

## **Extent of Protection via Antidumping Law: A case study of the Vitamin C industry in India.**

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Abstract

We look at the trade effects of antidumping (AD) policy in the Vitamin C industry in India. We find that AD is very effective in restricting imports from the countries that are named to be dumping. However, we also find a strong evidence of trade diversion: imports are diverted away from the named source country to the non-named countries. More over, after the imposition of AD duties on the named countries there is an influx of new entrants. Countries that were not supplying Vitamin C to India earlier now become an important source of imports. Our study highlights how the entry of alternate foreign suppliers (new entrants) significantly mitigates the restrictive effect of AD Law. It has been suggested in the literature (Prusa (1996)) that multiple petition filing or using the cumulation amendment is one way to curb import diversion. However, our study shows that the entry of new foreign suppliers could lend such a solution ineffective, as these foreign suppliers enter the market only after the petition has been filed. This case study also highlights the possibility of abuse of the AD law by the domestic industry. One way to mitigate abuse is for national authorities to incorporate the views of the importing industry in its decision making process.

## 1. Introduction

Since the early 1990's India has followed a liberal trade policy and opened its economy to foreign trade. Through an easing of licensing (import and industrial), quantity controls, and a reduction in tariffs the country is gradually moving towards free trade.<sup>4</sup> This has caused an increase in imports in almost all sectors. Domestic producers in several sectors are losing their markets to cheaper imports, and are finding it hard to withstand the competition. Despite a nationwide desire to liberalize trade, the demand for protection from domestic industries remains as strong as ever.

A number of industries seeking relief from rising imports turn to the antidumping (AD) legislation. This legislation, designed to protect domestic industries from dumped imports,<sup>5</sup> is being increasingly used since India's trade liberalization. In 2002 the number of antidumping cases initiated was 81. This was almost 13 times as much as the 6 cases initiated in 1995.<sup>6</sup> This growth has been so significant that, amongst the members of the World Trade Organization (WTO), India is now a major user of anti-dumping measures. In 2003, India ranked as the second largest user of antidumping actions after the US.<sup>7</sup> India had 210 antidumping measures in force as compared to 278 by the US.

Given that AD measures are used so intensively the natural reaction is to believe that AD duties provide significant protection to the domestic industry in India. However, if there is significant trade diversion these duties may not provide benefits to domestic producers. In such a case, AD duties may actually be transferring welfare from domestic consumers to new foreign exporters. This is potentially a significant issue. Higher prices induced by AD duties—penalize

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<sup>4</sup> The average level of tariff in the non-agricultural sector has fallen from around 113% in the early 90's to roughly 33% in 2001 (Please see Panagariya (2004) for a detailed discussion of Trade reforms in India).

<sup>5</sup> Dumping is defined as selling a product at a price lower than the price for which it is sold in the home market. In absence of comparable home market sales, sales in a surrogate 'third country' may be used. In the absence of sufficient home market and third country sales a 'constructed value,' which uses a cost-plus-profit approach to arrive at normal value can be used.

<sup>6</sup> Source WTO statistics on AD cases from the reporting countries ([www.wto.org](http://www.wto.org))

<sup>7</sup> WTO Annual Report 2004

other industries that use these protected goods, hurt final consumers, and reduce economic growth overall. If the beneficiary of these AD duties is not the domestic industry, but exporters to whom trade is diverted, countries might want to reassess the use of their AD law.

We present an illustration of trade diversion by studying the Vitamin C Industry in India. One of the main questions addressed is whether the imposition of AD duties actually protects the Indian industry from imports. Does the domestic industry reap the benefits that result from these duties, or are imports diverted to other non restricted countries, which then benefit instead? The importance of this study can hardly be overstated, given the number of sectors hurt, usually considerably, by AD measures, and as well the large number of cases initiated by India.

