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MINISTRY OF COMMERCE & INDUSTRY
(Department of Commerce)
Directorate General of Anti Dumping & Allied Duties
Notification

New Delhi, the 2nd January 2001

PRELIMINARY FINDINGS

Subject: Anti-dumping investigation concerning imports of Theophylline & Caffeine originating in or exported from the European Union - preliminary findings

No.26/1/2000-DGAD.- The Government of India having regard to the Customs Tariff Act, 1975 as amended in 1995 and the Customs Tariff (Identification, Assessment and Collection of Anti Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, thereof;

A. PROCEDURE

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. Kores (India) Limited, Thane, M/s. Bakul Aromatics & Chemicals Ltd., Mumbai and M/s. Valiant Industries Limited, Mumbai, on behalf of the domestic industry, alleging dumping of Theophylline & Caffeine originating in and exported from the European Union (hereinafter referred to as EU);
- ii. The Authority notified the Delegation of European Commission in India about the receipt of dumping 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 11th July, 2000 published in the Gazette of India, Extraordinary, initiating anti dumping proceedings concerning imports of Theophylline & Caffeine originating from EU classified under heading 2939.30 & 2939.50 of Schedule I of the Customs Tariff Act, 1975;
- iv. The Authority forwarded copy of the said public notice to the known exporters, importers, industry associations and to the petitioners and gave them an opportunity to make their view known in writing;

- v. According to sub-rule (3) of Rule 6 supra, the Authority provided a copy of the petition to all the known exporters and Delegation of European Commission in India.
- vi. The Authority sent questionnaires, to elicit relevant information, to the exporters as mentioned in the petition;
- vii. The Delegation of European Commission in New Delhi was also informed about the initiation of investigation and was requested to advise the exporters/producers from their territory to respond to the questionnaire within the prescribed time;
- viii. The questionnaire was sent to the following importers and users of Theophylline & Caffeine:
 - 1. M/s. J Shah & Co., Mumbai
 - 2. M/s. Salvi Chemicals, Boiser
 - 3. M/s. Kantilal Manilal & Co., Mumbai
 - 4. M/s. Medi Pharma, Chennai
 - 5. Ahinsha Chemicals Pvt Ltd., Nalbari
 - 6. M/s. Coca- Cola India Limited, Pune
 - 7. M/s. Pepsi Foods Ltd., Sangrur
 - 8. M/s. Nicholas Piramal India Ltd., Dhar
 - 9. M/s. Panjon Ltd., Indore
 - 10. M/s. Cadila Pharmaceuticals Ltd., Ahmedabad
 - 11. M/s. German Remedies Ltd., Mumbai
 - 12. M/s. Meridian Enterprises Pvt Ltd., Navsari
 - 13. M/s. Kopran Ltd., Raigad
 - 14. M/s. Unimed Technologies Ltd., Halol
 - 15. M/s. FDC Ltd., Mumbai
- ix. Out of the importers, response to the questionnaire was filed by M/s. Ahinsha Chemicals, Nalbani. M/s. BASF AG, Ludwigshafen, Germany also filed response to the questionnaire as exporter.
- x. Additional information regarding injury was sought from the petitioners, which was also furnished;
- xi. The Authority kept available non-confidential version of the evidence presented by various interested parties in the form of a public file maintained by the Authority and kept open for inspection by the interested parties;
- xii. ***** in this notification represents information furnished by the interested party on confidential basis and so considered by the Authority under the Rules;
- xiii. The Authority sought and verified information deemed necessary for the investigation, and to this end investigations were carried out at the premises of the petitioners' offices at Mumbai, Thane and works at Patalganga,

Maharashtra; verification was also carried out at the premises of the exporter M/s. BASF AG at Ludwigshafen, Germany.

