

Ministry of Commerce

NOTIFICATION

New-Delhi, the 23rd January, 2003

FINAL FINDINGS

Subject: Anti-Dumping investigations concerning imports of Vitamin A Palmitate from European Union, Singapore and Georgia

65/1/2001-DGAD - Having regard to the Customs Tariff Act, 1975, as amended in 1995 and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 thereof:

A. PROCEDURE

1. The procedure described below has been followed subsequent to the preliminary findings:

- a. The Designated Authority (hereinafter also referred to as the Authority) notified Preliminary Findings vide notification no. 65/1/2001-DGAD dated 30/4/2002 with regard to anti-dumping investigations concerning imports of Vitamin A Palmitate from European Union, Singapore and Georgia and requested the interested parties to make their views known in writing within forty days from the date of its publication;
- b. 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 said findings within forty days from the date of the letter;
- c. The Authority provided an opportunity to all interested parties to present their views orally on October 28, 2002. All parties presenting views orally were requested to file written submissions of the views expressed orally at the time of the public hearing. The parties were advised to collect copies of the views expressed by the opposing parties and offer rejoinders, if any.
- d. The Authority made available the public file to all interested parties containing non-confidential version of all evidence submitted and arguments made by various interested parties;
- e. The arguments raised by the petitioners and other interested parties have been appropriately dealt with in the preliminary findings and/or these findings;

- f. In accordance with Rule 16 supra, the essential facts/basis considered for these findings were disclosed to known interested parties and comments received on the same, have been duly considered in these findings;
- g. The Authority issued a Public Notice dated 24th January 2002, published in the Gazette of India Extraordinary initiating anti-dumping investigations concerning imports of Vitamin A Palmitate;
- h. *** in this notification represents information furnished by an interested party on confidential basis and so considered by the Authority under the Rules.

B. PRODUCT UNDER CONSIDERATION

2. The product under investigation in the present case is Vitamin A Palmitate. It is an orange yellow to yellowish red oily liquid, which may crystallize below 20 C. It contains a mixture of Vitamin A Palmitate and Vitamin A Acetate, having a content of not less than 90% Vitamin A Palmitate and not more than 10% Vitamin A Acetate. Vitamin A Acetate is present on account of the chemical process of manufacture. It contains BHA and BHT as anti oxidants.

Vitamin A Palmitate is used in pharmaceutical preparations.

Vitamin A Palmitate is normally produced by the petitioner in the following two strengths:

- Vitamin A Palmitate 1.0 MIU/g
- Vitamin A Palmitate 1.7 MIU/g

Since Vitamin A Palmitate of various strengths have the same end use, the present investigations shall cover the subject goods in all its strengths and forms.

Vitamin A Palmitate is classified under Customs sub-heading no. 2936.21 of the Customs Tariff Act, 1975. The classification is however indicative only and in no way binding on the scope of the present investigations.

The Authority confirms the preliminary findings on product under consideration.

C. LIKE ARTICLES

3. Rule 2(d) of the anti-dumping rules specifies that "Like Articles" means an Article which is identical or alike in all 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 examinations.

In order to establish that Vitamin A Palmitate produced by the domestic industry is a Like Article to that exported from EU, Singapore and Georgia, characteristics such as technical specifications, manufacturing process, functions and uses and tariff classification have been considered by the Authority.

The Authority also finds that there is no argument disputing that Vitamin A Palmitate produced by the domestic industry has characteristics closely resembling the imported material and is substitutable by Vitamin A Palmitate imported from the subject countries both commercially and technically. Vitamin A Palmitate produced by the domestic industry has been treated as Like Article to the product exported from EU, Singapore and Georgia, within the meaning of Rule 2(d).

In view of the above, the Authority proposes to confirm the preliminary findings on Like Articles.

D. Domestic Industry

4. The petition has been filed by M/s Nicholas Piramal India Ltd. , Mumbai M/s Nicholas Piramal India Ltd., Mumbai is the only manufacturer of Vitamin A Palmitate in the country. The Authority notes therefore that the petitioner constitutes "domestic industry" and has the required standing to file the present petition under the Rules.

The production of Vitamin A Palmitate by the petitioner has been as under:-

Vitamin A Palmitate: 1.0 MIU/g

Year	Production (MT)
1999-2000	7.18
Apr.2000-Dec.2000	3.50
Jan 2001-Sept.2001	3.00

Vitamin A Palmitate: 1.7MIU/g

Year	Production (MT)
1999-2000	18.81
Apr.2000-Dec.2000	19.70
Jan 2001-Sept.2001	20.88

E. Period of Investigation:-

5. Investigations were carried out for the period 1st January 2001 to 30th September 2001 (9months).

6. Other Issues:-

A. Submissions made by M/s BASF AG , Germany:-

1. The production process of BASF is different to the one of the complainants. Therefore differences of cost of production between BASF and Piramal can be shown. Additionally, BASF has the big advantage of being a fully integrated producer. This gives a better cost situation. Therefore the profit situation of BASF at a given price has to be significantly better than the one of Piramal.
2. It is not correct, that the price of the higher concentrated Vitamin A has a massive influence on the prices of the product with the lower concentration. Only a certain small volume between Vitamin A Palm 1.0 and Vitamin A Palm 1.7 is interchangeable. Vitamin A Palm 1.7 has a bigger market than the 1.0 product. Therefore the price pressure on the 1.7 market is higher, but not with the intention to press the 1.0 out of the market.
3. BASF has stated that interest and finance cost (Appendix 8,9 & 10) are not recorded in their product P&Ls and can thus not be documented on a product level.
4. Regarding raw material in volume (kg) and rate thereof they have stated in order to see the cost of each raw material from which Vitamin A is manufactured, they have to go into the details of BASF AGs product costing system and look at each cost calculation sheet. The CCS is available on a monthly basis, there is no yearly summary of the CCS. The CCS are in German language.
5. The bifurcation of utilities into cost type and quantity can be documented as the cost centre level. They are not individually allocated to cost places and products.
6. A reply on the statement of cost of production has been furnished on a confidential basis in format A.