We look at the effect of an antidumping action on the level of imports not just from the countries named to be dumping but also from the non-named countries, to analyze the extent of protection brought about by an antidumping action. We show that though imposition of antidumping duty effectively restricts imports from countries that are found to be dumping, entry of new foreign exporters diminishes the benefits to the domestic Industry. For example AD duties on imports coming from Russia and EU reduced the level of imports by an astounding 50 percent. However, as imports from these alleged countries declined, the market was flooded with new entrants<sup>8</sup>, which consequentially captured a larger share of the domestic market. Inevitably these new entrants were alleged to be dumping by the domestic producer in the following years, and were restricted with antidumping duties, only to be followed by more new entrants.

Trade diversion to new entrants is also a possible explanation for the large number of AD cases in India. Consider a successful AD petition which restricts imports from the original exporters, but engenders the growth of exports from new countries. In such a case, a petition to reduce imports from these new entrants is likely to follow. Thus while the number of products, and the total volume of imports protected might not be relatively large, trade diversion could cause the

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<sup>8</sup> Countries which hadn't imported to India in, at least, the last 3 years and never had more than 1% of the market share of the vitamin C industry.

number of AD cases in India to be markedly higher than other member countries of the WTO that do not experience trade diversion.

Our case study is important for three reasons. Firstly, it demonstrates how domestic producers might not benefit from restricting trade through AD duties. When there is trade diversion, the beneficiaries are often foreign rather than domestic producers. Secondly, it provides a plausible reason for the large number of AD cases in India. Thirdly, it highlights the possible misuse of the AD legislation. We demonstrate how the same petitioner keeps submitting new AD petitions against new countries as they become significant exporters. Since, the petitioner is the sole producer of Vitamin-C, restricting imports enhances the monopolistic structure in India. By presenting the views of the ‘import competing’ industry, the case points to the welfare implications and the anti competitive nature of AD. The pattern of petitioning, and subsequent imposition of AD duties in this case highlight the fact that the AD legislation can be used primarily as an instrument to restrict all trade, whether it involves dumping, or not.

There has been earlier work that looks at the trade effect of AD protection for other countries. Prusa (1997) looks at the trade effects of US antidumping actions and concludes that antidumping duties restrict trade from the countries ‘named’<sup>9</sup> to be dumping. He also finds there to be a higher trade diversion to the ‘non-named’<sup>10</sup> countries the higher the antidumping duty. Vandebussche et al (1999), in contrast do not find trade diversion effects to be significant in the case of European Union. However, they also find that AD duties in EU restrict imports from the named countries. They conclude that the antidumping action in EU effectively restricts imports and benefits the domestic industry. Overall there hasn’t been a consensus regarding the trade restrictive effect of the AD law. The restrictive nature of AD law differs across countries. This paper is suggestive of the protectionist nature of AD law for the case of India.

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<sup>9</sup> By *named* countries we imply those countries that were named to be dumping in the AD petitions filed by the domestic producers. All the petitions we consider were successful and resulted in AD duties.

<sup>10</sup> By *non-named* countries we mean those that were not named in the AD petition, and hence did not have any AD duties imposed on their exports.

The paper is structured as follows. In Section 2 we briefly discuss the background for this paper; Antidumping Procedure in India, Case history of Vitamin C detailing the various AD petitions filed. In section 3 we look at the extent of protection to the domestic industry by analyzing trade effects of the various AD duties imposed in the industry. In section 5 we present the views of the industries involved in the case. In section 6 we present our conclusions.

## **2. Background**

### *a. Antidumping Procedure in India*

Although, the legislation on antidumping has been in place since 1985, the first case of antidumping was initiated only in 1992. Currently, the Directorate General of Anti-dumping and Allied Duties (DGAD),<sup>11</sup> headed by a Designated Authority (DA),<sup>12</sup> handles the investigation of all AD cases. This investigation procedure begins with the filing of an application by the domestic industry for alleged dumping of a product in India. There is a set performa for the application; accompanied by documents, giving evidence of dumping, injury where applicable, and explaining the causal link between such dumped exports and the alleged injury. It is mandatory for the petitioners (domestic industry) to account for at least 25% of the total production of the like product produced by the domestic industry.

