Department of Commerce
Ministry of Commerce & Industry

Notification

New-Delhi, 6th June.2001

Subject:-: Anti-Dumping investigation concerning imports of Vitamin AD3 500/100 originating in or exported from European Union and Singapore --- Preliminary Findings.

No.16/1/2001-DGAD– Having regard to the Customs Tariff (Amendment) Act 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 given below has been followed with regard to the investigations:

i. The Designated Authority (hereinafter referred to as Authority), under the above Rules, received a written petition from M/s. Nicholas Piramal India Limited, Mumbai, alleging dumping of Vitamin AD3 500/100 originating in or exported from European Union cumulatively and individually from Germany**,** France**,** Israel, People's Republic of China and Singapore.

ii. The preliminary scrutiny of the application revealed certain deficiencies, which were subsequently rectified by the petitioner. The petition was therefore considered as properly documented.

iii. The Authority on the basis of sufficient evidence submitted by the Petitioner decided to initiate investigations against alleged dumped imports of Vitamin AD3 500/100 originating in or exported from European Union and Singapore. The scope of the present investigations had included the EU as a single customs union and distinct economic entity as there is no customs boundary in the EU between various member countries. It was decided to exclude Israel and the People's Republic of China from the scope of these investigations, as imports of the subject goods did not take place during the 'POI' as per the data made available by the Petitioner. The Authority notified the Embassies of the subject countries about the receipt of dumping allegation before proceeding to initiate investigations in accordance with sub rule 5(5) of the Rules;

iv. The Authority issued a Public Notice dated 19th March, 2001, published in the Gazette of India Extraordinary initiating anti-dumping investigations concerning imports of Vitamin AD3 500/100 being cleared under Chapter 23 and 29 of the Customs Tariff Act, 1975, (as it is not specifically mentioned in any one sub-heading of the Customs tariff) originating in or exported from European Union and Singapore. No specific data is available with DGCIS on the import and export of this product, as the same has not been imported under one custom heading. Data is collected from secondary sources (two private data collecting agencies) namely M/s INFORMANT and M/s INTERNATIONAL PUBLISHING HOUSE.

v. The Authority forwarded a copy of the Public Notice to the known exporters (whose details were made available by the Petitioner) and gave them an opportunity to make their views known in writing within forty days from the date of the letter;

vi. The Authority forwarded a copy of the Public Notice to the known importers and the known users of Vitamin AD3 500/100 (whose details were made available by the petitioner) and advised them to make their views known in writing within forty days from the date of the letter;

vii. Request was made to the Central Board of Excise and Customs (CBEC) to arrange details of imports of Vitamin AD3 500/100;

viii. The Authority provided copies of the non-confidential version of the Petition to the known exporters and the Embassies of the subject countries in accordance with Rule 6(3) supra;

ix. The Authority sent a questionnaire, to elicit relevant information to the following known exporters, from the subject countries, in accordance with Rule 6(4);

European Union

1. BASF Aktiengesellschaft,
   CARL – BOSCH – STRABE, 38
   67056, LUDWIGSCHAFEN,
   GERMANY.
2. RHONE POULENCE SA (AVENTIS)
   Quai Paul Doumer, F-92408.
   Courbevoie Cedex,
   France

Singapore

1. BASF South East Asia Pte. Ltd.,
   7, Temasek Boulevard, 35-01, Suntec
   Tower One,Singapore – 038987

2. Aventis Animal Nutrition Asia Pacific Pte. Ltd.,
   1, Loyang Way 4, Singapore – 507028

x. The Embassies of the subject countries were informed about the initiation of the investigation in accordance with Rule 6(2) with a request to advise the exporters/producers from their country / territory to respond to the questionnaire within the prescribed time. A copy of the letter, petition and questionnaire sent to the exporters was also sent to them, along with a list of known exporters/producers.

xi. A questionnaire was sent to the following known importers/users of Vitamin AD3 500/100 in India calling for necessary information in accordance with Rule 6(4);

Importers:

1. 1. M/S. K. Sevantilal & Co.,
   74/83, Mangaldas Road,
   Dwarkadas Bldg., 2nd Floor,
   MUMBAI – 400 002.
2. 2. M/s. Lalchand Bhimraj & Co.,
   11, Nyniappa Naick Street,
   CHENNAI 600 003
3. 3. M/s. Sheetal Pharma,
   B/6, Devalki Nagar,
   Near Shanti Ashram, Eksar Road,
   Boriwali (W), Mumbai – 400 103
4. 4. M/s. Chokhani Pharma Vet,
   Banu Mansion, 3rd Floor, 16,
   Nadirsha Sukhia Street,
   FORT, MUMBAI – 400 001.
5. 5. Mr. C.J. Shah,
   105, Bajaj Bhawan, 10th Floor,
   Nariman Point,
   MUMBAI 400 021
6. 6. M/s. Kantilal Manilal & Co.,
   Apeejay Chambers, (Ist Floor),
   Wallace Street,
   FORT, MUMBAI – 400 001.
7. 7. M/s. Ashish International,
   407, AGH Chambers, 379/81,
   Narsi Natha Street,
   Mumbai- 400 009.