(B) Submissions by M/s BASF India :-

1. With reference to the examination of the exporters questionnaire submitted by BSEA Private Ltd. BASF India Ltd. has submitted that BSEA Pvt. cannot furnish the sales price structure for exports to India (Appendix 4) and sales price structure for exports to countries other than India (Appendix 6) as the product under investigation was shipped directly from BASF AG, Germany.
2. Report of the Directors and Financial statement of BSEA Pvt. Ltd. for 1999, 2000 and 2001 has been submitted.
3. It has been stated that there is no discrepancy on the commission paid to BASF India Ltd. For those orders booked/shipped directly to BASF India Ltd., no

commission was paid to BASF India Ltd. BASF India Ltd. was paid ***% commission on supply to third party.

4. There is no compensatory arrangement between BASF India Ltd. and BASF AG.
5. Adjustments claimed: BASF India has clarified that the costs incurred by them between importation and resale (duly supported with documentary evidence) for the sale of 2300 kgs of Vitamin A Palmitate 1.7MIU BHT during the period of investigations are as follows:-
 - i. Warehousing and Storage - Rs. ***/-
 - ii. Airconditioning charges (material has to be stored at cool temp) - Rs. ***/-
 - iii. Man power charges - Rs. ***/-
 - iv. Transportation/ Conveyance and miscellaneous expenses (viz., cost of stationery, furniture etc.) - Rs. ***/-.

The total charges work out to Rs ***/- for 2300 kgs which is Rs ***/kg.

6. Some information on amount incurred towards packing cost on imports vide BASF AG to BASF India provided. P&L account for the year 2001 given.
7. Sales price structure for UNICEF and Non UNICEF Exports of Vitamin A Palmitate 1.7 BHT has been submitted by BASF AG, Germany.

(C) Examination by Authority:

1. Packing costs are in the German language.
2. Appendix 8,9&10 of the exporters' questionnaire requires the exporter to furnish detailed break-up of raw materials in the form of quantity, rate, value and incidence of the same in respect of the finished product. These details were not furnished. Accordingly, they were asked to furnish the same. BASF has furnished some information with regard to the value. The exporter was requested to provide the break-up of the cost of captively produced and consumed raw materials especially Vitamin A Acetate. Information in respect of quantity of raw materials and rates have not been furnished. BASF has not provided the information with regard to the cost of Vitamin A Acetate to the Authority. The total of raw materials claimed is not tallying with the break-up of the raw materials claimed to be used in the manufacture of the subject goods.
3. BASF has submitted that the cost of each raw material involved in manufacturing Vitamin A can be examined through each Cost Calculation Sheet (CCS). However, the detailed sheet of such cost calculation has not been provided. The theoretical aspect of such calculation has been given without indicating the methodology for the transfer price being adopted by them for the captively produced and consumed raw materials. The CCs have not been

provided. It has been mentioned that the CCS are in German and can be translated into English for the perusal of the Authority. No translated copy was made available to the Authority.

4. BASF has not provided the quantitative information with regard to different elements of utilities nor the rates thereof.
5. BASF has admitted that interest and finance cost are not recorded in their product Profit and Loss Account and cannot be documented on a product level. They have stated that if these are required, assumptions are necessary.
6. The information in Appendix 7 regarding installed capacity, production, sales etc., has been submitted in terms of quantity alone and not in terms of value. No information with regard to other products has been given.
7. The total of cost details furnished by BASF vide letter dated 15th November 2002 for the period of investigation in respect of Vitamin A Palmitate does not tally with the break-up of the cost so claimed.
8. The data on cost given in format B vide letter dated 18/12/2002 still does not rectify the deficiencies indicated above.
9. In view of the above anomalies/deficiencies, it is not possible to assess whether the same represents the full cost of production as envisaged under the anti-dumping Rules to determine whether the domestic sales are in the ordinary course of trade.

F. Public Hearing Held by the Authority on October 28, 2002

I. Views expressed by Domestic Industry:-

(A) The petitioner vide their written submissions given subsequent to the oral hearing held on has inter alia raised the following issues:-

1. M/s Nicholas Piramal India Ltd. is only producer of Vitamin 'A' Palmitate in the country. The installed capacity of their plant is 110 MT and the petitioner is in a position to meet the demand of Vitamin 'A' Palmitate in the country.
2. Vitamin 'A' Palmitate imports started from the year 1999 onwards and dumping of the subject goods started from January, 2001. The weighted average c.i.f price went down from USD *** /kg prevailing in 1999-2000 to USD ***/kg during the period January, 2001 to September, 2001.
3. The availability of imported subject goods at lower price in the market led to price undercutting which forced the petitioner to reduce on their price. In view of increase losses, the petitioner could not reduce their selling price beyond what was offered by the importers and hence lost market share.