This is followed by preliminary screening; where, DGAD authenticates the accuracy and the validity of the documents and arguments put forth by the petitioners. After satisfying itself with the adequacy of evidence, the DA informs the Embassies / Foreign Offices of the concerned countries in India about its intention to initiate investigations into the alleged dumping of the like product from their country. The DA communicates a period of 40 days for the concerned parties (domestic industry and foreign company) to make their representation.

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<sup>11</sup> The DGAD was set up in 1998. It is a directorate under the Ministry of Commerce and Industry. The setting up of the DGAD also involved a streamlining of the AD investigation procedure. This reduced the time for preliminary findings from eight months to three months. As compared to the time taken by India to issue the preliminary findings, US takes four to four-and-a-half months, EU takes nine months and Australia and New Zealand five to six months.

<sup>12</sup> Usually a senior official of the rank of an Additional Secretary to the Government of India.

If information received from all the interested parties, provide sufficient evidence to prove dumping and injury, the DA may recommend provisional duty to be imposed on the foreign firm, so that the domestic industry need not continue to suffer due to trade distortion during the course of investigation. The Ministry of Finance, on the basis of these preliminary findings may impose duty as per the recommendation of the DA. According to WTO agreement on antidumping, the DA cannot issue its preliminary findings before the expiry of 60 days from the date of initiation of investigation. The provisional duties remain in force for a period not exceeding six months.

After the preliminary findings a detailed inquiry is conducted by the DGAD. During this stage, the parties can seek an oral hearing with the DA. After this detailed inquiry, which takes 8 to 10 months from the release of Preliminary Findings, the DA forwards the final recommendation to the Ministry of Commerce and Industry. In case, the duties are to be levied, the recommendations are forwarded to the ministry of finance. India, normally adopts fixed duties, but of late it has imposed variable duties, where a reference price is fixed for the import of the product. In case the product is imported at a price equal to or above the reference price, no duty is levied, but in the event of the import price being below the reference price, antidumping duty is levied taking in to account the customs duty. The antidumping duty once imposed normally remains in force for a period of five years. After which a sunset review is carried out to reassess the case. In case the decision is affirmative duties remain on the subjected product.

#### ***b. Antidumping Petitions***

The Vitamin C industry has overall filed 5 petitions against 8 Countries in the past 9 years<sup>13</sup>. Table 1 lists cases filed by the domestic producer. The first case was filed in 1997. In 1999 the case was against imports from 8 countries in EU and against Russia. The case in 2002 was against imports from USA, Canada and Taiwan. All these petitions for AD duties resulted in affirmative actions,

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<sup>13</sup> EU is considered to be one country. If you consider all the EU countries separately then cases against 15 countries were filed (as there were 8 European countries that were exporting vitamin C to India).

and duties were imposed on imports coming in from all these countries, and these duties are still in place against the named countries. In 2004, case has been filed against imports from UAE.

**Table 1: Background of Antidumping Petitions Filed**

<b>Importing Country</b>	<b>Initiation</b>	<b>Prelim decision</b>	<b>Final decision</b>
Japan	26/05/1997	16/04/98	24/07/98
China PR	26/05/1997	16/04/98	24/07/98
Russia	10/08/1999	16/03/00	15/09/00
European Union	10/08/1999	16/03/00	15/09/00
Japan*		13/06/00	13/06/00
China PR*		13/06/00	13/06/00
USA	14/08/2002	27/12/02	10/07/03
Canada	14/08/2002	27/12/02	10/07/03
Taiwan	14/08/2002	27/12/02	not available

\* Cases were reviewed at the request of domestic petitioner

### 3. Extent of Protection

#### *a. Trade Restrictive Effects*

AD duties have been extremely successful in protecting the domestic industry from imports from named countries. As shown in table 2, after AD duties were imposed on imports from China and Japan in 1998 the quantity of imports fell by an average amount of 36%.

