

**GOVERNMENT OF INDIA**  
**MINISTRY OF COMMERCE & INDUSTRY**  
**(DEPARTMENT OF COMMERCE)**  
**DIRECTORATE GENERAL OF ANTI DUMPING &**  
**ALLIED DUTIES**

New Delhi, the 7th March 2003

**FINAL FINDINGS**

**Subject:** - Anti-dumping investigation concerning imports of D (-) Para Hydroxy Phenyl Glycine Base (PHPG Base) originating in or exported from the European Union

**No. 14/6/2002-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:

- i. The Designated Authority (hereinafter referred to as Authority), under the above Rules, received a written petition from M/s Daurala Organics Limited, Daurala, Meerut, U.P. on behalf of the domestic industry, alleging dumping of D (-) Para Hydroxy Phenyl Glycine Base also known as PHPG Base (hereinafter referred to as subject goods) originating in and exported from European Union (hereinafter referred to as subject country / territory) ;
- ii. The Authority notified the Delegation of European Commission in India about the receipt of dumping application made by the petitioner before proceeding to initiate the investigation in accordance with sub-rule (5) of Rule 5 supra;
- iii. The Authority issued a Public Notice dated 8th March 2002 published in the Gazette of India, Extraordinary, initiating anti dumping proceedings concerning imports of D (-) Para Hydroxy Phenyl Glycine Base falling under Chapter heading 2942 of Schedule I of the Customs Tariff Act.
- iv. The Authority sent questionnaires, to elicit relevant information, to the following known exporters from European Union:

- M/s. Recordati, Italy

- M/s DSM Deretil S.A. Spain.
  - Response has been received from both the exporters.
- v. The Delegation of European Commission in New Delhi was also informed about the initiation of investigation and requested to advise the exporters/producers from their countries to respond to the questionnaire within the prescribed time;
- vi. The questionnaire was sent to the following known users/importers of subject goods:-
- M/s. Aurbindo Pharma Ltd, Hyderabad.
  - M/s. Lupin Laboratories Ltd., Mumbai.
  - M/s. Koprana Drugs Ltd., Raigad.
  - M/s. Surya Pharmaceutical Ltd., Chandigarh.
  - M/s. Torrent Gujarat Biotech Ltd, Ahmedabad.
  - M/s. Ranbaxy Laboratories Ltd, New Delhi.
  - M/s. Tini Pharma Limited, Mumbai.

Response has been received from M/s Torrent Gujarat Biotech Ltd whose submissions are presented in the importer's response. Apart from this, no other users/importers has responded to the questionnaire.

- vii. The Designated Authority issued Preliminary Findings vide notification dated 5th June 2002 and forwarded a copy of the preliminary finding to the known exporters and industry associations and gave them an opportunity to make their views known in writing within 40 days from the date of the letter;
- viii. The Authority forwarded a copy of the public notice to the known importers of PHPG base in India and advised them to make their views known in writing within forty days from the date of the letter;
- ix. The Authority provided a copy of the preliminary findings to the Delegation of European Union in with a request that the exporters and other interested parties may be advised to furnish their views on the preliminary findings;
- x. Additional information regarding injury was sought from the petitioner, which was also received;
- xi. The Authority made available non-confidential version of the evidence presented by various interested parties in the form of a public file as per Rule 6(7) and kept it open for inspection by the interested parties. All parties who made request for inspection, in writing, were allowed to inspect the public file;
- xii. The Authority sought and verified information deemed necessary for the investigation, and the investigations were carried out at the premises of Petitioner's as well as cooperating Exporter from European Union.

- xiii. The Authority also conducted cost investigation to work out optimum cost of production and cost to make and sell subject goods in India on the basis of Generally Accepted Accounting Principles based on the information furnished by the petitioner.
- xiv. The investigations covered the period of 1st April, 2001 to 31st December 2001 (9 months);
- xv. The Authority provided an opportunity to all interested parties to present their views orally on 17.09.2002. All parties presenting views orally were requested to file written submissions, of the views expressed orally. The parties were advised to collect copies of the views expressed by the opposing parties and offer rebuttals, if any.
- xvi. In accordance with Rule 16 of the Rules supra, the essential facts/basis considered for these findings were disclosed to known interested parties and comments received on the same have been addressed suitably in the final findings.
- xvii. \*\*\* in this notification represents information furnished by an interested party on confidential basis and so considered by the Authority under the Rules;
- xviii. Following abbreviation have been used in the findings: PHPG Base as
- D(-) Alpha Para Hydroxy Phenyl Glycine or
  - D(-) Alpha Para Hydroxy Phenyl Glycine Base or
  - D(-) Para Hydroxy Phenyl Glycine or
  - Para Hydroxy Phenyl Glycine or
  - D(-) P-Hydroxy Phenyl Glycine Base or
  - D(-) P-Hydroxy Phenyl Glycine, etc.,

## **B. Views of Petitioners, Exporters, Importers and Other Interested Parties:**

### **3. Product under Consideration and Like Article**

Views of Importer : M/s Torrent Gujarat Biotech Ltd,(TGBL), Vadodra

(a) We do not agree with the views of Domestic Industry regarding product under consideration and like article and wish to submit as under:

It is to be understood that PHPG Base goes into direct manufacture of life saving drugs and forms part of the molecule. Any deviation in quality will hamper the efficacy of the drug. The PHPG is analysed critically for its quality. It is to be noted that the rejection is due to:

1. Presence of foreign material
2. Colour – off white colour resulting lower transmittance
3. Moisture content beyond specified limit.