4. In spite of the fact that the DPCO price was revised during the period April, 2000 to December, 2000, the petitioner could not realise this price and continued to suffer losses because of the availability of imported subject goods at lower prices.
5. Though the subject goods are imported at present only in 1.7 MIU/g strength, the imports have affected the sales of both 1.7 MIU/g and 1.0 MIU/g as various strength of the subject goods are used interchangeably by the user industry. The availability of higher strength at lower prices proportionately reduces the per unit price of lower strength and as such the user prefers to buy higher strength in order to reduce on its cost. Due to this, there was a significant increase in inventory of 1.0 MIU/g during the period of investigations. Hence, the Authority is requested to favourably consider the imposition of anti dumping duty on per 1.0 MIU/g basis which can be increased or decreased proportionately depending upon the higher or lower strength.
6. The domestic industry has so far not reduced on its work force of about 377 people. However, in case the dumping of subject goods continued further it may be forced to lay -off some of its employees in view of the increasing losses, which would have very bad impact on their families.
7. Due to increase losses, severe liquidity problems have been created for the petitioner company and the deficit financing has either resulted in increases finance cost or the loss of opportunity for expansion in the order units as the surplus created by them are utilised to finance the losses in this division. In order to keep these costs to the minimum the domestic industry has been forced to reduce on their working capital requirement by keeping the inventories to the bare minimum.
8. As observed in the non confidential summary and from the Preliminary Findings, BASF has not submitted the complete information as required under the anti dumping rules and is not in accordance with the prescribed format. The spot verification is conducted only to verify the information submitted and misunderstanding clarified to the Authority and is not for clarifying misunderstandings and collecting the data at the premises of the exporters. BASF should be treated as non cooperative. The information submitted by them which is grossly inadequate and non confirming to the prescribed formats should be rejected.
9. One of the contentions made by BASF is that their major supplies to India were for UNICEF programmes and sales under this programme enjoy a price reduction on the normal list price. It is submitted that the UNICEF supplies are made on international competitive bidding and the petitioner company has also been supplying to UNICEF directly for the last two years in view of social causes, night blindness being a major concern of the country. (India tops in the list of number of blind children, 60, 000 children per year). The petitioner

company's plant is the only plant in India approved by UNICEF Copenhagen. UNICEF sales enjoy the benefits of deemed exports in India.

10. In addition to the findings of the authority in its preliminary findings regarding information submitted by BASG AG in Appendix XI, it has been mentioned that the information regarding cost of production of Vitamin A Acetate has been submitted by BASF to the authority during the anti dumping investigation proceedings of Vitamin AD3 500/100. It may be noted that the present anti-dumping investigation are independent of the earlier investigation of Vitamin AD3 500/100 and have different period of investigation. Moreover, Vitamin A is for human consumption whereas Vitamin AD3 500/100 is meant for animal nutrition.
11. BASF AG, BASF South East Asia Ltd. and BASF India Ltd. are related companies. By not providing the balance sheet and profit and loss account of all these related companies to the Authority, they have not cooperated with the Authority in accordance with the anti dumping rules. This has also denied right of the petitioner to analyse the above referred information and provide their comments on the same.
12. As regards the contention of BASF AG that the production process of BASF is different to the one of the complainants, it is mentioned that in one of the CEGAT judgement it has been held that "Process of manufacture is not a relevant factor under anti-dumping law. Quality difference is also not material. The imported goods and domestically produced goods have the same use and have been correctly held to be 'like article' by the Designated Authority". Automotive Tyre Manufacturers Association vs Designated Authority. Final Order Nos. 37-40/2000-AD, dated 6-11-2000.
13. We would like to bring to the kind attention of the Authority that, European Commission had levied a fine of US\$ 755 millions on companies in a Vitamin Price fixing Case and BASF is one of the major companies against whom the fine of Euro 296.2 million has been levied. Vitamin A is one of the vitamins for which this cartel was formed.

Similarly even earlier in the USA, anti-trust proceedings were initiated against BASF and a fine of US\$ 225 million was levied on BASF. Therefore, the contention of BASF that the prices of Vitamin A sold by BASF are determined by the market forces, does not hold good and should not be considered against this background.

14. Moreover, perusal of the preliminary findings and information submitted by BASF AG/BASF SEPL/BASF India Ltd., clearly indicates that information which is material to the investigation have not been submitted by BASF companies and the information submitted have been in such a selective manner

that the Authority cannot cross verify and cross reconcile the same to arrive at a meaningful finding as to their correctness.

II. Views expressed by Trade Representation of Georgia , New-Delhi :-

No written submissions were given by the Trade Representation of Georgia , New-Delhi