- xiv. The Authority also conducted cost investigation and worked out optimum cost of production and cost to make and sell Theophylline & Caffeine in India on the basis of Generally Accepted Accounting Principles and information furnished by the petitioner;
- xv. The investigation covered the period from 1st April 1999 to 31st March,2000.
- xvi. Copies of initiation notice was also sent to FICCI, CII, ASSOCHAM etc., for wider circulation.

B. Submission made by Domestic Industry

3. The petitioners have made the following submissions:

- a. Theophylline & Caffeine, both in pure and crude form and their derivatives and salts thereof falling under sub-heading No. 2939.30 and 2939.50 of Custom Tariff Act are being dumped in India by European manufacturers. The industry was earlier faced with the problem of dumping from China and was forced to approach the Designated Authority for imposition of anti dumping duty on imports therefrom. After detailed investigation by the Designated Authority, anti dumping duty was imposed on imports from China on 20.3.95 which was continued after the mid-term review held in the year 1998. The exporters from China continued to dump materials into India and a sunset review investigation against import from China was initiated by the Designated Authority in March 2000 and the anti dumping duty imposed against China have been extended by one year. However, in the meantime exporters from EU have started dumping Theophylline and Caffeine in India. These imports are causing material injury to the domestic industry in India and hence they are filing a petition for imposition of anti dumping duty against imports originating in EU.
- b. The products under consideration are Theophylline, its derivatives, salts thereof and Caffeine, its derivatives and its salts and includes these products in pure as well as crude form. Theophylline & Caffeine are organic chemicals classified under chapter 29 of the Customs Tariff Act. Theophylline is used for pharmaceutical formulations and Caffeine is also used for beverage and soft drinks. The products are defined under Custom sub-heading 2939.30 and 2939.50.
- c. The petition has been filed by M/s. Kores (India) Ltd., Thane, M/s Bakul Aromatics & Chemicals Ltd., Mumbai and M/s. Valiant Industries Ltd., Mumbai on behalf of the domestic industry. The petitioners have averred that there are two more producers of the product, M/s. SU-VI Chemicals Ltd., Bombay and M/s. Suman Pharmaceuticals, Hyderabad. The petitioners'

production of Theophylline & Caffeine during 1999 accounted for approximately 85% of the total production in the country and therefore have a standing to file the petition on behalf of domestic industry under the Rules aforesaid Further M/s. German Remedies also produces the said goods for their captive requirements and therefore should not be considered as eligible producer for the present purposes.

- d. The petitioners have provided evidence of dumping of the product involved from the Federal Republic of Germany, Belgium, France and Spain- all members of European Union (EU). As there are no custom boundaries in the EU between various member-countries, it has been argued that for the purpose of this investigation EU should be treated as a territory subject to investigation.
- e. The petitioners have claimed that the goods produced by them are 'like article' to the goods exported, originating in or exported from the subject territory. Therefore, for the purpose of investigation, the goods produced by the petitioners should be treated as 'like articles' to Theophylline, its derivatives, salts thereof and Caffeine, its derivatives and its salts, both in pure as well as crude form imported from the European Union within the meaning of the Rules.
- f. Normal value in Germany and Spain (and the EU as a whole) is the price at which the consumers of Theophylline and Caffeine are purchasing these products in their domestic market in the ordinary course of trade. As per the evidence available of the prices at which Germany have exported subject goods to other EU member-countries, the prices are much higher than the prices at which these products are being exported to India by the European producers. As there are no custom barriers between Germany, Spain and other EU member-countries, the same normal value should be used for the entire territory.
- g. As per the information available from the records of Director General of Commercial Intelligence and Statistics and the relevant adjustments to be permitted to arrive at the ex-factory price, such as landing charges, ocean freight, marine insurance, commission, inland transportation in the country of export, port handling and port charges, the net export prices arrived at comes to be much below the normal value discussed above and hence there is substantial dumping by the exporters from EU.
- h. Low and declining export prices of Theophylline and Caffeine from EU is under cutting the prices in Indian market and hence causing injury to the domestic industry as they are unable to realise a fair selling price in the domestic market. The domestic industry has been forced to maintain its selling price based on landed value of the imports from the EU resulting in decline in sales realisation, financial losses and failure to recover optimum cost of production and fair return on the investment made.