The quality of the imported PHPG Base is generally superior than the quality of the PHPG Base indigenously available. This fact can certainly be established by comparing the quality of the material imported from various sources with indigenously available material. The specifications and its permissible limit of the various users will not necessarily be the same and may vary from user to user. Every user will have their own method of testing of the material and thus, the acceptance of the material by one or two users does not necessarily certify the acceptance of the quality of such an important raw material by all. The views of the domestic industry of getting repeated orders for the material from some of the large consumers are not necessarily indicative about the quality of material. Our experience on quality of the material being manufactured by M/s. DOL (Daurala Organics Limited) are totally contradictory to the claim of manufacturer.

(b) We, therefore, once again appeal to you that in the interest Amoxycillin manufactures and in the national interest; levying anti dumping duty on PHPG Base imported from European Union may kindly be reconsidered. We look forward to your kind consideration of the above matter.

#### 4. Views of the Domestic Industry

The product involved in the present investigation is D(-) Para Hydrox Glycine Base irrespective of its customs subheading as mentioned in the initiation notification also. It is classified in "others" category under custom subheading 2942.00 of the Customs Tariff Act (2942.00.29 under ITC). It is primarily used for production of Amoxycillin. However, it cannot be used directly. The product is first converted into "D(-) Para Hydroxyl Phenyl Glycine Methyl Potassium Dane Salt" commonly referred as PHPG Dane Salt and then used for production of Amoxycillin. There is no material difference in the PHPG Base imported from the subject countries and the PHPG Base produced by the Indian industry in terms of product specifications, function & uses, marketing, pricing, customer perception and tariff classification. PHPG Base produced by the Indian industry and PHPG Base exported from the subject countries are substitutable with each other. Therefore, it is submitted that PHPG Base produced by the domestic industry is a like article to PHPG Base imported from the subject countries within the meaning of the Anti Dumping Rules.

As regards Quality issue, the domestic Industry has submitted that they have been supplying PHPG Base to various customers who have submitted certificate of suitability of their intermediates to various Authorities not only in Europe but also in

USA. They have also submitted that they have got repeated orders for some of the large customer of the subject goods in India and they have found that quality of the product is not only acceptable but also satisfactory.

#### 5. Examination by the Authority

- a. The product under consideration in this investigation is PHPG Base. (Para Hydroxy Phenyl Glycine Base). The subject goods is imported in India which is then converted in situ to PHPG Dane Salt(PHPGDS) as PHPG cannot be used directly for the production of Amoxycillin etc. This conversion is done either at PHPG/PHPGDS manufacturers' end or at the users' ends i.e. producers of Amoxycillin etc. It is classifiable under Chapter 29 of the Customs Tariff Act under sub heading 2942.00. As per ITC eight-digit classification PHPG is classified in "Others' categories' under chapter 29 i.e. 2942.0029. The present investigations are in respect of the product under consideration irrespective of the classification under which they are imported. Customs classification is indicative only and is in no way binding on the scope of the present investigation.
- b. Rule 2(d) of the anti dumping rule specifies that Like Article is an article, which is identical and alike in all respects to the product under investigation or in absence of such an article, another article having characteristics closely resembling those of the articles under examination.
- c. The petitioner has claimed that the goods produced by them are like articles to the goods originating in or exported from subject country. No dispute has been raised on the definition of the product under consideration by any interested party in the investigation. The Authority notes that PHPG base produced by domestic industry has characteristics, which are similar to those of the PHPG base imported from subject countries. No evidence has been placed by any of the interested parties regarding the fact that imported products are not substituting the domestically produced subject goods and unquantified quality difference does not make the product different. The Authority has determined that PHPG Base produced and sold by Domestic Industry and those imported from the subject countries are being used interchangeably by the consumers in India. In view of the above, the Authority holds that PHPG Base produced by the domestic industry and those being imported from the subject countries are Like Articles within the meaning of the rules for the purpose of injury determination. The Authority proposes to confirm the Preliminary Findings on Product Under Consideration and Like Article.

### **C. Initiation, Standing and Domestic Industry:**

6. As per Rule 2(b) of the Anti Dumping Rules, "domestic industry means the domestic producers as a whole engaged in the manufacture of the like article and any activity connected therewith or those whose collective output of the said article constitutes a major proportion of the total domestic production of that article except when such producers are related to the exporters or importers of the alleged dumped article or are themselves importers thereof in which case such producers shall be deemed not to form part of domestic industry."