III. Views expressed by the Delegation of the European Commission, New-Delhi :-

1. The provisional findings of the Designated Authority are based on best information available. This information refers to the cost of production estimated by the complainant. The only Indian producer has a capacity utilisation of 23.62% in 1999-2000, a time, where BASF had alleged dumped imports of 5 kgs. This utilisation rate went up to 28.94% in Jan-Sept 2001 when imports had reached 4900 kgs. These low rates do not enable any producer in the world to allocate costs on the sold product in a competitive environment with a profit. Piramal has asserted that their production sites are multipurpose plants. Everybody knows that multipurpose plants give a wide discretion of allocating costs to make one product profitable and the other loss-making.
2. Piramal claims losses in 1999/2000 when the alleged imports were only 5kgs. In the period April to December these imports have reached 2950 kgs and ,led to a significant price undercutting which pushed down the selling price." If we look at the Index table of the selling prices, starting with 100 in the period before the alleged dumping started, the index went up to 113 (Vitamin A 1.0) and 111 (Vitamin A 1.7) and remained stable with imports of 4,900 kgs. During the second period the petitioner made a profit with Vitamin A 1.7, even he claims that 1.7 was imported at low prices. The development of the losses of Vitamin A 1.0 which came under pressure by the low 1.7 prices was 100, 4.33 and 0.85 which can be interpreted only as an improvement.
3. The Indian fixed price of Vitamin A is, compared to world market prices, too high. BASF shipments of Vitamin A to India were mainly deliveries for the UNICEF program. Since UNICEF is a globally working organisation they are familiar with the world market prices and thus it is not possible to sell Vitamin A to UNICEF in India at a higher price than to other countries in the world.

(IV). Views expressed by exporter M/s BASF AG in written submissions and rejoinder:-

1. The provisional findings of the Designated Authority are based on best information available. This information refers to the cost of production, estimated by the complainant.
2. During the hearing, Piramal has taken reference to the antitrust fines. BASF had to pay for the Vitamin cartel. Some responsible employees had to go to prison. In the meantime, our company has taken consequences. BASF has introduced an antitrust compliance program with very strict rules against any repetition. Therefore, we do not see any possibility to talk with Piramal about a non-injurious price level, as proposed during the hearing. This would be a clear violation of BASF's rules. Furthermore, we do not see any need for such talks, as we are convinced that our exports to India are not dumped.
3. The Indian fixed price of Vitamin A is, compared to world market prices, too high. BASF shipments of Vitamin A to India were mainly deliveries for the UNICEF program. Since UNICEF is a globally working organisation they are familiar with the world market prices and thus it is not possible to sell Vitamin A to UNICEF in India at a higher price than to other countries in the world. Our business to International Food Aid Organizations, like UNICEF, WHO etc., is to be seen in a different way. These organisations have received better prices from all the suppliers due to the humanitarian aspect of this business. We at BASF see a great chance to help the Indian population with desperately needed Vitamin A in order to curb the large percentage of blind children coming from a lack of Vitamin A intake.

V. Rejoinder by Domestic Industry

1. In accordance with Anti Dumping rules the exporter is required to submit the information to the Designated Authority in accordance with prescribed format and within the prescribed time limit. Perusal of the preliminary finding of the Authority in this regard and the information submitted by the BASF in the non confidential summary during the investigation so far clearly indicates that they have not provided the material information to the authority in accordance with the anti dumping rules. Therefore the comments that the preliminary findings of the authority are based on the attitude of Honorable Designated Authority to carry out on the spot investigation after provisional measures is unjustified and against the facts of the investigation. What is apparent from their above comments clearly indicates that according to BASF the authority should accept their statements that they are not dumping without ensuring that the exporter has supplied the prescribed information within the prescribed time frame and examined by the authority. It is not a standard practice of the authority, but it is a consequence of exporter's non-cooperation in providing the required information in the prescribed format. It may please be noted that the spot

investigation is to be carried by the authority only and only after the prescribed information have not been submitted by the exporter to the authority to its satisfaction.

2. As regard low capacity utilisation it is stated that the capacity utilisation of the petitioners plant though low is yet cost effective, as it is a multipurpose plant. As several other products/premixes are also manufactured with it, which increases the overall capacity utilisation of the plant. Further as regards the age of plant of the domestic industry it is stated that the petitioner follows plan of continuous technology up gradation and cost reduction through yield and labour productivity improvements and energy conservation. The petitioners manufacturing facilities are accredited with ISO 9001 and ISO 14001 certificates HACCP (Hazard Analysis of Critical Control Points).
3. The petitioner has been following the standard accounting practices for maintaining their financial accounting and cost accounting records. These records are duly audited by the Statutory Auditors and Cost Auditors respectively. The petitioner has submitted the necessary information in this regard to the authority to its satisfaction along with documentary evidences. Therefore the allegation of using discretion in allocating costs to make one product profitable and other product loss making is baseless, unfounded and against the facts presented by the domestic industry to the authority during the investigations.
4. As regards the improvement in profitability of Vitamin A division by Rs. 400 lakhs on annualised basis, it is stated that these are not the real profits earned by the company from the Vitamin A division but these were the estimates for the expected increase in the profit to the Vitamin A division on account of revision of DPCO prices after a gap of 5 years, but this expectation of the company was never fulfilled on account of increase in dumping by BASF.
5. Further it may be noted that these allegations are coming from BASF who have already been held guilty by US Authorities for price fixing and thereby penalised with record US fines. It may be pertinent to note that following the opening of an investigation the European Commission has found that 13 European and non European companies participated in cartels aimed at eliminating competition in the Vitamin A, E, B1, B2, B5, B6, C, D3 Biotin (H), Folic Acid (M), Beta Carotene and carotinoids market.
6. It may also be noted that BASF has mentioned that they have highly sophisticated cost accounting system. Accordingly, we fail to understand why it is taking so much time for them to submit the information in the prescribed format.
7. As regards losses to the petitioner in 1999-2000, when imports were only 5 kgs, it is stated that the revision of prices by DPCO was overdue and since the prices of Vitamin A is controlled by DPCO, the company was not in a position