**Table 2: Imports from the Named Countries**

<b>Quantity in thousands</b>	1996	1997	1998	1999	2000	2001	2002
Canada	0.22	0	0	7	27.4	152.07	80.32
China	533.09	419	405.54	227.73	290.67	130.97	135.08
Japan	124.06	246.7	312.7	239.7	49.5	1.7	0
Russia	0	0	30	14	0	0	0
USA	0	4.61	0	134.76	51.33	230.51	674.23
All EU countries	56.8	227.78	265.1	631.6	43.01	16.84	0.35
Rest	143.10	268.71	140.66	479.86	21.56	91.24	68.63
<b>Total</b>	<b>809.47</b>	<b>1,045.05</b>	<b>1,056.80</b>	<b>1,282.00</b>	<b>480.44</b>	<b>608.40</b>	<b>995.00</b>



After the midterm review in 2000, when extra duties were imposed on imports coming in from these countries, the imports fell further by 65%.<sup>14</sup> Decline in imports from EU countries was a shocking 93% after preliminary duties were imposed in 2000.

Table 3 reports the Indian market share of imports from the various countries alleged to be dumping and the market share of the domestic petitioner, who was the sole producer of Vitamin C at the time of these petitions. Table 3 reveals the same story as above, the market share of imports from the named countries declined drastically after the imposition of AD duties. China and Japan's market share of the Indian market fell from 54% to 31% and further to 13% after extra duties were imposed. Russia and EU' market share had increased over the years from 4% to 42%, which was drastically reduced back to 4% in 2000 as duties were imposed. AD duties in all these cases significantly reduced imports from named countries, as well as, weakened their hold on the India market.

**Table 3: Market Share**

Market Share	1996	1997	1998	1999	2000	2001	2002
<b>Market Share of the Petitioner</b>	39%	21%	20%	16%	53%	42%	31%
China and Japan	52%	51%	54%	31%	<b>33%</b>	<b>13%</b>	<b>10%</b>
Russia and EU	4%	17%	22%	42%	<b>4%</b>	<b>2%</b>	<b>0%</b>
USA and Canada	0%	0%	0%	9%	8%	37%	52%
UAE	0	0%	0%	0%	0%	0%	1%
<b>Imports from other countries</b>	4%	10%	3%	2%	2%	7%	6%
Countries attracting duty			54%	31%	37%	15%	14%
Countries named in the initiated cases	-	51%	-	73%	-	-	52%
Number of Countries attracting Duty	-	-	2	-	4*	-	-

\* Considering European Union as one Country. However, Imports from 8 EU countries were effected 10th July 2003 duties against US and Canada were finalized, with 7 Countries (including EU) attracting Duties; In 2004 case is initiated against UAE; IN 2003 the number of countries attracting duty had increase to 7 (assuming EU is one country)

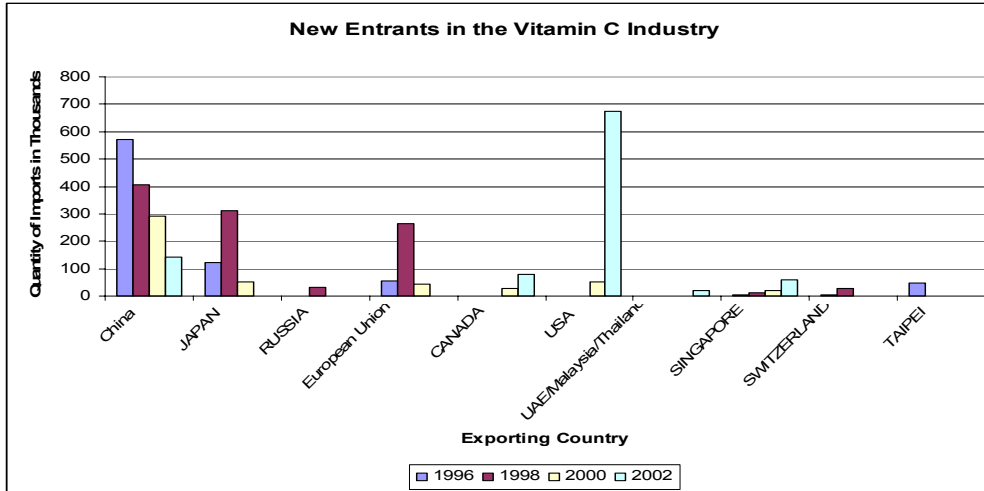
However, in order to conclude weather such protectionist measures were successful in minimizing overall import competition faced by the domestic producer we also need to consider the imports from other countries which did not face AD duties, the non-named countries.