8. 8. M/s. M.S. Pharma,
   3 Qureshi Mahal,
   M M Chotani Roa, Mahim,
   MUMBAI – 400 016
9. 9. M/s. Sunder Chemicals,
   6 – G, Century Plaza, 560-562,
   Anna Salai,
   CHENNAI – 600 018

Users:

1. Poorani Agro Med.
   Centre, Poori Plaza,
   114-B Paramathi Road,
   Namakkal – 637 001
2. Progressive Marketing,
   G-1, Golden Tower , 33,
   Veer Savarkar Nagar Main Road,
   Katiwala Tank,
   Indore – 452 004
3. Paul Distributors,
   SCF II, Sector 10-D,
   Chandigarh – 160 010
4. Sunder Chemicals,
   434, SIDCO Industrial Estate,
   Ambattur,
   Chennai – 600 098
5. Venkateshwari Hatcheries,
   16/2, Milestone Girinagar,
   Pune-Panshet Road,
   Pune – 411 030.
6. Farm Vet,
   251-252 Shantideep Complex,
   Vadgaon Maval,
   Pune – 412 106.

Responses were received from the following:

<u>Exporters</u>

1. M/s BASF Aktiengesellschaft, Germany
2. M/s BASF South East Asia Pte. Ltd., Singapore

3. M/s Aventis Animal Nutrition, France

Importers & Users (including Associations)

1. M/s Sundar Chemicals Private Ltd.
2. M/s Nav Maharashtra Chakan Oil Mills Ltd.
3. M/s Chokhani Pharma Vet
4. M/s Godrej Agrovet Ltd.
5. M/s Sonam International
6. M/s Sheetal Pharma
7. M/s K. Sevantilal & Co.
8. M/s Sevantilal & sons
9. M/s Tetragon Chemie Ltd.
10. Andhra Pradesh Poultry Federation
11. The Compound Livestock Feed Manufacturers Association of India

xii. Clarification/ additional information was sought from the exporters on the basis of their responses. Two of the exporting parties requested for extension of time to submit the responses. Keeping in view the time bound schedule, extension for a limited period, upon good cause shown, was allowed by the Authority**.**

xiii. Additional information regarding injury was sought from the petitioner, which was also received.

xiv. The Authority made available the non-confidential version of the petition and the non-confidential version of views / evidence presented by various interested parties in the form of a public file kept open for inspection by the interested parties.

xv. The Authority sought information from all parties concerned, deemed necessary for the investigation.

xvi. Cost investigations including spot verification of the domestic industry 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.

xvii. *** in this notification represents information furnished by an interested party on confidential basis and so considered by the Authority under the Rules;

xviii. Investigations were carried out for the period starting from 1st April, 2000 to 31st December, 2000 (the Period of investigation also referred to as the POI).

B.2. PETITIONER's VIEWS

The Petitioner has raised the following major issues in their petition: -

2.1 The Petitioner has stated that Vitamin AD3 500/100 is being produced in India by M/s. Nicholas Piramal India Limited, Mumbai, only. Being the sole producer of Vitamin AD3 500/100, the petitioner satisfies the test of ‘standing’ to file the present petition on behalf of the domestic industry.

2.2 Vitamin AD3 500/1000 started coming into the country from late 1996 (November/ December) onwards. The exporters have suddenly dropped their prices very substantially after March 2000. The imports from these countries are, therefore causing material injury to the domestic industry.

2.3 Till 99-00 the decline in selling price was because of the two reasons, one that the substantial amount of imports were done under advance licensing where the importer were not paying any customs duty and hence the prices charged by them were lower and two that after the route of advance licensing was plugged by revising the norms, they started importing the product as prawn feed by paying a nominal duty of 5%. After this route was also plugged the exporters reduced the prices substantially and started dumping the product thereby causing injury to the domestic industry.

2.4 The Petitioner has stated that the imports from the subject countries have increased tremendously. As per the statistics available (as per secondary sources), total imports from European Union which were at 12,660 kg in 1998-99 increased to 19,800 kg in 1999-2000 and further increased to 25,090 kg. during the period of investigation. While, total imports of the subject goods from Singapore increased from 2,000 kg. during 1999-2000 to 11,500 kg. during the period of investigation. The market share of the imported subject goods increased from 37% in 1999-2000 to 47% during the period of investigation. Whereas the share of the Indian producers declined from 63% in 1999-2000 to 53% during the POI showing a significant decline.

2.5 Vitamin AD3 500/100 is highly price sensitive. Even a small difference in prices may result in loss of sales. The domestic industry has been forced in the face of severe price undercutting from imports, to either reduce their selling prices or lose market share.

2.6 There has been a significant decline in the production of the petitioner as it fell from 80,120 kg in 1999-2000 to 55,725 kg during the POI (annualised).

2.7 The capacity utilisation of the petitioner increased in 1999-2000 as compared to the previous year mainly on account of drop in the imports of Vitamin AD3 500/100 due to revision in norms for issue of advanced licences. However, the capacity utilisation witnessed a significant decline during the POI over 1999-2000.