to realise the fair selling price as the DPCO price was fixed around 5 years back. The DPCO prices were revised in 1999-2000. Therefore, in the period April-December, 2000 the profitability of the division improved due to higher realisation as fixed by DPCO. During the period April, 2000 to December, 2000 through the imports had increased from 5 kgs to 2950 kgs the company still had been able to earn profits from sale of Vitamin A because imports during that period were at competitive prices. However, this benefit was short lived when from January, 2001 the dumping of the subject goods started. The weighted cif price of Vitamin A Palmitate 1.7 MIU came down to Rs. ***/kg during the period January, 2001 to September, 2001 from cif price of Rs. ***/kg during the period April, 2000 to December, 2000. The market of Vitamin A is highly price sensitive. Therefore, the petitioner had been compelled to sell the subject goods much below the fair selling price just to main its market share and keep the manufacturing unit running and avoid laying off man power.

8. Moreover BASF is trying to confuse the Authority by analysing the index figure in a selective manner. The indexed figures need to be analysed in totally to arrive at a meaningful conclusion. Comparison of indexed figures for sales quantity had been intentionally ignored by BASF. The petitioner has already provided the necessary data to the Authority in this regard.

Examination by the Authority on Other Issues:-

The Annual Reports of BASF AG were made available in the public file. The Designated Authority notes that the petitioner is producing Vitamin A Palmitate in its liquid plant at Thane (Mumbai) where other vitamin pre-mixes are also produced in addition to the subject goods. When the imports were 5kg in 1999-2000 the capacity utilisation of the liquid plant was 40.50% and the production of Vitamin A Palmitate was 25.99MT. During the POI, the plant attained a capacity utilisation of 48.65% but the production of the subject goods was 23.88MT. The sales of the petitioner was 24.80MT in 1999-2000 when the imports were 5kgs and 19MT in Apr-Dec 2000 when imports were 3MT. In the POI, the sales of the petitioner declined to 13.20MT (from 19MT in the previous period). However, the imports increased to 10.05MT (from 3MT in the previous period). Out of the total imports, imports from EU (BASF) alone constitutes about 9500 kgs.

The DPCO prices were revised in 1999-2000. The prices fixed under DPCO increased from Rs Rs ***/kg to Rs ***/kg for Vitamin A Palmitate 1.7MIU/g /kg in 1999-2000. During the period April 2000 to December 2000 though the imports had increased from 5 kgs to 2950 kgs the petitioner still had been able to earn profits from sale of Vitamin A 1.7MIU because imports during that period were at a cif price of Rs ***/kg from the EU which declined to Rs ***/kg in the POI (by 11.41%). The volume of

dumped goods also increased significantly from January 2001 (by 240.67%). The petitioner was able to register a marginally increased profit in the POI for VAP 1.7MIU as compared to Apr-Dec 2000 and improve upon their losses for 1.0MIU as they were able to cut down their costs as compared to the previous period. The sales realisation in the POI was however lower for both 1.0MIU and 1.7MIU than in Apr-Dec 2000 and even this was possible on account of revision in DPCO prices. The petitioner was not able to realise the prices fixed under DPCO by NPPA and the non-injurious price as ascertained by the Authority in the present investigation.

Examination by the Authority on comments given by BASF AG in response to Disclosure statement :

1. The Authority notes that BASF has not provided the information with regard to the cost of Vitamin A Acetate to the Authority as brought out in the Disclosure Statement and inspite of repeated reminders. The purpose of the on-the-spot verification is to ascertain the correctness of the data filed by the exporter in its response to the investigation and not to collect the primary data. The Authority notes that since BASF AG has not co-operated fully in providing complete information/data as solicited by the Authority during the course of these investigations, no meaningful purpose could have been served by conducting a spot verification. Therefore, under these circumstances, the Authority could not conduct a spot verification.
2. The information in Appendix 7 regarding installed capacity, production, sales etc., has been submitted in terms of quantity alone and not in terms of value. No information with regard to other products has been given.
3. In Annexure 3, the production of Vitamin A Palmitate in the table is in MT.
4. The landed price is inclusive of all applicable basic customs duty.
5. As pointed out in the course of the investigations and in the Disclosure Statement, BASF AG has failed to furnish certain information as pointed out in Para 6©, which was vital for the examination of their claim of cost of production and thereby in the determination of their domestic sales being in the ordinary course of trade as required under Anti Dumping Rules.

G. DUMPING:-

Exporters and Producers of the Subject Goods in the Countries of Origin:-

None of the exporters/producers of Vitamin A Palmitate in Georgia responded to the Authority's request for relevant information. M/s BASF AG, EU responded to the questionnaire sent by the Authority.

Normal Value

(A) European Union

M/s BASF AG:-

In view of the anomalies/deficiencies brought out under Para 6 ©, it is not possible to assess whether the data furnished by BASF AG represents the full cost of production as envisaged under the anti-dumping Rules to determine whether the domestic sales are in the ordinary course of trade. In the stated circumstances, the Authority is constrained to construct the normal value based on the cost of production as per best available information in terms of Rule 6(8). The constructed normal value is therefore determined to be USD ***/kg or Rs ***/kg at an average exchange rate of 1USD= Rs 47.32 during the POI.