- i. The imports from countries other than EU are either *de minimus* or at higher prices. It is the imports at low and declining prices from EU to India which are undercutting their selling prices and causing injury to the domestic industry;

C . Submissions made by Importers and Exporters

4. M/s. Ahinsha Chemicals Ltd., Nalbari, Assam, who are the manufacturers of Caffeine Anhydrous I.P. (Natural) and importers of Crude Caffeine (Natural) have made the following submissions:

- a. Caffeine Anhydrous I.P. (Natural) is manufactured using raw material like tea waste or crude caffeine which is a by-product for manufacture of decaffeinated coffee.
- b. Crude Caffeine which is extracted from natural tea/coffee is not 'like product' is synthetic caffeine manufactured by the petitioner.
- c. The manufacturing process of natural caffeine and synthetic caffeine is totally different. Crude caffeine is naturally available in tea/coffee and then extracted from it and then processed to make natural caffeine of about 99.3% purity for use in beverages and pharmaceutical industry. Natural Caffeine is preferred for use by beverages and pharmaceutical manufacturers in USA, Japan, Europe etc.,
- d. The cost of production of natural caffeine is higher than the cost of production of synthetic caffeine
- e. Crude (Natural) Caffeine as it is cannot be used by beverages/pharma industries and after processing and conversion to natural caffeine it has a purity of 99.3% and it also has to meet other parameters or specifications prescribed in I.P/B.P/U.S.P etc., and sold to pharma/beverages industry.
- f. The price of Crude Caffeine imported by the company is the normal value of the product and it is normal price of the Crude Caffeine in EU and/or international market. Moreover the price of Crude Caffeine depends on the quality and purity of the product. The suppliers of Crude Caffeine (Natural) are highly reputed companies in international market and Crude Caffeine is their by product/waste product which they receive for manufacturing Decaffeinated Coffee.
- g. The parties have deliberately and with *malafide* intentions manipulated the figures and wrongly presented the case by comparing Crude Caffeine and Synthetic Caffeine.
- h. Crude Caffeine (Natural) extract of Tea/Coffee is not available in India.

5. M/s. BASF AG, Ludwigshafen, Germany, having production site at Knoll AG, Minden, Germany have made submissions in response to the initiation notice and

questionnaire sent to them asking for information regarding their exports to India and other countries and domestic sales. Regarding the cost of production they have stated that their plant is a multipurpose plant for different grades of Caffeine and Theophylline, all of which are not exported to India. The production of different grades is influenced by different sales and therefore a meaningful split up of the capacity exported to India of different grades could not be given. The information submitted by them was verified from the cost and sales records available at their premises at Ludwigshafen, Germany.

D. Examination and Findings by Authority

6. The submissions made by the exporters, importers, petitioner and other interested parties have been examined and considered while arriving at these findings and wherever appropriate have been dealt hereinafter.

E. PRODUCT UNDER CONSIDERATION

7. The product under consideration are Theophylline, its derivatives, salts thereof and Caffeine, its derivatives and its salts and includes these products in pure as well as crude form. Theophylline and Caffeine are organic chemicals classified under chapter 29 of the Customs Tariff Act. Theophylline is used for pharmaceutical formulations and Caffeine is also used for beverage and soft drinks. The products are defined under Custom sub-heading 2939.30 and 2929.50. The classification is, however, indicative only and is not binding on the scope of the present investigation.

As stated in para 4 above, representation has been made to exclude crude caffeine from the scope of investigation as the production process as well as the new materials are different from those of synthetic caffeine. However, as per the evidence furnished by the petitioners, the synthetic caffeine is also being used by the manufacturers of beverages and other users of natural caffeine stated by the exporters. Since the synthetic and crude caffeine are close substitutes and are used interchangeably depending on price and availability, the Authority decides to keep crude caffeine also within the scope of investigation as was proposed in the notice of initiation of investigation. Thus the definition of 'product under consideration' continues to be the same as stated above.