<sup>14</sup> Imports from Japan started declining in 2000 as soon as the duties were imposed and for china the sharp decline occurred in 2001.

**b. New Entrants**

Figure 1 give a cross sectional view of the import market, and reports the import sources in the given year. In 1996 China was the biggest exporter to India followed by Japan.

**Figure 1**



After duties were imposed on imports from these two countries there was a flush of new entrants (Belgium, Russia, Netherlands and USA).

In 2000, extra duties were imposed on imports coming in from China and Japan, and imports from Russia and EU were also restricted. Level of imports declined from these countries but this was followed by a new group of entrants in 2002 (UAE, Malaysia, and Thailand entered the Indian Vitamin C market). The level of imports from these new entrants increased significantly, and these new entrants became leading exporters to India. Imports from UAE became quite significant in 2003 and consequently UAE was alleged to be dumping and had AD petition filed against its imports in 2004.

**c. Trade Diversion**

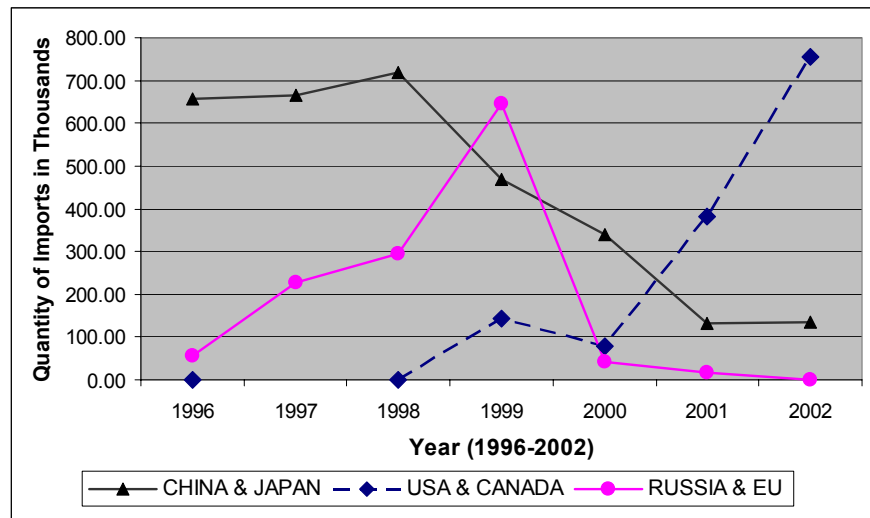
Despite restricting imports from the named countries (alleged to be dumping) the domestic industry still faces strong import competition from the non-named countries (in other words, trade diversion). Once AD duties are imposed on a significant level of imports (1997 petition 51% of

imports faced AD duties) this raises the domestic prices of the protected good at home. This increase in prices is suppose to help the domestic producer by increasing the price they get for their product in the Indian market, however, it also benefits other foreign countries exporting to India that do not face any duties, since they also earn this higher price.

These higher domestic prices also attract new foreign countries or import sources that did not find it profitable to export to India previously. If these new entrants can effectively compete with the domestic producers and offer the product at even a marginally lower price, they will out-compete the domestic producer from the Indian market. Unless the domestic producer can use these small windows of higher prices (before the new import sources enter the market) to lower costs and improve the production, it would keep losing its market share to non-named import sources. The major beneficiaries of AD duties in such a case would be the non-named sources, new or old. This is exactly what has happened in the Vitamin C industry in India. The domestic producer shuts out the largest import sources only to face competition from new import sources and this happened 5 times in this industry.