Other Producers/Exporters from EU :-

The Authority observes that other producers/exporters from the European Union have not responded to the questionnaire in the prescribed format and have not furnished information relating to normal value, export price, and dumping margin. The Authority therefore considers such producers/exporters to be non-cooperative and has proceeded on best available information. In the circumstances the Authority was constrained to determine the constructed cost determined as USD ***/kg (Rs ***/kg) at an average exchange rate during POI of 1USD=Rs 47.32.

(B) Singapore

BASF South East Private Ltd. has stated that there is no factory producing Vitamin A Palm Oil 1.7 MIU BHT in Singapore. The company has stated that there were no sales conducted in the home market in Singapore.

The company has stated that for all the transactions of this product in India, BSEA is only carrying out the coordination and invoicing services. The product is physically shipped from BASF Germany to India; no freight and insurance cost was incurred in Singapore.

Since the subject goods are not manufactured in Singapore and the goods have been physically shipped directly from Germany to India the Authority has not determined the normal value for the subject goods in Singapore.

(C) Georgia

As brought out in the Preliminary Findings, the exporters/producers from Georgia did not respond to the Authority in these investigations. The Honorary Consulate of Georgia has stated that enquiries made in Georgia have shown no light on the existence of any such Georgian company, which might have exported Vitamin A Palmitate to India either directly or through third country.

As brought out in the Preliminary Findings, a quantity of 550 kg of the subject goods was imported from Georgia. The Authority sent a letter to M/s Sundar Chemicals Pvt. Ltd., Chennai a known importer of Vitamin A Palmitate from Georgia and requested them to provide the names and complete addresses of the producers/exporters in Georgia. However no information was received from them.

A request was made by this Directorate during the Oral Hearing conducted by the Designated Authority on October 28, 2002 and subsequently vide a communication addressed to the Honorary Consulate of the Republic of Georgia to clarify if there are manufacturing facilities for Vitamin A Palmitate in Georgia and if exports of the subject goods had been effected during the period of investigations. However no reply was received from the Honorary Consulate of the Republic of Georgia.

The Authority observes that the exporters from Georgia have not responded to these investigations and have not furnished information relating to normal value, export price, and dumping margin. The Authority therefore considers the exporters to be non-cooperative and has proceeded on best available information.

The petitioner has stated that they have not been able to get any reasonable and authentic evidence with regard to prices prevailing either in the home market or prices charged by them for export to other countries. The petitioners have requested that the normal value in Georgia be accepted on the basis of constructed cost of production of Vitamin A Palmitate. In the circumstances the Authority has been constrained to determine the constructed cost.

The normal value in Georgia is therefore considered to be USD ***/kg or Rs ***/kg at an average exchange rate during POI of 1USD=Rs 47.32.

Export Price:-

(A) European Union

M/s BASF AG :

1. From Appendix 2 it is seen that a total quantity of 9,500 kgs of an invoice value of Euro *** (Euro ***/kg or USD ***/kg at an exchange rate of 1 Euro is =

0.895 USD) of Vitamin A Palmitate 1.7 BHT was exported by BASF AG during the POI. The invoice value and the cif price are stated to be the price for BSEA. The export selling price is therefore Euro *** (USD ***/kg). The charges after ex factory and before fob are Euro ***/kg for packing; inland freight *** E/kg; shipping cost at *** E/kg. The adjustments claimed after fob are on account of overseas air insurance at E ***/kg; overseas air freight at E ***/kg. The total cost on account of the above is E ***/kg or USD ***/kg (at an exchange rate of 1 Euro = 0.895676 USD).

2. It is seen that during the POI a quantity of 6,700 kgs of Vitamin A Palmitate was exported by BASF AG to various customers in India other than BASF India (out of the total quantity of 9,500 kgs.). The invoice/cif value of this quantity exported is USD *** or Rs. *** (USD ***/kg or Rs ***/kg)
3. A rebate commission of ***% was paid on these exports. Hence after considering the adjustments above and the commission value of ***% the ex factory export price for the quantity of 6,700 kgs is therefore USD ***/kg (or Rs. ***/kg).
4. BASF India Ltd., a related importer, has been sourcing Vitamin A Palmitate 1.7 MIU/g from BASF, Germany. Their orders are placed on BASF South East Asia Pvt. Ltd., Singapore which is the invoicing company. The goods are dispatched from Germany to Mumbai by air freight. The quantities imported are in small lots and hence there are very few instances where deliveries are delayed. The invoices are raised in Singapore and also negotiated through bank in Singapore. There are no discounts/rebates/commissions applicable or payable to BASF India Ltd.
5. For all the transactions of this product in India, BASF South East Asia Pvt. Ltd. is only carrying out the coordination and invoicing services. The product is physically shift from BASF Germany to India.
6. During the period of investigation BASF AG had exported 9,500 kg of Vitamin A Palmitate to India, out of which a quantity of 2,800 kg was imported by BASF India Ltd.
7. As reported in Appendix 2, BASF India Ltd. has sold a quantity of 2,300 kg of the imported product in India to unrelated parties during the POI of a gross turn over of Rs. *** (Rs. ***/kg). After adjustment of ***% sales tax and ***% CVD and discounts/rebates and charges on account of warehousing/storage, airconditioning charges, man power charges and transportation/conveyance and miscellaneous expenses, the net turnover was Rs. *** (Rs. ***/kg) or USD ***/kg. The cif price for 2300 kgs that is net of weighted average customs duty and landing charges is USD *** or USD ***/kg.
8. After adjustments of costs claimed at 6 (B), the ex-factory export price for 2300 kgs works out to USD ***/kg.
9. The weighted average cif price of 9000 kg sold is therefore USD ***/kg.

