

# MINISTRY OF COMMERCE

## NOTIFICATION

New Delhi, the 17th January, 2000

### Preliminary Findings

**Subject:** - Anti-Dumping investigation concerning imports of Vitamin C from Russia and European Union (EU).

**No. 26/1/99-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 with regard to the investigations:**

- i. The Designated Authority (hereinafter referred to as Authority), under the Rules received written application from Ws. Ambalal Sarabhai Enterprises, alleging dumping of Vitamin-C, originating in or exported from the Russia and European Union(EU) (hereinafter referred to as subject countries);
- ii. The Authority, on the basis of sufficient evidence submitted by the petitioner, decided to initiate investigations against imports of Vitamin-C from the subject countries. The Authority notified the Embassies/Delegations of the subject countries about the receipt of dumping allegation before proceeding to initiate the investigations in accordance with sub-rule 5(5) of the Rules;
- iii. The Authority issued a public notice dated 10th August, 1999 published in the Gazette of India, Extraordinary, initiating anti-dumping investigations concerning imports of Vitamin-C classified under custom sub-headings 29362700 of Schedule I of the Customs Tariff Act, 1975, originating in or exported from the subject countries;
- iv. The Authority forwarded a copy of the public notice to the known exporters (whose details were made available by the petitioner) and industry associations and gave them an opportunity to make their views known in writing in accordance with rule 6(2);

- v. The Authority forwarded a copy of the public notice to the known importers of Vitamin-C in India and advised them to make their views known in writing within forty days from the date of the letter;
- vi. Request was made to the Central Board of Excise and Customs (CBEC) to arrange details of imports of Vitamin-C for the past three years, including the period of investigations.
- vii. The Authority provided a copy of the petition to the known exporters and the Embassies/Delegations of the subject countries in accordance with rules 6(3) supra;
- viii. The Authority sent questionnaire, to elicit relevant information, to the known exporter from Russia and European Union (EU) as indicated by the petitioner, as mentioned below in accordance with the Rule 6(4) :-

## **RUSSIA**

- M/s. Belvitaminy, INC, Belgorod
- M/s. Immuno Preparations Plant
- M/s. Joint Stock Company Marbiopharm
- M/s. Schelkovsky Vitamin Plant
- M/s. Joint Stock Company Syvtvita
- NPO Vitamins

## **European Union**

- UK
- M/s. Hoffman-La-Roche, Scotland
- M/s. Laporate Industries Ltd., London
- M/s. Roche Products Ltd., Heanor

## **GERMANY**

- M/s. BAYER AG
  - CULTOR FOOD SCIENCE GmbH
  - BASF Aktiengesellschaft
  - Haffmemn Like article Roche AG
  - Merck KgaA
- ix. The response to the questionnaire was received from BASF Aktiengesellschaft, M/s. Cultor Food Science GmbH, M/s Bayer AG and M/s Merck KgaA, Gerriarty. None of the other exporters responded to the questionnaire.
  - x. The Embassies/Delegations of the subject countries in New Delhi were informed about the initiation of the investigaitons in accordance with rule 6(2)

with a request to advise the exporters/producers from their country to respond to the questionnaire within the prescribed time. A copy of the letter, petition and questionnaire sent to the exporter was also sent to the Embassies/Delegations, along with a list of known exporters/producers;

xi. A questionnaire was sent to the following known importers / wholesale dealers of Vitamin-C in India calling for necessary information in accordance with rule 6(4):