2.8 The sales realisation of the subject goods too declined from Rs. *** p/kg in 1998-99; Rs. *** p/kg in 1999-2000 to Rs. *** p/kg during the POI.

2.9 The petitioner could not reduce its losses, rather they increased inspite of increase in capacity utilisation in 1999-2000. The main reason for this was the corresponding decline in selling price of the imported subject goods, which forced the petitioner to reduce its prices on the one hand and increased cost of Working Capital on the other hand. The decline in Selling Price further accentuated due to the import of dumped subject goods during the POI at unduly low prices.

2.10 The claim of injury to the Petitioner from the dumped imports is based on the following factors:

a. Increase in actual imports from the subject countries.
b. Increase in market share of imports from the subject countries.
c. Sales of the domestic industry would have declined had the domestic industry not reduced the selling price to prevent dumped imports.
d. Due to tremendous pressure on margins, the petitioner may be forced to reduce manpower to the extent possible. It is stated that its manpower strength of *** people is likely to be reduced if no corrective action is taken to redress dumping.
e. The imports from the subject countries have caused significant price erosion, price undercutting, price suppression or price depression in the market leading to significant decline in prices.
f. The losses incurred by the domestic industry in 1998-99 increased during the POI and losses were to the extent of *** Lacs in the period of investigation.

C.3. VIEWS OF EXPORTERS, IMPORTERS AND OTHER INTERESTED PARTIES

3.1 Exporters Views: -

<u>M/s BASF Aktiengesellschaft, Germany</u>

a. It was stated that the non-confidential version of the petition is not meaningful and index figures were sought by the exporter in order to have "a reasonable understanding of the substance of the information submitted".
b. The subject goods are available in 25 kg. cardboard boxes with Polyethylene (PE) inliner or in 25 kg. PE bags as against 1kg packaging of HDPE bottle.
c. Certain mistakes in the petition were pointed out.

d. The market price of Vitamin A (of which AD3 is one type) declined by more than 20% worldwide since 1998.

M/s BASF South East Asia Pte. Ltd., Singapore

M/s BASF South East Asia Pte. Ltd does not produce Vitamin AD3 500/100.

M/s Aventis Animal Nutrition, France

The information / data furnished by the exporter was incomplete, insufficient and inconsistent as per the format prescribed. Despite an opportunity provided to the exporter, no meaningful response was received**.**

3.2 Importers and other interested parties views

(i) M/s Sundar Chemicals Private Ltd.

a. The Petitioner is not the sole manufacture of Vitamin AD3 500/100 as it is also produced by M/s Kerala State Drugs & Pharmaceuticals Ltd.
b. The Petitioner imports the raw material namely Pseudoionone from Roche Basel, Switzerland, and hence the two would be "RELATED MEMBERS".
c. Vitamin D3 used in the manufacture of Vitamin AD3 500/100 by the petitioner is of pharmaceutical grade whereas the European Manufacturers produce the subject goods of FEED GRADE quality resulting in substantial reduction in prices for the European Manufacturers. The price of FEED GRADE Vitamin AD3 500/100 has been lowered internationally.
d. The petitioner is keeping the prices at low levels that goes to show that they are making sufficient profits in the manufacture of Vitamin AD3 500/100.
e. The imposition of anti-dumping duty would give a monopolistic advantage to the petitioner.

(ii) Chokhani Pharma Vet

a. Indian Farmers are likely to be most affected by the imposition of Anti-dumping duty on the subject goods, as it is an essential nutrient for feeding the poultry by breeders and the farmers even in remote areas. The product is used in feed, which is fed to the poultry.
b. The petitioner is trying to create a monopolistic situation just to increase the price and the profit.
c. The petitioner has failed to upgrade the technology, which is going worldwide. Due to the outdated technology the yields are low and the production cost is high.

d. The price for all the Vitamins have been falling worldwide since last three years.
e. The manufacturers/exporters have same pricing for all the South Asian countries. Also the local prices in the place of manufacturer is lower than the prices at which it was exported to India, as such there is no case of dumping of goods.

(iii) <u>Andhra Pradesh Poultry Federation</u>

a. The total requirement of vitamin AD3 in the country would be to the tune of 200 Mts/annum. Whereas, the production capacity of Vitamin AD3 (Feed Grade) by M/s. Nicholas Piramal is about 30 Mts, thus leaving a gap of 270 Mts. This implies M/s. Nicholas Piramal is producing only 15% of the total production of vitamin AD3 in the country and the poultry/diary sector had to depend on imports for balance requirement of 85%.
b. M/s. Nicholas Piramal is not manufacturing Vitamin AD3 fully. They are importing Vit.D3 and blending with Vit.A and making Vitamin AD3.