Other Producers/Exporters from EU :-

The Authority observes that the other producers/exporters from the subject territory have not responded to the questionnaire in the prescribed format and have not furnished information relating to normal value, export price, and dumping margin. The Authority therefore considers such exporters to be non-cooperative and has proceeded on best available information. The weighted average cif price as per the information available with the Authority is determined at Rs ***/kg or USD ***/kg for the European Union. After adjustments the ex-factory export price is or USD ***/kg at an average exchange rate of 1USD=Rs 47.32.

A. Singapore

Since the subject goods have been physically shipped directly from Germany to India the Authority has not determined the export price for the subject goods in Singapore for the purpose of these final findings.

(C) Georgia

The weighted average cif price as per the information available with the Authority is determined at Rs ***/kg for Georgia. The ex-factory export price has been determined after taking USD ***/kg as ocean freight, ***% as marine insurance charges, commission @ **%, USD ***/kg for inland transportation and USD ***/kg for loading, unloading and port expenses as per the petitioners information. After adjustments on these accounts the ex-factory fob export price is estimated to be Rs ***/kg or USD ***/kg for Georgia at an average exchange rate.of 1USD=Rs 47.32.

Dumping Margin:-

Examination by the Authority:-

The Authority has followed the consistent policy of adopting the principles governing the determination of Normal Value, Export Price and Margin of Dumping as laid down in Annexure I of the anti-dumping rules. Based on the ex-factory normal values and ex-factory export prices as indicated above, the Authority has assessed the dumping margins in case of all exporters from EU and Georgia as given in the table below:-

Country	Producer/Exporter	Ex-factory Normal Value (USD/kg)	Ex-factory Export Price (wt.ave USD/kg)	Dumping Margin (%)
EU	BASF AG	***	***	52.94
	All other exporters/producers	***	***	58.83

H. 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 article..." In considering the effect of the dumped imports on prices, it is considered necessary to examine whether there has been a significant price undercutting by the dumped imports as compared with the price of the like article in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increase, which otherwise would have occurred, to a significant degree.

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

The Authority notes that the margin of dumping and quantum of imports from the subject countries are more than the limits prescribed in Rule 11 Supra.

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

a. Quantum of Imports:-

Source: International Data Services, Mumbai

Quantity (kg.)

Countries	1999-2000	Apr - Dec 2000	Jan-Sep2001 (POI)
Total imports	5	2950	10,050
European Union	---	2950	9500 (exported by BASF)
Singapore	---	---	---
Georgia	---	---	550

The increase in the total imports of Vitamin A Palmitate from the subject countries was significant in Apr-Dec 2000 and in the POI as compared with the quantum of imports in 1999-2000.

The share of EU in total imports was 100% in Apr-Dec 2000 and 94.53% in the POI while the share of Georgia was 5.47% in the POI.

b. Production and Capacity Utilisation:-

The production capacity, actual production and capacity utilisation of the petitioners was as follows: -

Petitioners	1999-2000	2000-2001	Jan-Sep 2001 (POI)
Installed Capacity (MT) (liquid plant)	330	330	247.50
Production (MT)	133.27	153.75	120.41
Capacity Utilisation%	40.50%	46.60%	48.65%
Production of Vitamin A Palmitate	25.99	23.20	23.88

The petitioner is producing Vitamin A Palmitate in its liquid plant at Thane (Mumbai) where other vitamin pre-mixes are also produced in addition to the subject goods. As the plant is technically available for three shifts the installed capacity has been assessed on a three shift basis. The capacity utilisation of 48.65% for the plant during the POI is therefore against the maximum installed capacity of 330MT on a three shift basis. Although the production of the subject goods has increased in the POI as compared to the previous period, the petitioner was unable to sell the produce and has instead used it captively. The declining trend in sales volume in the domestic market is reflected in the table below.

(c) Sales and Market Share:-

	1999-2000	Apr-Dec 2000	Jan-Sep 2001 (POI)
Sales (MT) of petitioners	24.80	19.23	13.20 (annualised 17.60)
Demand	24.805	22.180	23.25 (annualised 30.99)
Share of imports %	0.02%	13.30 %	43.22%
Share of dumped imports %	---	13.30%	43.22%
Share of petitioner %	99.97%	86.69%	56.77%

It is seen that total and dumped imports have increased in absolute terms. While the market share of imports from the subject countries have increased in demand the share of the domestic industry has declined in demand from 86.69% in Apr-Dec 2000 to 56.77% in the POI.

d. Price undercutting and price depression

Rs/kg

Year	Sales Realisation (Rs/kg) 1.0 1.7		Landed Price of Imports EU Singapore Georgia Others			
1997-98	***	***				
1998-99	***	***	---	---	---	
1999-2000	***	***	***	---	---	---
POI	***	***	***	---	***	***

It is evident from the above table that the exporters from EU have reduced their prices significantly in the POI. The domestic industry has been forced to reduce its selling prices to respond to the low import prices in the market. Currently this product is price controlled by NPPA and Rs 5402.60/kg is the price for Vitamin A Palmitate 1.7MIU/g. In spite of the fact that the increase in cost of production was accepted by the National Pharmaceutical Pricing Authorities and

consequently the DPCO price was revised upwards, the petitioner could not get much benefit from it because of the dumping of goods at lower prices. The dumping of the subject goods prevented the petitioner from realising the DPCO price.

