority is indicated in the paragraphs above. The Authority proposes to recommend the amount of anti dumping duty equal to the margin of dumping or less, which if levied, would remove the injury to the domestic industry. For the purpose of determining injury, the landed value of imports is compared with the non-injurious price of the petitioner company determined for the period of investigation. The Authority, therefore, recommends imposition of definitive anti dumping duty on the goods, the description of which is specified in column (3) of the Table below, falling under sub-heading or tariff item of the First Schedule to the said Customs Tariff Act as specified in the corresponding entry in column (2), the specification of which is specified in column (4) of the said Table, originating in the countries as specified in the corresponding entry in column (5) , and produced by the producers as specified in the corresponding entry in column (7), when exported from the countries as specified in the corresponding entry in column (6), by the exporters as specified in the corresponding entry in column (8), and imported into India, an anti-

dumping duty at a rate which is equivalent to the difference between, the amount as specified in the corresponding entry in column (9), in the currency as specified in the corresponding entry in column (11) and per unit of measurement as specified in the corresponding entry in column (10), of the said Table, and the landed value of such imported goods in like currency per like unit of measurement.

Table

S. No	Sub-heading or tariff item	Description of goods	Specification	Country of origin	Country of Export	Producer	Exporter	Amount	Unit of measurement	Currency
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
1.	2936 28 00	Vitamin E Acetate	96% Grade	People's Republic of China	Any country	Any producer	Any exporter	22.64	Kilogram	US Dollar
2.	2936 28 00	Vitamin E Acetate	93% Grade	People's Republic of China	Any country	Any producer	Any exporter	21.94	Kilogram	US Dollar
3.	2309 90	Vitamin E Feed Grade or Dry powder	50% Grade	People's Republic of China	Any country	Any producer	Any exporter	11.32	kilogram	US Dollar
4.	2936 28 00	Vitamin E Acetate	96% Grade	Any country	People's Republic of China	Any producer	Any exporter	22.64	Kilogram	US Dollar
5.	2936 28 00	Vitamin E Acetate	93% Grade	Any country	People's Republic of China	Any producer	Any exporter	21.94	Kilogram	US Dollar
6.	2309 90	Vitamin E Feed Grade or Dry powder	50% Grade	Any country	People's Republic of China	Any producer	Any exporter	11.32	Kilogram	US Dollar

In case the concentration of the imported product is reported different from the concentration mentioned in the table as mentioned above, Anti Dumping duty on pro rata basis would apply.

47. 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 under sections 3, 3A, 8B, 9 and 9A of the Customs Tariff Act, 1975.

48. Subject to the above, the Authority confirms the preliminary findings dated 2nd December 2002.

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

(L.V.SAPTHARISHI)
DESIGNATED AUTHORITY