(iv) <u>The Compound Livestock Feed Manufacturers' Association of India</u>

a. Vitamin AD3 **-** is an essential Nutrient for Animal Feed. Poultry Feed production is about 9 to 9.5 million tonnes. For this the Vitamin AD3 500/100 requirement is 90 to 100 tonnes. In addition, about 10-15 tonnes is required to manufacture cattle and other animal feeds, including pet foods. The petitioner is producing around 55-60 tonnes of feed grade Vitamin AD3 per annum. The balance quantity of about 35-40 tonnes is being met by imports.
b. There were two manufacturers of Vitamin A in the country till recently. However, one of them, namely Kerala State Drugs and Pharmaceuticals Ltd (KSDP), a Government undertaking is mostly irregular in supplies. The only other manufacturer of Vitamin A today is Nicholas Piramal. They supply approximately 35% to 40% of the total requirement of Vitamin AD3 500/100 as Feed Grade product.
c. The domestic manufacturer, Nicholas Piramal is using outdated technology, which is inefficient to produce Vitamin A economically. The intermediate used for the manufacture of Vitamin A is Pseudoionone/Betaionone. The import duty on this intermediate was reduced from 35% to 10% with effect from 28.02.2000. This was meant to reduce its cost of product and thereby its price to consumers**.** Though their cost of production was reduced, the local manufacturers did not reduce their price to the consuming industries, i.e. animal feed industries and poor farmers who mostly suffer losses.
d. As per their Annual report for the year 1999-2000, Government of India granted the petitioner a price increase of 28%. The petitioner has further

claimed in the said Annual report that this has helped in improving his profitability. Apart from the profit which the petitioner was earning at the pre-revision price, with this 28% price hike, the annualised additional profit of Vitamin A Division, including Vitamin AD3, works out to additional Rs.400 lacs. Thus, there is no damage or loss to the petitioner**.**

e. As there is virtually only one manufacturer of Vitamin A in the country, anti-dumping duty on it and / or on Vitamin AD3 will make the Petitioner, a monopoly company.
f. The price trend during the last 2 years is on decline. The international price had come down from US $ 23/Kg to US $ 18/Kg during the last two years. The product is sold by the importers @ around Rs. 1400 per kg. The local product is also sold at the same price.

D. EXAMINATION OF THE ISSUES RAISED

4.1 The foregoing submissions made by the petitioner, exporters, importers and other interested parties, to the extent these are relevant as per Rules and to the extent these have a bearing upon the case, have been examined and considered and have been dealt with at appropriate places in these findings.

E. PRODUCT UNDER INVESTIGATION

5.1 The product under consideration in the present investigation is Vitamin AD3 500/100. It is a light brown coloured fine granular powder. The individual particles contain Vitamin A Acetate and Vitamin D3 microencapsulated in gelatin and sucrose. EMQ is added as an anti oxidant.

Each gram of Vitamin AD3 500/100 contains

Vitamin A 500000 IU
Vitamin D3 100000 IU

5.2 Vitamin AD3 500/100 falls under Chapter 23 of the Custom Tariff Act. However, the product has not been categorised precisely under single dedicated Customs sub-heading, but it has been covered under the category of others preparations of a kind used in animal feeding. Some imports of the Vitamin AD3 500/100 have also being done under Customs sub-heading no. 29.36. Present investigation covers all forms of Vitamin AD3 500/100.

5.3 The classification is, however, indicative only and is in no way binding on the scope of the present investigation.

F. LIKE ARTICLES

6.1 The Vitamin AD3 500/100 is used in animal/poultry/prawn feed to provide required Vitamin Level for better nutrition. The pharmaceutical companies having veterinary divisions use this product to manufacture animal health dry products. On the basis of the ‘facts available’ with the Authority, it is observed that the subject goods i.e. Vitamin AD3 500/100 is of feed grade quality only.

6.2 No argument has been raised disputing that Vitamin AD3 500/100 produced by the domestic industry has characteristics closely resembling the imported Vitamin AD3 500/100 and is substitutable both commercially and technically. Vitamin AD3 500/100 produced by the domestic industry has been treated as like article to the product exported from European Union and Singapore, within the meaning of Rule 2(d).

G. DOMESTIC INDUSTRY

7.1 M/s. Nicholas Piramal India Limited, Mumbai has filed the petition. The petitioner is the only surviving producer of Vitamin AD3 500/100. Being the sole manufacturer, the Petitioner has the ‘standing’ to file the petition as per the Rules.

7.2 M/s Kerala State Drugs & Pharmaceuticals Ltd, the other known manufacturer of the subject goods has stated that their sales of Vitamin AD3 500/100 had been very badly affected because of the dumping of cheaper imports and they were forced to pull out from the open market sales because of the non-remunerative prices and has expressed support to the petition.

H. DUMPING

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

The comparable price in the ordinary course of trade, for the like article when meant for consumption in the exporting country or territory as determined in accordance with the rules made under sub-section (6); or

When there are no sales of the like article in the ordinary course of trade in the domestic market of the exporting country or territory, or when because of the particular market situation or low volume of the sales in the domestic market of the exporting country or territory, such sales do not permit a proper comparison, the Normal value shall be either:comparable representative price of the like article when exported from the exporting country or territory to an appropriate third country as determined in accordance with the rules made under sub-section (6); or the cost of production of the said article in the country of origin along with reasonable addition for administrative, selling and general costs and for profits, as determined in accordance with the rules made under sub-section (6);

Provided that in the case of import of the article from a country other than the country of origin and where the article has been merely transshipped through the country of export or such article is not produced in the country of export or there is no comparable price in the country of export, the Normal value shall be determined with reference to its price in the country of origin.