The definition of Domestic Industry given above is further clarified by Rule 5 of Rules which reads as follows:-

"----- the application shall be deemed to have been made by or on behalf of the domestic industry, if it is supported by those domestic producers whose collective output constitute more than fifty percent of the total production of the like article produced by that portion of the domestic industry expressing either support for or opposition as the case may be to the application.

The petition has been filed by M/s Daurala Organics Limited, Daurala, Meerut, U.P. The petitioner is the sole producer of the subject goods in India. Accordingly, the petitioner satisfies the criteria of standing to file the petition on behalf of the Domestic Industry in terms of Rule 5(3) (a) of the Rules supra.

## **D. Period of Investigation**

7. The Authority has taken POI from 1st April 2001 – 31st December 2001 being the most recent period for the investigation when this case was initiated on 15th February 2002. This period was also taken because of the closing of the quarters and the feasibility of getting the complete data. The Authority confirms that nine months time is adequate and just for Anti Dumping Investigation since it also synchronizes with the three quarters for which the relevant data could be available.

## **E. Other Views: Views of Importer M/s Torrent Gujarat Biotech Ltd**

8. TGBL is manufacturing and exporting life saving drugs like Pencillin-G and its derivatives viz. Amoxicillin Trihydrate, Ampicillin Trihydrate, Cefalexin Monohydrate, Cloxacillin Sodium, Cefadroxyl Monohydrate. The manufacturing facility is located at Village Masar, a backward region in the District of Vadodara, Gujarat State.

Pencillin based antibiotics and in particular Amoxicillin Tryhydrate is the cheapest drug widely used in most of the developing countries. The estimated production of Amoxicillin Tryhydrate in the country is in the range of 4500/5000 MT per annum.

Up-till now PHPG Base is being imported from Europe, Singapore and China PR, as no reliable domestic source of material is available ensuring consistent quality and quantity supply. Since imposition of Anti-dumping duty on PHPG Base from China PR & Singapore, we are left out with no other alternative except to depend on the material imported from the European Union. Levying of anti dumping duty from EU would make the availability of PGPG Base scarce to meet with the domestic and export requirement of Amoxycillin Trihydrate.

The quality of PHPG Base of M/s. Daurala Organics Limited is not consistent and the product is yet to be stabilized for consistent quality. The quality of Amoxycillin Tryhydrate is directly related to the quality of PHPG Base and other raw materials.

Indian manufacturers have been importing PHPG Base @ US \$ 12/13 from Europe. The difference in prices between the two sources could be due to ocean freight, marine insurance, handling charges and other trade practices and the process technique being followed.

Proposed imposing of the anti dumping duty on PHPG Base from EU at almost double the price @ US \$ 21.38/21.81. This will increase the total cost of production of Amoxycillin Tryhydrate, which cannot be passed on to the end users.

This will also lead to Monopolistic situation in the domestic market as there is only one supplier of the product and all Amoxycillin manufacturers in India will have to either import material with antidumping duty or use domestic material at a high price and questionable quality.

The cost of production of the DOL also depends on the scale of operation and other input cost like utility, labour cost and interest. It is a know fact that the utility cost and interest rates are very high in India as compared to other countries.

In view of the above, we say that:

- a. There is no justification for fixing the arbitrary landed prices of US \$ 21.38/21.81 per kg for PHPG Base imported from European Union.
- b. It is incorrect to conclude that PHPG Base has been exported to India from European Union below its normal value.
- c. It is incorrect to conclude that the domestic industry has suffered material injury on account of imports from European Union, which could possibly be

due to their inherent inefficiencies, scale of operation and higher input costs leaving aside a questionable consistent quality.

- d. On the contrary, if antidumping duty is imposed, the Indian Amoxicillin manufacturers would be put to lot of hardships and uneconomical business conditions. It would not be possible to pass on entire impact of increase in cost to end-users.

### **Comments of the Importer M/s TGBL, Ahmedabad after Disclosure**

With the imposition of Anti Dumping duty, the domestic manufacturer of the Amoxicillin trihydrate will have to purchase the raw material from the local supplier by compromising with the quality. Otherwise the domestic manufacturer would have to import the same material with the additional cost of ADD. The importer has further added that this would encourage the monopolistic situation but would also increase the price of even the domestic material in near future.

### **F. Other view: Views of exporter: M/s Recordati, Italy**

9. We produce the PHPG via enzymatic route (Petitioner's route is chemical) since 20 years and re-selling to Indian market at an average price in line with world market price. The price level of our PHPG in India comes from hard negotiations where the quantity per order and international prices of Amoxy and Pen G are closely taken under consideration.

The continuous prices erosion of both PHPG and Dane Salt in 2001 has been enhanced by the presence of several Chinese new producers of these commodities. Latter's, it is well known, concentrated their export activity to India rather than elsewhere.

As per existing scenario in the market of PHPG and Dane Salt in the last few years, we never considered (you gave us the information) that a local company – the Petitioner – invested to enter the now overcrowded market of PHPG manufacturers.

We do not want to express any judgment on the Petitioner's decision for his investment, however, are deeply disappointed to ascertain that Authorities in India are called for patronage and to act against the interests of a foreign company.