- M/s. Anglo French Drugs Co. (Eastern) Ltd., Bangalore
- M/s. American Remedies, Madras
- M/s. Bharat Laboratory Suppliers, Mumbai
- M/s. Crystal Pharmaceuticals, Calcutta
- M/s. Chemie Pharma, Mumbai
- M/s. C.J. Shah & Company, Mumbai
- M/s. Concepe Pharma Limited, Mumbai
- M/s. Dilip Kumr & Company, Mumbai
- M/s. Eros Pharma, Bangalore
- M/s. Fourts (I) Labs. Pvt. Limited, Madras
- M/s. Glaxo India Ltd., Mumbai
- M/s. Gracure Pharmaceuticals Limited, New Delhi
- M/s. Khrina Pharma, Delhi
- M/s. K. Seventilal & Company, Mumbai
- M/s. Lapx Chemicals Privated Ltd., Mumbai
- M/s. Lalchand Bhimraj, Mumbai
- M/s. Merit Organion Ltd., Mumbai
- M/s. Mercury Labs Limited, Mumbai
- M/s. Medley Labs, Mumbai
- M/s. Medi Pharma Drug House, Mumbai
- M/s. Nemi Pharma Private Ltd., Walkeshwar
- M/s. Puja Enterprises, Mumbai
- M/s. Pardipkumar & Company, Mumbai
- M/s. Pharmaceutical India, Mumbai
- M/s. Recon Limited, Bangalore
- M/s. Remidex Pharma Pvt. Ltd., Bangalore
- M/s. Stride pharma Limited, Mumbai
- M/s. Sunways Private Ltd., Mumbai
- M/s. Taru Enterprises, Mumbai
- M/s. Turakha Brothers, Mumbai
- M/s. TH Tnakore Pharma Labs., Mumbai
- M/s. Tablets India Ltd., Chennai

**The response was, however, filed by the following importers of Vitamin-C: -**

- M/s K. Sevantilal & Co., Mumbai
  - M/s Medi Pharma Drug House, Mumbai
- xii. Additional information regarding injury was sought from the petitioner, which was also received;
- xiii. 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;
- xiv. The Authority conducted spot verification of the domestic industry to the extent considered necessary.
- xv. Cost investigations were also conducted to work out optimum cost of Production and cost to make and sell the subject goods in India on the basis of Generally Accepted Accounting Principles (GAAP) and the information furnished by the petitioner;
- xvi. \* \* \* in this notification represents information furnished by the petitioner on confidential basis and so considered by the Authority under the Rules.
- xvii. Investigation was carried out for the period starting from 1st April, 1998 to 31st March, 1999.

## **B. PETITIONER'S VIEWS**

3. The petitioner has expressed the following views with regard to dumping of Vitamin-C and the injury to domestic industry as a consequence thereof:

**i) Dumping:**

- a. Vitamin-C is being dumped in India by the exporters from Russia and European Union (EU). Further imports from these countries are not only substantial but also benchmark the price of the Vitamin-C in Indian market.
- b. In European Union, Vitamin-C is being imported from United Kingdom and Federal Republic of Germany. Apart from this Vitamin-C is also being imported into India from Italy, France and Denmark. These countries are members of European Union. There are also many other producers of Vitamin-C in European Union. There is no custom boundary in European Union. Thus, imposition of anti-dumping duty cannot be effective without imposing duty against European Union as a whole as other producers may start dumping of Vitamin-C in the Indian market after imposition of anti-dumping duty against United Kingdom and Germany alone. Even circumventing antidumping duty shall not be difficult for the producers from Germany and United Kingdom;

therefore, the petitioner has requested the Designated Authority to initiate investigation against European Union cumulatively.

- c. The producers in United Kingdom and Germany have reduced their price in the Indian market. Producers 'from Russia were not exporting Vitamin-C earlier. The exporters from these countries started exporting Vitamin-C in Indian market recently at dumped prices.
- d. Vitamin-C is shipped in India primarily directly from Russia, United Kingdom and Germany. However, it is coming in small quantity through traders in Hong Kong and Singapore also.
- e. Market share of imports from subject countries is increasing. Share of subject countries in domestic demand was only 5.29% in 1996-97, which increased to 19.07% in 1998-99.

**ii) On injury:**

The petitioner has suffered injury as would be seen from the following: -

- a. Vitamin-C is a drug; the price of which are controlled under Drug Price (Control Order) and the price control has been in force from the year 1970 onwards.
- b. The margin of dumping from each of the subject countries is more than the limits prescribed. Quantum of imports from subject countries and other countries is available with the Designated Authority. Petitioner has claimed cumulative assessment of the effects of imports since the export price from the subject countries directly compete with the price offered by the domestic industry in the Indian market. Petitioner has requested assessment of injury to the domestic industry cumulatively from all the subject countries.
- c. Vitamin-C production of petitioner declined from 468.961 MT in 1996-97 to 287.299 MT in 1998-99.
- d. The capacity utilisation of the domestic industry has declined from 109.26% in 1996-97 to 66.84% in 1998-99. They have also submitted that should the current trend of volume of imports from these countries continue, the production of current year of the domestic industry will be much less than the production in 1998-99. As a result, the domestic industry has no option but to close their production.
- e. Sales volume of domestic industry during 1996-97 was 413.694 MT which was reduced to 234.729 MT during 1998-99, the average monthly sales volume of domestic industry which was 34.47 MT in March, 1997 declined to 19.56MT in 1998-99.
- f. Vitamin-C average domestic realisation of petitioner during 1996-97 was Rs. \* \* \* per Kg. which has reduced to Rs. \* \* \* \* per Kg. during 1998-99, which shows a decline of 14%.