8.2 The Authority sent questionnaires to the exporters from the subject countries in terms of the section cited above. Though some of the exporters from European Union and Singapore responded to the questionnaire but the same was not deemed sufficient in terms of the format prescribed for this purpose. Despite an opportunity being provided to them to furnish relevant information/ documents in the extended period, the exporters failed to submit the sufficient relevant and necessary information/ documents.

8.3 The Authority notes that the exporter is required to furnish the information as is deemed necessary by it. While the exporter can always advance arguments to support his case, he is required to furnish the information requested by the Authority before advancing any argument.

8.4 M/s BASF, Aktiengesellschaft, Germany did not furnish certain material information on the grounds that the data as provided is sufficient. Besides, certain information was considered as highly confidential and suggested that the same could be made available during the on the spot verification. It is not conceived in law that the exporter has a right to pre-decide as to what information is necessary and what is not for the Authority to arrive at a decision. However, the data furnished was examined and found insufficient, inconsistent and hence, disregarded.

8.5 M/s BSEA, Singapore' data was also examined. Since, M/s BSEA, Singapore did not manufacture the subject goods exported to India and the same were procured from M/s BASF, Germany; as per the laws and the rules, the Normal value is to be determined with reference to its price in the country of origin. Moreover, the response received from M/s BSEA, Singapore revealed certain discrepancies in the documents furnished.

8.6 Therefore, the Authority notes that by not providing the desired information, the exporters have not co-operated in the investigations and has prevented the Authority from analysing the normal value and export price.

8.7 In view of non-submission of information by producers /exporters from European Union and Singapore, the Authority has been constrained to rely upon ‘facts available’ with regard to normal value and export price.

(A) NORMAL VALUE

Based on ‘facts available’: - European Union

8.8 As regards the Normal value of the subject goods from European Union, neither the European Union producers nor the exporters of European Union origin material, to India furnished sufficient information in the prescribed questionnaire. Representatives of the exporters who responded have also not submitted the relevant information in spite of opportunity provided to them.

8.9 The examination of the response by M/s BASF, Aktiengesellschaft, Germany shows that no direct sales to India were effected by them during the period of Investigation**.** All exports to India were handled via BASF South East Asia (BSEA), Singapore during the POI. However, it was stated that the data might vary from the purchasing data given by BSEA due to 6 weeks transit period of the goods**.** Besides, necessary supporting documents/evidence as per the exporters questionnaire were not furnished. Therefore, additional information / clarification was sought from the exporter. However, the desired information was not made available to the Authority.

8.10 M/s Aventis Animal Nutrition, France also did not respond to the questionnaire in the prescribed format despite an opportunity provided to them.

8.11 The Petitioner has stated that they have not been able to get any reasonable and authentic evidences with regard to domestic prices of Vitamin AD3 500/100 or price list of exporters either for selling in their domestic market or for export to other countries other than India. The Petitioner has requested that the normal value may be based on constructed cost.

8. 12 Authority notes that some exporters of European Union/Singapore responded to the questionnaire with insufficient/unreliable information and documents thereby making it impossible to arrive at Normal Value on the basis of their data.

8.13 Under the circumstances, Normal value under the rules is determined on the basis of ‘facts available’. Therefore, as per the information provided by the petitioner on the basis of the estimated cost of production of the subject goods after being normated has been taken as the basis for working out the Normal value of the product which works out as US $ *** per Kg in case of European Union.

SINGAPORE

8.14 M/s BASF South East Asia Pte. Ltd stated that they do not produce Vitamin AD3 500/100. All exports of the subject goods to India were handled on behalf of M/s. BASF Aktiengesellschaft, Germany during the period of investigation. However, it was stated that the data might vary from the purchasing data given by M/s BSEA, Singapore due to 6 weeks transit period of the goods. Besides, necessary supporting documents/evidence as per the exporters questionnaire were not furnished. Therefore, additional information / clarification was sought from the exporter. The data furnished was examined and found to be inconsistent in certain respects and hence disregarded. The other known exporter from Singapore did not respond to the questionnaire.

8.15 Under the circumstances, Normal value under the rules is determined on the basis of ‘facts available’. Therefore, as per the information provided by the petitioner on the basis of the estimated cost of production of the subject goods after being normated has been taken as the basis for working out the Normal value of the product which works out as US $ *** per Kg in case of Singapore.

(B) EXPORT PRICE

8.16 The Petitioner has stated that Vitamin AD3 500/100 was imported under different headings of the Customs Tariff Act. The subject goods have not been cateogrised precisely under single dedicated Customs sub-heading, but it has been covered under the category of others preparations of a kind used in animal feeding. Some imports of the subject goods are also being done under Custom sub-heading No. 29.36.

