

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN RE:)
VITAMINS ANTITRUST LITIGATION)

) Misc. No. 99-197 (TFH)
) MDL No. 1285

THIS DOCUMENT RELATES TO:)
Cargill Inc. *et al* v. F. Hoffman LaRoche Ltd. *et al*,)
Civ. No. 99 C 5167 (N.D. Ill))

Blue Seal Feeds, Inc. v. BASF AG *et al.*,)
Civ. No. 99-3226 (C.D. Ill))

Kellogg Co. v. BASF AG, *et al.*)
Civ. No. 4:99-75 (W.D. MI))

FILED

AUG 04 2003

**NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT**

ORDER

Re: Dispositive Motions Concerning Foreign Purchases [#37 - #40]

Pending before the Court are the following four motions for summary judgment:

#37 Certain Defendants Motion for Summary Judgment Against Agribrands;

#38 Defendants' Motion For Summary Judgment Relating to Plaintiff R.P. Scherer Corporation's Foreign Purchases Claims;

#39 Motion of Certain Defendants For Partial Summary Judgment Against Cargill, Inc. and Its Foreign Affiliates for Purchases Made for Delivery Outside the United States; and,

#40 Certain Defendants' Motion For Partial Summary Judgment Against Kellogg on Claims Based Upon Certain Transactions in Foreign Commence by Kellogg's Foreign Affiliates.

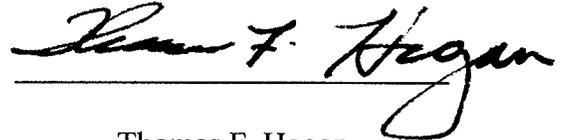
In light of the D.C. Circuit's Opinion in Empagran S.A. v. F. Hoffman-LaRoche, Ltd, 315 F3d 338 (D.C. Cir January 17, 2003)¹, it is hereby

¹ Significantly, no mandate has issued from the D.C. Circuit as the appellants filed a petition for rehearing *en banc* on February 3, 2003 which has yet to be decided. Despite recognition that the Empagran decision essentially renders the criteria set forth in the Court's June 7, 2001 Order moot - the criteria upon which Defendants' base their motions for summary judgment - Plaintiffs urge the Court to deny motions on the merits under the criteria set forth in that Order. This Court is, however, bound by the ruling in Empagran despite the fact that no

ORDERED that these motions are **DENIED**.

SO ORDERED.

August 4, 2003



Thomas F. Hogan
Chief Judge

mandate has issued. In Vo Van Chau v. U.S. Dept. of State, 891 F.Supp. 650, 654 (D.D.C. 1995), the court said:

[D]efendants argue that this Court is not bound to follow LAVAS, since the mandate in LAVAS has not yet issued from the Court of Appeals. This argument has no merit. The District Court "is bound by the principle of stare decisis to 'abide by a recent decision of one panel of [the Court of Appeals] unless the panel has withdrawn the opinion or the court en banc has overruled it.'" The fact that a party has petitioned for rehearing, automatically resulting in the stay of the mandate under Rule 41, Fed.R.App.P., is irrelevant.

(citing Association of Civilian Technicians, Montana Air Chapter v. FLRA, 756 F.2d 172, 176 (D.C.Cir.1985) (quoting Brewster v. Commissioner of Internal Revenue, 607 F.2d 1369, 1373 (D.C.Cir.1979))).