- g. Petitioner has also submitted that there is no significant change in the cost of production of the domestic industry for subject merchandise. Even then the domestic, industry has been forced to reduce the selling prices
- h. Due to tremendous pressure on margin; domestic industry has been forced to take a decision to reduce manpower to the extent bearable.
- i. Petitioner claimed that till 1995-96, they have been making profits. Due to dumping of Vitamin-C from subject countries, they are forced to sell Vitamin-C at below their cost of production resulting in loss of Rs \*\*\*\* per Kg. of Vitamin-C.
- j. Due to tremendous price under cutting by the dumped imports, the domestic industry is forced to sell the subject material at prices below from the DPCO price.

## **C. VIEWS OF EXPORTERS, IMPORTERS AND OTHER INTERESTED PARTIES**

### **4. Views of Exporters:**

- a. The exporters M/s Caltor Food Science GmbH, Germany and M/s Bayer AG, Germany have informed that they have not exported the subject material to India.
- b. M/s .BASF Aktiengesellschaft, Germany & M/s. Merck KGaA, Germany have furnished the information solicited by the Designated Authority. The information made available by the exporters has been examined and considered by the Authority in the findings at appropriate places.

### **5. Views of importers:**

- a. Claim of dumping by domestic industry only on the basis of letter from Indian High Commissioner would be misleading conclusion because the Indian High Commissioner is not competent authority to properly check prevailing domestic prices abroad.
- b. Domestic industry is importing the intermediate 2-Keto Gluconic Acid from China PR to manufacture .Vitamin-C. So it would be advisable to drop such a ridiculous anti-dumping investigation for imposing anti-dumping duty on Vitamin-C originating from major producers all over the world. Instead, the Designated Authority should recommend reduction in duty on intermediate to a level of 10%, which would be a feasible solution to make the Indian Industry survive rather than wrong protection & monopolistic situation. Even after imposing anti-dumping duty if domestic industry will not produce sufficiently, formulation Industry will suffer badly.

## **D. EXAMINATION OF THE ISSUES RAISED**

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

## **E. PRODUCT UNDER CONSIDERATION & SCOPE OF INVESTIGATION**

7. The product considered in the present investigation is Vitamin-C originating M or exported from Russia and the European Union (EU). Vitamin-C is classified, under the Custom-sub heading 2936.27 of the Custom Tariff Act, 1975. The classification is, however, indicative only and in no way binding ors the scope of the present investigation.

## **F. LIKE ARTICLES**

- a. 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 examination.
- b. The petitioner has claimed that the Vitamin-C produced and sold by them and those imported from the subject countries have similar characteristics and should be treated as like articles. They have also claimed that there is no significant different in the technology adopted by petitioner and by the producers in these countries. Though, every manufacturer fine-tunes production process according to available facilities and necessities. None of the other parties. have claimed. any thing with regard to like articles.
- c. In view of the same, the Authority holds that Vitamin-C being produced by the domestic industry and those being imported from the subject countries can be used interchangeably and thus are commercially and technically substitutable and therefore, are like articles within the meaning of the Rules.

## **G. DOMESTIC INDUSTRY**

9. The petition has been filed by M/s. Ambalal Sarabhai Enterprises Ltd. having its Registered Office at Wadi Wadi, Baroda-390007. The petitioner is the sole producer of the subject goods in India. The other company M/s. Jayant Vitamin Ltd. that had created capacities from the manufacture of Vitamin-C in India has since closed it

operations. Therefore, the petitioner accounts for a major proportion of the production of the subject goods in India and fulfils the requisite criteria to represent the domestic industry, as required under the Rules.