8.17 No specific data was made available by DGCI&S, as there is no specific ITC (HS) Code for the subject goods. Therefore, the volume and value of the subject goods imported into India from the subject countries has been compiled on the basis of ‘facts available’, i.e. from the data made available by the Petitioner (secondary sources; namely, M/s. INFORMANT and M/s. INTERNATIONAL PUBLISHING HOUSE) and on the basis of information provided by some of the importers and exporters.

8.18 The Petitioner has claimed adjustments towards ocean freight, marine insurance, commission, inland transportation and loading, unloading and port expenses. However, the Authority has accepted the adjustments on the basis of evidence/documents produced to that effect.

European Union

M/s BASF, Aktiengesellschaft, Germany

8.19 The weighted average cif price per kg. of exports of the subject goods effected during the period of investigation by M/s BASF, Aktiengesellschaft, Germany through M/s BSEA, Singapore works out as US $ ***. The weighted average ex-works export price has been determined after taking 2.54% as ocean freight, 0.18% as marine insurance charges, 5% as commission amount, 4.37% as inland transportation and 4.54% as loading, unloading and port expenses. After adjustments on these accounts for US $ *** per kg. against the total quantity of exports of 15000 kg; the weighted average ex-works export price works out to US $ *** per kg.

All other exporters

8.20 The weighted average cif price per kg. of exports of the subject goods effected during the period of investigation by all other exporters of the European Union works out as US $ ***. The weighted average ex-works export price has been determined after taking 1.08% as ocean freight, 0.18% as marine insurance charges, 5% as commission amount, 2.54% as inland transportation and 1.8% as loading, unloading and port expenses. After adjustments on these accounts for US $*** per kg. against the total quantity of exports of 25090 kg; the weighted average ex-works export price works out to US $ *** per kg.

SINGAPORE

8.21 The weighted average cif price per kg. of exports of the subject goods effected during the period of investigation works out as US $ ***. The weighted average ex-works export price has been determined after taking 0.69% as ocean freight, 0.18% as marine insurance charges, 5% as commission amount, 1.06% as inland transportation and 2.28% as loading, unloading and port expenses. After adjustments on these accounts for US $ *** per kg. against the total quantity of exports of 16500 kg; the weighted average ex-works export price works out to US $ *** per kg.

DUMPING MARGIN

8.22 The Rule relating to fair comparison provides comparison of Normal Value and Export Price as follows:

"While arriving at margin of dumping Designated Authority shall make a fair comparison between the Export Price and the Normal Value. A comparison shall be made at the same level of trade, normally at ex-works level and in respect of sales made and as nearly as 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 and sales, taxation, levels of trade, quantities, physical characteristics, and any other differences which are demonstrated to affect price comparability".

A. European Union

M/s BASF, Aktiengesellschaft, Germany

8.23 Considering the ex-works normal value at US $ *** per kg and the ex-works export price at US $ *******per kg after adjustments on account of ocean freight (2.54%), marine insurance charges (0.18%), commission (5%), inland transportation (4.37%) and loading, unloading and port expenses (4.54%); the dumping margin comes to US $ *** per kg (which is 126 % of export price**).**

All other exporters

8.24 Considering the ex-works normal value at US $ *** per kg and the ex-works export price at US $ ******* kg after adjustments on account of ocean freight (1.08%), marine insurance charges (0.18%), commission (5%), inland transportation (2.54%) and loading, unloading and port expenses (1.80 %); the dumping margin comes to US $*** per kg (which is 105 % of export price**).**

B. Singapore

8.25 Considering the ex-works normal value at US $ *** per kg and the ex-works export price at US $ *** per kg after adjustments on account of ocean freight (0.69%), marine insurance charges (0.18%), commission (5%), inland transportation (1.06%) and loading, unloading and port expenses (2.28%); the dumping margin comes to US $*** per kg (which is 140 % of export price**).**

Comparing the Normal value and Export price, the dumping margin works out as under: -

US $ per Kg.	European Union (M/s BASF, Aktiengesellschaft, Germany)	European Union (All other exporters)	Singapore (All exporters)
Normal Value	***	***	***
Export Price	***	***	***
Dumping Margin %	**126%**	**105%**	**140%**

8.26 For the purpose of fair comparison between Normal Value and Export Price the Authority took into account the information furnished by the Petitioner and other information available with the Authority. The Normal Value and Export Prices determined as detailed above are at ex-works level.

I. INJURY

9.1 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.

9.2 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 investigation, 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.

9.3 The Authority notes that the margin of dumping and quantum of imports from European Union and Singapore are more than the limits prescribed above. The cumulative assessment of the effect of imports of Vitamin AD3 500/100 is appropriate in light of the conditions of competition between the imported subject goods and the conditions of competition between the imported subject goods and the like domestic article.

9.4 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, 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

The total imports of Vitamin AD3 500/100 were 38.7 Mt in 1998-99, 46 Mt in 1999-2000 and 57.09 Mt during 1st April, 2000 – 31st December, 2000, the period of investigation. (as available from the statistics from secondary sources and data made available by some of the importers and exporters). Thus, the increase was18.9% in 1999-2000 over 1998-99 and 65.5%(annualised) in POI over 1999-2000. The increase was 96.7% (annualised) in POI over 1998-99. Thus, the quantum of imports has gone up significantly during the period of investigation.