F. LIKE ARTICLE

8. Theophylline and Caffeine their derivatives, salts thereof is being imported from EU having characteristics closely resembling to Theophylline and Caffeine, their salts and derivatives being produced by the domestic industry and therefore the two are

considered as 'like article' in accordance with rule 2(d) supra. These products are, therefore, covered under the scope of this investigation.

G. DOMESTIC INDUSTRY

9. The petition has been filed by M/s. Kores (India) Limited, Thane, M/s. Bakul Aromatics & Chemicals Ltd., Mumbai and M/s. Valiant Industries Limited, Mumbai, on behalf of the domestic industry. There is one more producer of the product, M/s. SU/VI Chemicals Limited, Mumbai. The petitioners' production of Theophylline and Caffeine during 1999 accounted for approximately 85% of the total production in the country and, therefore, have a standing to file the petition on behalf of the domestic industry under the rules aforesaid.

H. DUMPING

Normal value

10. The domestic industry in their submissions have stated that normal value in EU is the price at which consumers of Theophylline and Caffeine are purchasing the same in the EU in the ordinary course of trade. They have given evidence of the prices at which one member of the EU has been exporting the said goods to the other member countries of the Union. As sale by the producers of one member country of the EU to consumers in the other member country is within the common custom territory it is treated as domestic sale for the purpose of arriving at the normal value as EU is being taken as one common subject territory. However, in view of the response given by M/s. BASF AG, one of the manufacturers in the EU exporting to India, sufficient information is available with the Authority regarding the domestic prices in the EU. The Authority intends to use the information provided by the exporter on the domestic sale price in EU for arriving at the normal value. Also adjustments have been claimed regarding ex-factory charges in the form of distribution costs, shipping costs, overseas freight, marine insurance etc., which have been also allowed as claimed.

Export price

11. The petitioners have furnished information regarding the export price for the period upto September 1999 on the basis of the information published by Director General, Commercial Intelligence and Statistics, (DGCIS) Calcutta. Now, information for the whole year for import volume and value from EU is available from DGCIS. However, for the purpose of calculation of dumping margin for the exporter who have furnished information and which has also been verified, the net export price after

making adjustments of commission, freight etc., has been considered as claimed in their response to the questionnaire sent by the Authority

Dumping margin

12. 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. For the purpose of fair comparison between the normal value and export price, the Authority has made calculations on the basis of parameters mentioned in paragraphs above. Based on the fair comparison of the normal value and export price so worked out, the margin of dumping in respect of exports made by BASF AG comes out to be 229 % of the export price in the case of Theophylline, its derivatives and salts, 177%, in the case of Caffeine, its derivatives and salts thereof. The Authority intends to use the same dumping margin for all the exporters from EU.

H. INJURY

13. Under Rule 11 supra, annexure II, when a finding of injury is arrived at, such finding shall involve determination of the injury to the domestic industry, "*.....taking into account all relevant facts, including the volume of dumped imports, their effect on prices in the domestic market for like articles and the consequent effect of such imports on domestic producers of such articles.....*" In considering the effect of the dumped imports on prices, it is considered necessary to examine whether there has been a significant price undercutting by the dumped imports as compared with the price of the like product 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.

14. For the examination of the impact on the domestic industry in India, the Authority considered such further indices having a bearing on the state of industry as production, sales, stock, profitability, net sales realisation etc.

(a) Volume and market share of dumped imports

Imports of Theophylline from EU were nil till 1998-99 which have increased to 32500 kgs in 1999-2000 which signifies a very sharp increase in the imports in the total market size of approximately 300 MTS. The market share of imports from the territories of EU in Theophylline in India has also thus increased from nil to approximately 11 % of the total domestic demand in 1999-2000. The increase in absolute terms as well as percentage terms of imports of Theophylline has led to loss of sales to the domestic industry.