## **H. DUMPING**

### **Normal value:**

10. The Authority has examined Normal Value in relation to an article as per the Rules in Section 9A(1)(c).

11. The Authority sent the questionnaire to the exporters from the subject countries in terms of the section cited above. The claims made by the exporters with regards to the Normal value and the export price are as under: -

## **I. Exporters from Russia and EU**

12. The response was received only from M/s BASF and M/s Merck KgaA , Germany who had furnished the details of the exports made to India during the period of investigation and the domestic sales. The claims made by the exporters with regard to the Normal Value and the Export Price are discussed herein under: -

## **J. BASF, Germany**

### **13. Normal Value:**

- i. The exporters furnished the month wise details of the sales of Vitamin C in the domestic market. M/s BASF sold \* \* \* \*Kg of Vitamin-C in the domestic market at a sales value of US\$\*\*\*\*. Thus, the average sales realisation in the domestic market was US\$\*\*\*\* per kg. M/s BASF has also submitted its cost of production of Vitamin-C. It is observed from the information provided by the exporter, the company has sold Vitamin-C in domestic market at a loss i.e. below their cost of production.
- ii. In view of the above, the Authority considers it appropriate to determine normal value on the basis of cost of production, including administrative, selling, general expenses and interest, depreciation and element of profit. Since the normal value is based on cost of production, the Authority has not considered any other adjustments.

### **14. Export Price:**

(K) The exporter has exported \* \* \* \* Kg. of Vitamin-C to India for a total value of US\$ \* \* \* \* . Accordingly, the average export price of Vitamin-C during the period of investigation works out to US\$\*\*\*\*\* per kg. The exporter has claimed adjustments on account of Inland Freight (\*\*\*), Overseas Freight (\*\*\*) and Packing (\*\*\*). Thus the Ex-factory price for export sales to India 'is claimed at \* \* \* \*/Kg.

## **L. M/s Merck KGaA, Germany**

### **Normal Value**

15. The Authority notes that the exporter has not furnished information on transaction-wise details of sales made in the home market. The exporter has not furnished details of its cost of production also. The Authority cannot determine whether the sales made in the home market are above cost of production and are in the ordinary course of trade. The Authority, therefore, considers it appropriate to disregard the information furnished by the exporter for the purpose of preliminary determination. The Authority considers it appropriate to consider normal value in respect of Merck KGaA based on the normal value in respect of other, - co-operative exporter, pending detailed investigations.

### **16. Export Price:**

The exporters M/s. Merck KGaA have exported \*\*\*\*\* Kg. of Vitamin-C to India for a total value of US\$\*\*\*\*\*. Accordingly, the average export price of Vitamin-C during the period of investigation works out to US\$\*\*\*\*\* per kg. The exporter has not disclosed any adjustments from the CIF export price. The Authority considers it appropriate to provide for adjustments from the CIF export price based on information made available by the other co-operating exporter.

### **17. Other Exporters from EU:**

With regard to other exporters from EU, the Authority considers it appropriate to consider the dumping margin based on the highest dumping margin in respect of the co-operating exporters from EU.

### **18. Exporters from Russia**

- a. The Authority provided opportunity to the exporters from Russia to furnish information relevant to the investigations and offer comments, if any, in accordance with the Section cited above, The Authority also wrote to the Embassy of Russia in India. However, none of the exporters from the subject country has responded to the Authority's request for information.

- b. The claim made by the petitioner with regard to the determination of normal value has also not been disputed by any interested party (ies). The Authority has, therefore, proceeded on the basis of Rule 6(8), i.e., best information available
- c. The normal value was determined at the time of initiation of the investigations on the basis of the constructed cost of production of Vitamin-C in Russia as provided by the petitioner. The Authority has considered the same as the basis for determination of the Normal Value after appropriate adjustment.
- d. The export price has been determined on the basis of the information compiled by the DGCIS. The average export price has been adjusted for commission, insurance, inland freight, overseas freight, packing & handling charges.

19. The Rules relating to comparison provides as follows:

"While arriving at margin of dumping, the designated authority shall make a fair comparison between the export price and the normal value. The comparison shall be made at the same level of trade, normally at ex-works level, and in respect of sales made at as nearly possible the same time. Due allowance shall be made in each case, on its merits, for differences which affect price comparability, including differences in conditions and terms of sale, taxation, levels of trade, quantities; physical characteristics, and any other differences which are demonstrated to affect price comparability."