The quantum of imports from European Union was 12.66 Mt in 1998-99, 19.80 Mt in 1999-2000 and 40.09 Mt during the POI (as available from the statistics from secondary sources and data made available by some of the importers and exporters) respectively. Imports from European Union increased by 56.4 % in 1999-2000 over1998-99 and increased by 170 % (annualised) in POI over 1999-2000. The increase was 322% (annualised) in POI over 1998-99. Thus, the quantum of imports from European Union has gone up significantly during the period of investigation.

The quantum of imports from Singapore was 2 Mt in 1999-2000 and 16.5 Mt during the POI (as available from the statistics from secondary sources and data made available by some of the importers and exporters) respectively. The imports from Singapore increased by 1000% (annualised) in the POI over 1999-2000. Thus, the quantum of imports from Singapore has gone up significantly during the period of investigation.

The quantum of imports from other countries was 10 Mt in 1998-99, 1 Mt in 1999-2000 and below the de-minimis threshold limit during the POI (as available from the statistics from secondary sources) respectively.

(b) Production, Capacity Utilisation and Impact on Inventories

It is observed that the production capacity, production and capacity utilisation of the petitioner company (viz., M/s. Nicholas Piramal India Limited, Mumbai was as under:

Year	Capacity (MT) (per annum)	Production (MT)	Capacity Utilisation
1998-99	132	49.04	37.15%
1999-00	132	80.12	60.70%
2000	132	41.79	42.21%
(POI)			(9 mths)

The capacity utilisation of the petitioner was 37.15% in1998-99, 60.70% in 1999-00 and during the POI, it was 42.21**%.** It is seen that the capacity utilisation of the

Petitioner Company has come down significantly during the period of investigation. In order to keep the inventories to the minimum, the petitioner has been forced to sell the quantity produced even at low sales realisation**.**

(c) Sales and Market Share

It is observed that the total consumption of Vitamin AD3 500/100 in the Indian Market was 92 Mt in 1998-99, 126 Mt in 1999-2000 and 98 Mt (as per the data made available sources and some of the exporters & importers) during the nine months of the POI respectively. The share of imports in total consumption was 42% in 1998-99, 37% in 1999-2000 and 58% during the POI respectively**.** The share of the Petitioner Company was 58%, 63% and 42% respectively during 1998-99,1999-2000 and POI respectively. Thus, the share of imports has risen in the total consumption whereas the share of Indian industry has declined.

(d) Price undercutting and price depression

The petitioner company has stated that imports from the subject countries have significantly depressed the prices of the Vitamin AD3 500/100 being sold by the domestic producers. The petitioner has been forced to offer discounts and decrease its list price in view of the fact of dumping and the threat thereof posed by the dumped imports. Therefore, the dumped imports from the subject countries have caused significant price undercutting and caused losses to the petitioner. The average realisation per kg of Vitamin AD3 500/100 in 1998-99 was Rs ***/- per kg, which dropped to Rs. ***/- per kg in 1999-2000 and to Rs ***/- per kg, during the POI.

(e) Profitability & impact on employment.

It is also shown that the losses of the petitioner companies were Rs. ***Lacs during 1998-99. In 1999-2000, the petitioner company losses increased to Rs. ***Lacs. The Losses further increased to Rs. ***Lacs for nine months period of the POI. Sale of Vitamin AD3 500/100 has resulted in loss of profit to the petitioners. The selling prices in 1998-99 were Rs. ***per kg; in 1999-2000 it was Rs. *** per kg, and in the POI (Apr'2000-Dec'2000) Rs. ***per kg respectively.

The petitioner has not yet laid off employees but it has been mentioned that they may be forced to lay off employees if corrective measures to check dumping are not taken. But it is observed that the Petitioner Company is a multi-product Company and involved in production of various products. Therefore, no significant change in employment level of the domestic industry due to poor operating levels is observed.

(f) Impact on Cash Flow & Growth

It has been claimed by the Petitioner that constant reduction in the prices of Vitamin AD3 500/100 in the domestic Market on account of dumped imports has affected the profitability of the petitioner consequently adversely affecting the cash flow of the company.

However, sufficient data was not available before the Authority to assess any significant impact on the factors such as actual and potential negative effects on cash flow, growth and ability to raise capital investments.

J. CONCLUSION ON INJURY

10.1 . In view of the foregoing it is observed that: -

a. the quantum of imports from European Union and Singapore has increased in absolute terms;
b. the market share of the Petitioner Company has gone down;
c. the domestic industry has been forced to sell at reduced prices that have resulted in losses or low returns on investments;
d. imports are significantly undercutting the prices of the domestic industry;
e. the Production of the Petitioner Company has gone down;
f. there has been significant decline in the utilisation of capacity of the Petitioner Company.
g. there has been significant decline in the Sales volume of the Petitioner Company

The Authority therefore concludes that the domestic industry has suffered material injury.