Figure 2 highlight the trends in imports, it shows the rise and fall of imports for the countries that were named in the investigations and the non-named countries that eventually had AD petitions filed against their imports. As the level of imports from China and Japan declined, imports from Russia and Germany increased sharply (almost doubled) and imports from US and Canada showed an upward trend during the same time. When imports from Russia and Germany were completely restricted in 2000, trade was diverted to US and Canada. Imports from US and Canada increased 8 times over the next two years, increasing to 754 thousand, which is higher than ever before from a single import source.

**Figure 2: Import trend of the countries which had the largest share of the Indian Market**



So far we have just looked at trends; Table 4 provides empirical evidence of import diversion in the Indian case.  $M_t$  is import in thousand metric tonnes at time period  $t$  and  $M_{t-1}$  is imports at period  $t-1$ . The first row looks at the change in imports for the named countries after the preliminary duties had been imposed<sup>15</sup> ( $M_t - M_{t-1}$ ). The level of imports declined on an average<sup>16</sup> by 27 thousands metric tonnes and this is significant using a 95% confidence interval level. The third row looks at the growth in imports for the named countries. Level of imports declined on an average by 63% after the imposition of the preliminary duties. For the non-named countries (row 2 and 4) the level of imports increased significantly over this period when named countries trade was restricted, on an average import grew by 163%. This sharp increase is mainly due to the entry of new import sources. Row 3 reports the differences across named and non-named countries;  $t$  test reveals this difference to be significant. Similarly the difference in growth of imports across named and non-named countries is also significant (reported in row 4). Table 4 provides further evidence that AD duties though were significant in restricting trade from named countries, resulted in import being diverted to non-named countries.

<sup>15</sup> Since all the cases had an affirmative final decision, final duties were imposed and remained in force for the whole period of the analysis (1996-2002).

<sup>16</sup> Average over all the countries that were named to be dumping, for example Russia and EU were considered non-named from 1996 to 1999, From 2000 onwards they were considered to be named.

Column 6 reports the robust results for the t value when Huber/White/sandwich estimator of variance is used in place of the traditional calculation. This is done to account for the outliers, countries importing positive amount stop importing or vice versa.

**Table 4: Import Growth from named and non-named countries.**

	Change in Imports	Mean	t value	Robust Mean	Robust t value
1. Named	$M_t - M_{t-1}$	-27.0**	-2.63	-27.0**	-2.84
2. Non-named	$M_t - M_{t-1}$	19.14**	2.16	19.14**	2.05
Difference	Named(1)-Non-named(2)	-46.2**	-3.4		
	Import Growth Rate				
3. Named	$(M_t - M_{t-1})/M_t$	-0.63	-1.27	-0.63**	-6.86
4. Non-named	$(M_t - M_{t-1})/M_t$	1.63**	3.27	1.63**	2.33
Difference	Named(3)-Non-named(4)	-2.26**	-3.21		

\*\* Significant at 95% confidence interval level.

## 5. Views of the Importing industry

The petitions were filed by M/S. Ambalal Sarabhai Enterprise Limited, which was the sole producer in 1997 and is still a major producer in 2003.<sup>17</sup> The domestic industry petitioned for AD duties on imports from countries that had the largest share of the Indian market. Countries that were named in the 1997 petition had 51% share of the market, and countries named in the 1999 petition had 73% of the market share with only 11% accruing to other import sources<sup>18</sup>. Any country that had a significant share of the Indian market was alleged to be dumping by the sole domestic producer. It is somewhat surprising that all these petitions received an affirmative decision by the DGAD.

<sup>17</sup> M/s Cardinals Drugs Ltd. And M/s Tonira Pharma are vary small (insignificant) producers of Vitamin C that started production in 2004.