Our approach to the market in India has always been correct, serious and in the spirit of fair competition. We assure you that we have not neither the resources to be burnt in an operation of dumping nor the intention to act against the interest of the Petitioner whom we require to reconsider his position.

## **Examination by the Authority**

10. As regards the claim of the importers about the subject goods not being exported below its normal value, the Authority observes that this issues concerning sales under ordinary course of trade and exports below normal value could be determined by the response from the exporter and not from the assertions of the importers.

As regards the observations made by another exporter M/s Recordati, on para 1.12 above, the Authority notes that adequate opportunity had been granted earlier to M/s Recordati to enable it to respond to the Authority. However the Authority notes that the exporter has not responded to the exporters questionnaire and has not submitted any data to the Authority in the present Anti Dumping Investigations. In the absence of any response from the exporter, the Authority has been constrained to treat M/s Recordati as uncooperative in the present investigations and has taken data pertaining to the exporter as per best information possible as per Article 6(8) of the Agreement of Anti Dumping and as per Rule 6(8) of the Anti Dumping rules.

## **G. Examination by the Authority regarding Monopoly, and Other Issues raised**

11. It has been recognized by the Authority consistently that the imposition of anti dumping duty may have some impact on the prices of the product in the market. However, at the same time, the Authority has consistently held that the relative competitiveness of the users would not be affected with imposition of anti dumping duty. In the long run, Users would have assured supply of material at reasonable prices.

1. The fact that there is a single producer of subject goods in the country and does not, in any way, restrict the right of domestic producer to claim relief from the Authority against the dumped imports under anti-dumping rules. It has been the accepted that anti-dumping duty is in the nature and form of providing a remedy against trade distorted practice of dumping. Further, anti-dumping duties do not propose to restrict or block imports from any sources and, therefore, the issue of domestic supply being short of the total consumption in the country, has no relevance. Also, since alternative sources of supply are available to the Indian users, the apprehensions of user industry, in this regard, are misplaced.
2. With regards the point raised by various interested parties about domestic industry being an inefficient supplier of the subject goods, the Authority holds that it has determined injury margin considering the optimum costs of the production.

## 12. Issues relating to the Dumping Margin

### Views of Exporter M/s DSM Deretil

DSM Deretil is extremely shocked to note from the preliminary finding that the Authority had determined a provisional dumping margin of 6.68%. This finding is totally incorrect, illegal and arbitrary, without any basis whatsoever. The dumping margin has been contrived because of (i) arbitrary selection of the third country for determination of normal value, (ii) the arbitrary disallowance of the ocean freight indicated to India, and (iii) a deduction of 3% from the export price towards commission. According to Explanation (c)(i), the normal value is the comparable price in the ordinary course of trade for the like article sold in the exporting country or territory. If there are no sales of the like product in the ordinary course of trade in the domestic market of the exporter (as in the present case), then Explanation (c)(ii) provides two alternatives for determination of normal value. Explanation (c)(ii)(a), which is relevant, provides for the determination of the normal value with reference to the comparable representative price of the like article when exported to an appropriate third country. In other words, if there are export sales to more than one third country, there is a duty cast on the investigating authority to determine which country should be used for determining the normal value. The country so determined should satisfy the requirement that it is an "appropriate" third country and the price to that country is a "representative" price. DSM Deretil had exported PHPG to India and to two other countries in the world. It had not sold PHPG to any other country, including their own domestic market (EU). The question, therefore, is which of the two third countries should be used for determining the normal value. The Authority has arbitrarily taken one of the two countries, presumably because the price to that country is marginally higher than the price to India.

Without prejudice to the above submission, it is submitted that the price to the third country considered by the Designated Authority is higher than that of India by about 1%. Such a marginal price difference cannot result in the dumping margin being above the de minimis level of 2%. DSM Deretil reiterates its submission that the export price to the other third country should be used for determining the normal value.

DSM Deretil had exported only one consignment of the subject goods to India during the period of investigation. The Authority had accepted this export price and also the deductions claimed therefrom, excepting for two deviations. In fact, these two deviations have resulted in the dumping margin. The two deviations are in respect of (a) ocean freight and (b) commission. DSM Deretil had claimed a deduction towards ocean freight. DSM Deretil had attached the invoice issued by the shipping company giving details of the ocean freight and other expenses. In other words, the actual

evidence towards payment of the amount claimed as deduction on account of ocean freight was attached to the initial Questionnaire response itself. There cannot be a better evidence than the actual invoice raised by the shipper.

The Authority will appreciate that ocean freight does not depend solely on the distance travelled. It depends on the frequency of movement of ships/vessels between two ports. The number of vessels that travel between Barcelona and India is far more than the number of vessels that move between Barcelona and the third country chosen by the Designated Authority. Consequently, the freight to India and to other ports to which there are frequent shipments is considerably lower than the freight to infrequent destinations.

The Authority will note from the said invoice that the inland transport from Nhavasheva port to New Delhi is approximately equal to the ocean freight to India. The distance between Barcelona and Nhavasheva is certainly far greater than the distance between Nhavasheva and New Delhi. On this ground, the Authority cannot reject either of the transportation figures.