K. CAUSAL LINK

11.1 In establishing that the material injury to the domestic industry has been caused by the imports from the subject countries, the Authority holds that the increase in market share of imports from European Union and Singapore resulted in decline in the market share of the petitioner. These imports significantly undercut the prices of the domestic product forcing the domestic industry to sell at unremunerative prices. Resultantly, the domestic industry incurred losses**.** The material injury to the domestic industry was, therefore, caused by the dumped imports from the subject countries.

11.2 On the basis of the ‘facts available’, it is observed that the imports of the subject goods from "other countries " are below the de-minimis level during the period of investigation.

11.3 Contraction of demand is not apparent and no technological development in the industry or any other such factor which could have resulted in injury to the domestic industry has been noticed.

L. INDIAN INDUSTRY'S INTEREST & OTHER ISSUES

12.1 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.

12.2 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 in 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 domestic industry. 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 Vitamin AD3 500/100. 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.

12.3 To ascertain the extent of anti-dumping duty necessary to remove the injury to the domestic industry, the Authority relied upon reasonable selling price of Vitamin AD3 500/100 in India for the domestic industry, by considering the optimum cost of production at optimum level of capacity utilisation for the domestic industry.

12.4 The Authority forwarded the 'non-confidential version" of the petition to the exporters and also forwarded the "index figures" as procured from the Petitioner to enable them to have a reasonable understanding of the petition filed.

12.5 The issue regarding Petitioner's monopoly position is also irrelevant in the present proceedings as the right of a single producer cannot be restricted under the Anti-dumping Rules so long as the Petitioner satisfies the criteria of 'Domestic Industry'. Even though the Petitioner has a virtual monopoly in India, the duty recommended is sufficient to merely prevent the injury and not to give him an edge.

12.6 It has been noted that the petitioner produces Vitamin AD3 500/100 of feed grade only and the entire petition relates to the same.

12.7 As regards the farmers interests / interests of the user industry is concerned**,** it has been noted that Vitamin AD3 500/100 constitutes approximately only 0.37% of the total cost of the feed.

12.8 It has been alleged that the manufacturers/exporters have same pricing for all the South Asian countries. However, the Authority notes that the export prices to third countries may also be dumped and may, therefore, be not reliable.

12.9 Since the fair selling price has been worked out on normative basis, injury to the domestic industry on account of other factors, if any, is nullified.

12.10 Mere existence of factual discrepancies in an application does not debar an applicant from seeking redressal of his grievance in accordance with the law, so long as the applicant has been able to demonstrate a prima-facie case.

12.11 As regards the difference in packing of the subject goods is concerned, the same has been taken care of by comparing the cost of the subject goods in 25-Kg packing only.

M. LANDED VALUE

13. The landed value of imports is determined on the basis of export price of Vitamin AD3 500/100, determined as detailed above in the para relating to dumping, after adding the prevailing level of customs duties and one per cent landing charges**.**

N. CONCLUSIONS

14.1. It is seen, after considering the foregoing, that:

a. Vitamin AD3 500/100 described under Para 5 originating in or exported from European Union and Singapore has been exported to India below Normal value, resulting in dumping;
b. the Indian industry has suffered material injury;
c. injury has been caused by imports from the subject countries.

14.2. It is considered necessary to impose anti-dumping duty, provisionally, pending final determination, on all imports of Vitamin AD3 500/100 originating in or exported from the subject countries, pending investigations.

14.3 It is decided to recommend the amount of anti-dumping duty equal to the margin of dumping or less, which if levied, would remove the injury to the domestic industry (clause (d) Rule 4 supra as amended). The landed price of imports was also compared with the fair selling price of the domestic industry, determined for the period of investigation. Accordingly, it is proposed that provisional anti-dumping duties be imposed, from the date of notification to be issued in this regard by the Central Government, on Vitamin AD3 500/100 originating in or exported from European Union and Singapore being cleared under Chapter 23 and Chapter 29 of the Customs Tariff Act, pending final determination. The anti-dumping duty shall be the difference between the amount mentioned in Col.3 below and the landed value of imports of the subject goods in US $ per KG.

Country	Name of the Producers/Exporters	(US $/ Kg.)
1.	2.	3.
European Union	M/s BASF, Aktiengesellschaft, Germany	41.13
European Union	All Exporters	41.13
Singapore	All Exporters	41.13

14.4. 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 Section 3, 3A, 8B, 9 and 9A of the Customs Tariff Act, 1975.

O. FURTHER PROCEDURE

15.1 The following procedure would be followed subsequent to notifying the preliminary findings:

15.2 The Authority invites comments on these findings from all interested parties and the same would be considered in the final findings;

15.3 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 of the dispatch of this notification. Any other interested party may also make known its views within forty days from the date of publication of these findings.

15.4 The Authority would provide opportunity to all interested parties for oral submissions;

15.5 The Authority would disclose essential facts before announcing the final findings.

(L.V. Saptharishi)
DESIGNATED AUTHORITY