(b) Price under cutting and price suppression

Data on the landed value from the member-countries of EU calculated on the basis of the DGCIS data clearly show the condition of under cutting being faced by the domestic industry both in case of Theophylline and Caffiene especially during the period of investigation. This has resulted in an average sales realisation for domestic industry being much below the optimum cost of production and consequent financial losses from the production and sales of Theophylline and Caffeine for the domestic industry.

(c) Profit/Loss

The petitioner are part of multi-unit organisation engaged in multi product activities and no conclusion can be drawn from the printed annual accounts about the financial position of the companies for the product under consideration. The Authority has, however, for purpose of assessment of the profitability of the petitioner from the product under consideration relied upon information collected and after considering allocation and apportionment of expenses on the basis of Generally Accepted Accounting Principles. The Authority noted that the average sales realisation to the petitioner is less than the cost of production resulting in losses from the sale of Theophylline & Caffeine.

(d) Conclusion on the injury

The Authority is led to conclusion that all the relevant factors, cumulatively and collectively establish that the domestic industry has suffered material injury during the period of investigation.

I. CAUSAL LINK

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

- i. the substantial imports of Theophylline & Caffeine from EU at dumped prices forced the domestic industry to keep its selling prices at un-remunerative level which resulted in a situation of price undercutting in the Indian market.
- ii. The imports from EU suppressed the prices of the product 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 sales of Theophylline & Caffeine in India.

J. INDIAN INDUSTRY'S INTEREST

15. 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.

16. The Authority recognised that the imposition of anti dumping duties might affect the price levels of the products manufactured using Theophylline & Caffeine 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 Theophylline & Caffeine. The Authority notes that the imposition of anti dumping measures would not restrict imports from EU in any way, and therefore, would not affect the availability of the product to the consumers. The consumers could still maintain two or even more sources of supply.

17. The Authority notes that the petitioner as well as the other producer have been forced by the importer to reduce the prices of Theophylline & Caffeine which clearly establish a situation of price undercutting prevailing in the Indian market.

K. CONCLUSIONS

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

- i. Theophylline and Caffeine of EU origin have been exported to India below their normal value;
- ii. the Indian industry has suffered material injury;
- iii. the injury has been caused by the imports from EU.

19. The Authority considers it necessary to impose an anti dumping duty provisionally, pending final determination, on all imports of Theophylline and Caffeine originating from EU in order to remove the material injury to the domestic industry. The margin of dumping for known exporter determined by the Authority are indicated in para 12 above.

20. Accordingly, the Authority recommends that provisional anti dumping duties as set out below be imposed from the date of notification to be issued in this regard by the Central Government on all imports of Theophylline and Caffeine falling under customs code 2939.30 and 2939.50 originating from EU pending final determination.

The anti dumping duty shall be the difference between the amount mentioned in column 3 and landed price of import per MT for all exporters/manufacturers (including M/s. BASF AG).

Territory/country	Product	Amount in US\$ per MT
European Union (all member-countries)	1. Theophylline	10686
	2. Caffiene	11486

21. 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 section 3, 3A, 8B, 9 and 9A of the Customs Tariff Act, 1975.

L. FURTHER PROCEDURE

22. The following procedure would be followed subsequent to notifying the preliminary findings:-

- a. The Authority invites comments on these findings from all interested parties and the same would be considered in the final findings;
- b. Exporters, importers, petitioner and other interested parties known to be concerned are being addressed separately by the Authority, who may make known their views, within forty days from the date of despatch of the letter. Any other interested party may also make known its views within forty days from the date of publication of these findings;
- c. The authority would provide opportunity to all the interested parties for oral submissions to be rendered thereafter in writing;
- d. The Authority would conduct further verification to the extent deemed necessary;
- e. The Authority would disclose essential facts before announcing final findings.

L.V. Saptharishi,
Designated Authority