It is seen from para 17 of the preliminary finding that the Authority has made a deduction towards commission. The rate at which the deduction has been made has not been indicated. It appears that the Authority has made a deduction of 3% of the c.i.f. price towards commission.

In Appendix 4 of the response, the DSM Deretil had categorically indicated against the Head "Discounts/Commission", the figure of " 0 ". When the exporter, who knows the facts, indicates clearly that no commission has been paid it is not known on what basis the Authority has presumed that commission has been paid. This action is again clearly in violation of the principles of Natural Justice. It appears that this deduction has been made with the singular objective of some how determining a dumping margin for DSM Deretil.

DSM Deretil does not sell PHPG Base either in Spain or in the European Union. Hence, it does not have any domestic sales. It has sold PHPG Base only to India and to two other countries in the world. The transaction-wise details of the exports made to the two countries have been made available to the Designated Authority.

It has been alleged that DSM Deretil had not disclosed its selling arrangement, but only relevant evidence has been provided. It is pertinent to point out that DSM Deretil had exported only one consignment to India during the period of investigation. The relevant evidence for this transaction has been made available which is also the evidence of selling arrangement. The write-up portion of selling arrangement is relevant only when there are several sales, made to different types of customers, with

different terms of delivery/payment etc. This is not so in the case here. The only supply has been made to an end-user and copies of the indent, invoice, etc. have been made available as part of the response. The exporter had made a categorical statement that no commission has been paid to any one on this sale transaction.

The submission that DSM Deretil has "now disclosed" that the material was delivered to ICD, Delhi is totally wrong. This information was made available as part of the original questionnaire and the DA is aware of it.

The averment in para 5 that the sales made to the Gulf country should be considered for determining normal value is totally incorrect. Para 6(i) of Annexure-I to the Anti-dumping Rules provides that comparison should be made in respect of sales made at as nearly as possible the same time. Para 6(iv) also provides that the dumping margin should normally be determined on the basis of a comparison between the weighted average normal value and the weighted average export price. The calculation of a weighted average presupposes the consolidation of all transactions that took place during the nine months of the period of investigation. Para 6(iv) also provides that the dumping margin can be determined on a comparison of the normal value transaction with the export price transaction. Both the provisions, i.e., Para 6(i) and 6(iv) have to be read harmoniously together. The Authority had determined the dumping margin on the weighted average to weighted average method and not by the transaction-by-transaction method.

The appropriate third country has to be determined with reference to the market conditions prevalent in India and that of the third country. The representativeness of the price is required to be determined with reference to the conditions of competition in the two countries.

The allegation that the cost of production made available by the exporter "is highly suspected" is objectionable. As regards Balance Sheet and Profit & Loss Accounts for POI, the Authority is very well aware, having conducted more than ninety investigations, that no company ever prepares a profit and loss account and balance sheet for the period of investigation set by the Authority or for the product being investigated. The cost of production submitted by us is very much backed by the evidence and is open to verification by the Designated Authority.

The response submitted by DSM Deretil is sufficient and reliable. We have made available all reasonable and sufficient information that has been asked for by the Authority till date. Hence, we request the Designated Authority to verify this information and reverse the finding in so far as DSM Deretil is concerned.

Comments by the exporter after Disclosure statement

They have asked investigation to be terminated as dumping margin is De-minimus. Also they have also added that \*\*\*\*\* is more appropriate than \*\*\*\*\* for the determination of the normal value.

## **H. Views of domestic Industry**

13. The company has not furnished transaction wise export details to other countries. Since the exporter has claimed that there is no domestic sales of the exporter, the exporter was obliged to provide details transaction-wise details of exports to third countries. It is relevant to note that unless the exporter provides transaction wise details of exports to other countries, it cannot be established by the exporter that its sales in other countries were in the ordinary course of trade.

The exporter has not disclosed its selling arrangement. Only relevant evidence has been provided on confidential basis. However, the write up part has been simply ignored by the exporter. The reply to the questionnaire is deficient to such an extent. Thus, petitioner is at loss to understand how the exporter has done business. This all the more important in view of the claim of the exporter that it has paid no commission in respect of all the sales. Exporter has now 'disclosed' that the material was exported by the company, delivered ICD-Delhi. Invoice referred by the exporter at the time of oral hearing disclosed that the same contained ocean freight from European Union to Mumbai and inland freight from Mumbai to Delhi. This revelation by the exporter raises a major issue with regard to the quantum of deduction made by the exporter from the CIF export price. The freight (ocean and inland) from EU port to Delhi is quite higher as compared to Ocean freight from European Union to Mumbai. The petitioner requests detailed investigations on this account.

Petitioner constructed the freight claimed by the exporter in case of exports to two other countries. It was rather shocking for the petitioner to find that the exporter has claimed an estimated freight in case of the Gulf country, which is almost five times higher than ocean freight involved in case of India. By no stretch of imagination, the freight from the exporter's port to Gulf port can be so high as claimed by the exporter. It is for this reason that petitioner has been repeatedly insisting on evidence of freight in this regard. However the exporter has consciously avoided providing this information.