<sup>18</sup> Imports from other countries that were not named in the petition: this consists of countries which already had AD duties imposed on them (like China and Japan) and countries which had never been alleged to be dumping.

While determining whether to impose AD duties, National Authorities do not weigh the input of the domestic importing industry. Such a consideration is particularly important if the AD law, by restricting import competition, is creating a monopoly at home. Monopolies do not have the incentives to adapt superior technology, or to cut costs. In this case, the monopoly producer might not even have the plant capacity to fulfill present domestic demand.

There are mainly 4 main importers<sup>19</sup> of the good in the Indian market, they sent back written opinions, which are mentioned in the published govt. reports.<sup>20</sup> The following quotes from the Final Finding Notification published by Government of India highlights the views of the importers.

“If the Anti-Dumping Duty is imposed, the imports from European Union and Russia will be uneconomical and it would stop completely. There is Anti-Dumping Duty on Chinese and Japanese Vitamin-C for which the petitioner has filed review application to increase the same. So the contention of the petitioner is to prove that all the manufacturers in the world want to dump their Vitamin-C in India only, which sounds totally wrong and irrational.”

“The total demand of the alleged product in India is more than 1200 tons, whereas the installed capacity of the complainant who is the only producer is only 430 tones, which itself justify the monopolistic situation. Even if the complainant produces and sells at 100% of their installed capacity they- cannot meet the market requirement or demand and import has to take place to meet the demand of Vitamin-C in India. As the complainant/petitioner is unable to meet the domestic demand, it is unfair for it to restrict imports by seeking imposition of Anti-Dumping Duty”

## **6. Conclusion**

For the Vitamin C industry, restricting one import source just introduced more import sources and the domestic industry did not get much respite from Import competition. At times imports were

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<sup>19</sup> M/S Gandhi Parmaxeuticals, M/S Bajaj Health Care, M/S The chemists and Druggists Association, M/S Kawarlal & Sons.

<sup>20</sup> Quote from “Anti Dumping investigation concerning imports of Vitamin-C from Russia and EU- Final Findings”, Ministry of Commerce and Industry, final findings, New Delhi, 8<sup>th</sup> August, 2000

diverted to previously importing sources but at times the market was captured by countries that had not previously exported to India. There were five petitions filed in the Vitamin C industry in the past eight years, and this was observed after each petition. This influx of new entrants was quite significant every time an import source was restricted. We can conclude from the above study that import diversion in the case of Vitamin C industry in India is significant and that it mitigates the restrictive effects of AD duty.

This case study has highlighted two very important facts about the antidumping measures in the case of Vitamin C. First, despite restricting imports from the named countries, the AD policy is not necessarily an effective tool for protecting the domestic industry. In our case study we show that except for the year 2000 (when antidumping duty was imposed against 11 countries) domestic producer faced stiff import competition and had less than half the market share of the Vitamin C industry. The entry of alternate foreign suppliers (new entrants) significantly mitigates the restrictive effect of AD policy. It has been suggested in the literature (Prusa (1996)) that multiple petition filing or using the cumulation amendment is one way to curb import diversion. However, this case study points out that the entry of new foreign suppliers lends such a solution ineffective, as these foreign suppliers enter the market only after the petition has been filed. However a caveat is due, this paper only highlights trade diversion effect of AD in the Vitamin C industry. A careful analysis needs to be carried out for all the AD cases filed in India to draw a general inference about the trade effect of AD legislation in India.

Secondly, the case study highlights the possibility of its abuse by the domestic industry. In the case of Vitamin C, every import source that captured even 5 percent of the market share was alleged to be dumping by the domestic producer, and all these cases were given affirmative decisions by the DGAD. Imports from 14 countries were restricted by the end of 2003 with a case pending against UAE. Since M/S Amabalal was the sole producer in the domestic industry at the time of the petitioning, wouldn't restricting all imports create monopoly at home? One needs to

question whether the petitioning firms are genuinely facing unfair trade or are just shying away from foreign competition.

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