Based on the Normal Value and the Export Price, as discussed above, the dumping margin<sup>3</sup> in respect of individual exporters and the specific countries, is as under: -

S. No.	Country/Exporter	Dumping Margin %
1.	<b>Germany</b> 1. M/s. BASF 2. M/s. Merck KgaA 3. Other Exporters	35.49% 38.77% 38.77%
2.	<b>Russia</b> All Exporters	62.56%

## M. INJURY & CAUSAL LINK:

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

22. 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 utilisation, sales quantum, stock, profitability, net sales realisation, the magnitude and margin of dumping, etc. in accordance with Annexure II (iv) of the rules supra.

23. The various parameters indicating injury to the domestic industry are as follows: -

**(a) Production: -**

The production of the petitioner company has decreased from 303.713 MT in 1997-98 to 283.842 MT in the period of investigation.

**(b) Sales Quantity: -**

The petitioner company sold 234.792 tons of Vitamin-C during the financial year 1998-99 as compare to 269.457 tons in financial year 1997-98.

**(c) Capacity utilisation: -**

The company achieved capacity utilisation of 71 % during the financial year 1997-98, which decreased to 66% during the period of investigation on an annualised basis.

**(d) Sales Realisation: -**

The average sales realisation of the petitioner company during 1997-98 was Rs. \* \* \* \* /Kg. There was a decline in the sales realisation during the period of investigation and the same was at Rs. \*\*\*\*\*/Kg.. However, the sales realisation of the Petitioner Company during the period was below its cost of production.

**(e) Profitability:**

During the financial year ending 31st March, 1998, the losses of the company from the Vitamin-C operation was Rs.530.13 lacs. The losses further increased to Rs.573.50 lacs during the year 1998-99.

24. The Authority, therefore, notes from the above that the imports from the subject countries have been at a price below the selling prices of the domestic industry. Farther, the imports into India have been at, a price lower than the non-injurious price for the domestic industry. As a consequence thereof the petitioner was forced to sell its product at a price significantly below its reasonable selling price resulting in financial losses to the petitioner. The petitioner was also prevented from increasing

the level of capacity utilisation. These parameters collectively and cumulatively indicate that the petitioner teas suffered material injury due to the dumped imports.

## **N. INDIAN INDUSTRY'S INTEREST & OTHER ISSUES**

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

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

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

## **O. LANDED VALUE:**

28. The landed value has been determined on the basis of export price of Vitamin-C from Russia and EU, as detailed above in the para relating to dumping, after adding the prevailing level of customs duties and one percent towards landing and two percent towards handling charges.

## **P. CONCLUSIONS:**

29. After considering the foregoing the Authority concludes that:

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

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

30. It is considered necessary to impose anti dumping duty, provisionally, pending final determination, on all imports of Vitamin-C originating in or exported from Russia and EU pending investigations.

31. The authority considered recommending the amount of Anti-Dumping Duty equal to the margin of dumping or less, which if levied, would remove the injury to domestic industry. The average landed price of the imports, for the purpose, was compared with the non-injurious selling price of the Petitioner Company, determined for the period of investigations. Wherever the difference was less than the dumping margin, a duty lower than the dumping margin is recommended. It is considered necessary to impose antidumping duty, provisionally, pending final determination on all imports of Vitamin-C originating in or exported from Russia and EU pending further investigation.

32 . Accordingly, the Authority recommends that provisional duties be imposed, on all imports of Vitamin-C originating in or exported from Russia and EU. The Anti-Dumping duty shall be the amounts indicated in the table below, to be imposed from the date of Notification to be issued in this regard by the Central Govt. on all the imports of Vitamin-C falling under Chapter 29 of the Customs Tariff, originating in or exported from the countries mentioned below: -

S.No.	Exporter/Country	Amount (Rs. Per kg.)
1.	Russia – All Exporters	150.49
2.	EU-M/s. BASF, Germany	85.35
3.	EU – Other exporters	91.04

33. 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. 9A of the Customs Tariff Act, 1975.

## **Q. FURTHER PROCEDURE:**

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

- a. If 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 the dispatch 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.

**RATHI VINAY JHA...**  
Designated Authority