With regard to the argument of the exporter that assessment of normal value should be based on Country 1, petitioner submits that normal value should be based on export sales from European Union to country 2. The sales made to country 2 were in same period of time as was in respect of exports to India.

The cost of production information provided by the exporter is highly suspected by the petitioner. Further, the information has been restricted only to PHPG Base and information in respect of other products has not been provided.

The exporter has not provided Balance Sheet and Profit & Loss Statement for the investigation period. Further, P&L Statement is not for the product under consideration. It is relevant to note in this regard that the company is a multi product company. Thus, allocation and apportionment basis used by the company assumes greater importance. It is possible that some elements of cost are affected due to certain affiliations. Thus, a mere statement filed by the company cannot be accepted by the Designated Authority without calling necessary information and thereafter verifying the data. Petitioner, therefore, submits that the detailed information on cost of production is required to be collected from the exporter.

M/s. Recordati, Italy has not furnished information in the form and manner prescribed by the Authority. The same is evident from the preliminary findings also. Therefore, Designated Authority is fully justified in proceeding with best available information. Recordati is the major exporter of PHPG Base from EU to India. Against total exports of more than 144000 kgs. exported to Indian in the investigation period, exports by DSM was just 9000 kgs. Thus, it can be stated that the majority exporter of the subject goods from the subject countries have refrained from responding to the Designated Authority.

### **Comments of the Domestic Industry after the Disclosure**

1. M/s DOL, has submitted that assuming , though not admitting, that the company did not pay any commission to this indent, the fact that the order was procured through an indenting agent, adjustment of the amount of the commission which is payable as consideration against such services rendered by the agent is required to be made.
2. The domestic industry has added that if there is any change in the in the exporters submission towards Appendix 7 as well as in the information relating to the Appendix 8,9 and 10, the complete response of the exporter should be rejected.

## **I. Examination by the Authority**

14. Under Section 9A(1) (c) normal value in relation to an article means:

- i. 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

- ii. 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:
  - a. Comparable representative price of the like article when exported from the exporting country or territory or an appropriate third country as determined in accordance with the rules made under sub-section (6); or
  - b. 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.

**M/s DSM Deretil, S.A. Spain.**

15. Normal Value

M/s. DSM Dereteil has replied that they have no domestic sales. They have given information in their response to their questionnaire in the prescribed format. As per Appendix –1 they have replied that they do not have any domestic sales and they have also added that they don't have any sales in the European Union for that product. As per Appendix –3 they have given an account of their sales to other countries and India, which is further split in month wise details of the sales. In the Appendix-4 & 6 they have given price structures and sales arrangements for sales to India and other countries. The Authority had noted at the time of preliminary findings that the exporter had not submitted complete information with respect to appendix 7, of the exporters' questionnaire. Additionally, complete information with respect to finance and interest costs with respect of appendix 8 and 10 had also not been furnished by the exporters. Though the exporter had submitted month-wise information for exports to third countries in aggregate, they had not submitted country-wise and transaction wise information with respect to third country exports.

After the preliminary findings, the exporter has furnished complete information with respect to the Appendix-7 of the exporters questionnaire. The exporter has also submitted transaction-wise information with respect to third-country exports during the period of investigation. Information with regards to the quantity and value for

other products has also been submitted. After the preliminary findings, they have submitted information relating to financial and interest costs pertaining to Appendix 8 and 10 of the exporters questionnaire. They have also submitted their corporate balance sheets and profit and loss accounts for the last three years. In response to the submissions made by the domestic industry after the disclosure, the Authority notes that these submissions have been made by the exporter subsequent to the public hearing and all submissions received before the Authority have been examined by the Authority in this final findings.

The Authority notes that firm has submitted detailed information regarding the sales price structure for the exports to other countries and India. The Authority also verified the original documents at the exporters premises pertaining to the transaction wise details of exports made to other countries. The verification team examined the evidence in support of the claim made by DSM Deretil for the freight paid on the consignment exported to India and for non-payment of any commission on this transaction. The verification team also examined ordering system prevalent in DSM Deretil and also examined the ledger accounts of importer in India. Ledger account of the indenting agent was also verified by the verification team for the POI and after that period to examine the commission paid if any by the exporter. The verification team also examined the invoices raised by the M/s Global Container Agency-S.A for shipment to India and other countries. The verification team also examined the reasonableness of the ocean freight and freight from Nhava Sheva to New Delhi by examining the other invoices for this period pertaining to other products. The verification team also examined the methodology for reporting the figures of POI for ascertaining the cost of production data.