(e) Profitability:-

Vitamin A Palmitate 1.0

Petitioner	Apr-Dec 2000	Jan-Sep 01
COP	***	***
Selling Price	***	***
P/L	(***)	(***)

Vitamin A Palmitate 1.7

Petitioner	Apr-Dec 2000	Jan-Sep 01
COP	***	***
Selling Price	***	***
P/L	***	***

(f) Closing Stocks (MT)

(Kg)

	Apr.1999- Mar., 2000	Apr. -Dec. 2000	Jan-Sept. 2001 (POI)
Petitioner	15	-	498

(g) Reduced return on investments

On account of continuous dumping of Vitamin A Palmitate, the division of the company is suffering losses, thereby the return on investments in the division has been adversely affected.

d. Wages

To keep the trained work-force employed intact, the company has to continuously revise the wages on regular basis even though the company is suffering losses due to dumping.

e. Growth

The country has substantial demand of Vitamin A Palmitate and the petitioner has the capacity to meet the entire demand of Vitamin A Palmitate in the country. However, on account of continuous dumping, the capacity utilisation of the petitioner has been adversely affected thereby hampering growth.

f. Ability to raise capital

On account of losses in the Vitamin A Palmitate division caused by dumping, the ability of the division of the company to raise finance has been adversely affected because every financial institution needs to ensure the profitability of the unit they wish to finance.

g. Cash Flow

On account of continuous losses, the cash flow of the division manufacturing Vitamin A Palmitate has been adversely affected.

I. CONCLUSION ON INJURY

7. In view of the foregoing the Authority confirms the conclusions on injury at Para J of the Provisional Findings and reiterates that:-

- a. the quantum of imports from the subject countries/territory have increased in absolute terms and in relation to consumption in India;
- b. the market share of the petitioner has gone down while that of imports has increased;
- c. the petitioners have been forced to sell at prices below their non-injurious price and DPCO price.

J. CAUSAL LINK

8. The Authority holds that the material injury to the domestic industry has been caused by imports from the subject country/territory which are major exporters of Vitamin A Palmitate to India. The increase in the market share of imports from EU and Georgia resulted in the decline in the market share of the petitioner. The share of dumped imports in demand increased significantly from 13.30% in April-December 2000 to 43.22% in the POI. The share of the petitioner declined from 86.69% in April-December 2000 to 56.77% in the POI. While the increase in volume of imports of the subject goods was by 7 MT in the POI as compared to April-December 2000, the decline in sales quantum of the petitioner was 6.03MT in the POI as compared to the previous period. Hence the volume effect of the dumped imports on the domestic industry is clearly established. In examining the price effect, that is, whether the dumped imports have significantly undercut the price of the like product in India, the Authority notes that the landed value of Vitamin A Palmitate from both EU and Georgia has been significantly lower than the net selling price of the petitioner during the period of investigation. Due to dumping of the subject goods the petitioner has been forced to sell the product much below the DPCO price due to which their margins are under severe pressure. Import prices from the subject country/territory forced the domestic industry to sell below its 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 country/territory.

K. Anti-Dumping duty imposed:-

9. The Authority has carefully evaluated the injury caused to the domestic industry on account of dumping of Vitamin A Palmitate and has recommended the amount of anti-dumping duty equivalent to the dumping margin or less, which if levied, would remove injury to the domestic industry.

10. FINAL FINDINGS:-

The Authority after considering the foregoing, concludes that:

- a. Vitamin A Palmitate originating in or exported from EU and Georgia has been exported to India below normal value, resulting in dumping;
- b. the domestic industry has suffered injury;
- c. injury suffered by the domestic industry and the dumped imports from the subject countries/territory.

11. The Authority recommends imposition of definitive Anti-dumping duty on all imports of Vitamin A Palmitate originating in or exported from European Union and Georgia falling under customs sub-heading no. 2936.21 of Chapter 29 of the Customs Tariff Act, 1975, and ITC (HS) Code No. 29362100. The anti-dumping duty shall be the difference between the amount mentioned in Col.3 and the landed value of imports.

Country	Name of the producer/exporter	Amount (USD/kg)
European Union	All producers/exporters	113.95
Singapore	All producers/exporters	Not applicable
Georgia	All producers/exporters	113.95

As noted by the Authority, the subject goods are available in different strengths which have the same end use and are used interchangeably. The amount set out in the table above at col 3 of para 11 is recommended for Vitamin A Palmitate 1.7MIU/g strength. The amount for the purpose of col 3, for any other strength of the subject goods would be determined by dividing USD 113.95/kg (as recommended at col. 3 above) by 1.7 and multiplying the quotient by the particular strength of the subject goods that is imported (eg amount for Vitamin A 1.0 MIU/g would be USD 67.03/kg). The anti-dumping duty shall be the difference between the amount so calculated and the landed value of the particular strength of the subject goods.

12. Landed value of imports for the purpose shall be the assessable value as determined by Customs under the Customs Act, 1962 and all duties of customs except duties levied under Sections 3, 3A, 8B, 9 and 9A of the Customs Tariff Act, 1975.

13. Subject to the above, the Authority confirms the preliminary findings dated 30/4/2002.

14. 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