On the basis of above examinations, the Authority has determined the normal value for this exporter by taking Comparable representative price of the like article when exported from the exporting country or territory. The Authority has determined that M/s DSM has exported \*\*\*\* kg of subject goods during the POI for US\$\*\*\*\* to country \*\*\*\*. The Authority has accepted country Iran as an appropriate third country as exports have been made to that country around the same time as exports made to India. As per section 6(1) of the Annexure-1 to the Anti Dumping rules, "while arriving at margin of dumping, the Designated Authority shall make a fair comparison between the export price and normal value. The comparison shall be made at the same level of trade, normally at ex-factory level at in respect of sales made at the same level of trade, normally at the ex-factory level and in respect of sales made at as nearly as possible the same time. The Authority had observed that the sales were made to the country "IRAN", at the same time, when they had shipped the goods into India. The Authority had also taken IRAN as the appropriate third country as its level of development and economic parameters are more in the line of country of export. The

Authority has determined weighted ex -factory price of US\$ \*\*\*\*\*/kg for exports to country IRAN after deducting US\$\*\*\*\*\*/kg for packing, US \*\*\*\*\*/kg for the inland freight, US\$ \*\*\*\*\*/kg as inland insurance, US\$\*\*\*\*\*/kg for the overseas freight, US\$ \*\*\*\*\*/kg for the overseas insurance. The normal value determined for this exporter is US \$ \*\*\*\*\*/kg.

### **EXPORT PRICE:**

16. The exporter has exported \*\*\*\* Kg. of PHPG Base to India for a total value of US\$\*\*\*\*. They have given transaction wise details for export sales made to India in their response to the exporters questionnaire. Accordingly, the weighted average export price of PHPG during the period of investigation works out to US\$\*\*\*\* per kg. After verifying the exports data for this firm for exports to India with regards to commission and freight, the Authority has determined the weighted ex-factory price for export sales to India as US \$ \*\*\*\*\*/kg after making adjustments on account of inland freight @ US \$ \*\*\*\*\*/kg, packing @ US\$ \*\*\*\*\*/kg, inland insurance @ US \$ \*\*\*\*\*/kg, overseas freight @ US \$\*\*\*\*\*/kg, overseas insurance @US \$ \*\*\*\*\*/kg, shipping charges @ US\$ \*\*\*\*\*/kg, clearance and handling charges @ US\$ \*\*\*\*\*/kg.

Dumping Margin has been established on the basis of comparison of the weighted average normal value with weighted average export price. The dumping margin in case of M/s DSM Deretil S.A. from Spain is assessed by Authority at US\$ \*\*\*\* per Kg or 1.21% of the export price. ,

### **M/s Recordati, Italy:**

17. M/s Recordati has given only a general submission and have commented only on the technology used by them and by the Petitioner. They have not submitted any data/information in the form and manner prescribed in the Exporters Questionnaire and have not presented any data relating to the various Appendices mentioned in the exporters questionnaire. The Authority, therefore, considers the exporter to be non-cooperative. As no information/data about domestic sales price structure of the subject goods, its cost of production in EU and other information as per the questionnaire was furnished, it is not possible to determine the normal value in the ordinary course of trade as per the WTO provisions and the Anti Dumping Rules. The Authority has, therefore, been constrained to rely upon the best available information for the determination of normal value. The petitioners have claimed normal value in respect of EU on the basis of constructed cost of production. This has been considered by the Authority in the absence of the data on the cost of production & domestic sales transactions. The Authority has determined Normal value on the basis of the facts available to it as per rule 6(8) supra.

The normal value so determined for M/s Recordati, Italy is US \$ \*\*\*\* per Kg.

As regards determination of export price from M/s. Recordati, the Authority notes that \*\*\*\* MT of subject goods have been exported for US\$ \*\*\*\* from EU at the unit price of US\$ \*\*\*\*/kg during the POI. The Authority has determined the weighted ex-factory export price as US\$ \*\*\*\*/kg after making adjustments on account of inland freight, insurance, overseas freight, Commission and overseas insurance as made in case of M/s Deretil, DSM, Spain.

Thus, the dumping margin in case Recordatti is assessed by Authority at US \$ \*\*\*\* per Kg. or 78.48 % of export price.

### **OTHER EXPORTERS FROM EU**

18. The Authority provided opportunity to the known exporters from EU to furnish information relevant to the investigations and offer comments, if any, in accordance with the Rules cited above. The Authority notes that none of the exporters apart from those mentioned above from the EU have filed any response and furnished information on domestic sales price structure of the subject goods, its cost of production in EU and other relevant information as per the questionnaire. In the absence of information/data, the Authority has proceeded to rely upon the best available information for determination of normal value. The petitioners have claimed normal value in respect of EU on the basis of constructed cost of production. This has been considered by the Authority in the absence of the data on the cost of production & domestic sales transactions.

Accordingly, the Authority has constructed the normal value on the basis of facts available as per Rule 6(8) with the applicable adjustments. The normal value so determined for other exporters from EU is US \$ \*\*\*\*/kg.

The Authority has assessed the export price at the ex factory level for other exporters as has been done in the case of M/s Recordati , Italy and thus the weighted average export price at the ex-factory level comes to US\$ \*\*\*\*/kg after making all adjustments as made in the case of M/s DSM Deretil, Spain.

Thus, the dumping margin in case of non-co-operative/other exporters of PHPG Base from EU is assessed by Authority at US\$ \*\*\*\* per Kg. or 78.48% of the export price.

<b>Exporters/Country/Territory</b>	<b>Normal value</b>	<b>Export price</b>	<b>Dumping Margin % of Export price</b>
DSM Deretil, Spain	****	****	1.21
Recordati, Italy`	****	****	78.48
Other Exporters from EU	****	****	78.48

## **J. Issues relating to the Injury**

### **Views of the Exporter, M/s DSM Deretil, Spain**

19. Section 9B, inter alia, provides that the anti-dumping duty shall not be levied on import of any article into India from a member country of the WTO unless a determination has been made that the import of such article into India causes or threatens material injury to any established industry in India or materially retards the establishment of any industry in India. It is pertinent to point that that Section 9B contemplates three mutually exclusive injury determinations. These are:-

- a. actual material injury; or
- b. threat of material injury; or
- c. material retardation to the establishment of an industry in India.

The existence of actual material injury during the period of investigation would by definition exclude threat of material injury or material retardation. The absence of actual material injury during the period of investigation may still result in the imposition of dumping duty if there is a finding that there is a threat of material injury, in future. Material retardation does not take into account either actual present material injury or threat of future injury. It deals with a situation where a domestic industry manufacturing the like product is being attempted to be established and this attempt is materially retarded because of the allegedly dumped imports. Thus, the three types of injury are mutually exclusive. It may be seen from the finding that there is no clear indication as to which of these three aspects has been found to exist in this investigation.

Further, all the 15 factors that are mandatorily required to be examined for injury purposes have not been evaluated.

The establishment of the causal link has been superficial. It is seen from para 24(a) of the preliminary finding that the average import price from European Union in September 2001 is US \$ 11.816 per kg. The export effected by DSM Deretil is in July 2001 at a price, which is far higher than the price indicated in para 24(a). In para 24(e), the Table shows a fall in the net realisation, during the period of investigation, for the domestic industry. It is seen that the net realisation has fallen from about 100 in June 2001 to about 80 in September 2001. It is pertinent to note that the price had fallen to 89.47 in July 2001 and 91.42 in August 2001, whereas there has been no import of this product during these months from the European Union. This shows that the fall in price in July and August has not been influenced by the imports from the European Union. If that were so, it is not known on what basis the fall in price from

August 2001 to September 2001 is being identified as caused by European Union. It is our submission that the fall in net sale realisation has not been made by European Union, more particularly by DSM Deretil.

It is seen from the preliminary finding, in the present investigation, that the reference price for all other exporters other than DSM Deretil is US\$ 21.81 per kg. This again shows that US\$ 21.81 is the NIP for the domestic industry. A comparison of these two figures shows that the cost + profit for the period 1st April, 2001 to 30th September, 2001 is US\$ 24.83 whereas it is US \$ 21.81 for the nine month period 1st April, 2001 to 31st December, 2001. The NIP had fallen by about 12%. Since the average of the six-month NIP (US\$ 24.83) and the three-month NIP would be US\$ 21.81, it is axiomatic that the NIP for this three month (October-December, 2001) period must be much lower than US\$ 21.81 in order that a weighted average of US\$ 21.81 could have been arrived at for the nine month period. This shows that the choice of the period of investigation, coinciding with the commencement of the commercial production, which is bound to be at a low capacity utilisation and high initial cost, has resulted in a high NIP. The determination of NIP requires a re-look in order to adjust for the abnormal/start up cost associated with initial operation. It appears that the domestic industry is taking undue advantage of the anti-dumping proceedings in order to protect itself from the normal teething troubles that arise during the initial phase of any newly set up industry.

We request the authority to determine NIP on a quarterly basis and compare the landed value of imports from DSM Deretil with the NIP for the quarter October - December 2001. In fact, in the present case itself, the Designated Authority has considered domestic sales realisation on a month-to-month basis. The Designated Authority should consider cost of production on a monthly basis and the NIP at least on a quarterly basis.

During this period, NIP for the domestic industry was approximately US\$ 15.77 per Kg, whereas the landed value from EU was much higher than the NIP. In fact, the landed value of exports from DSM Deretil was higher than the NIP by over 25%. As such there was no undercutting by DSM Deretil.

It is also necessary to determine price undercutting with reference to individual exporters and not in totality. The landed value of DSM Deretil is available to the Designated Authority. The NIP for the period October-December is also available. This would clearly show that the landed value of DSM Deretil is higher than the NIP.

20. To conclude, we submit on behalf of DSM Deretil that:

- i. the comments of the domestic industry are mostly wild allegations and figments of imagination that need to be completely disregarded;
- ii. The export price of DSM Deretil has not caused any material injury to the domestic industry; and
- iii. the investigation requires to be terminated on both the absence of dumping margin and causality.

## **K. Views of the Domestic Industry**

21. Dumped imports from China and Singapore were earlier causing injury to the domestic industry. The Designated Authority was kind enough to recommend anti dumping duties on imports from these countries, which have since been imposed by the Govt. of India. Therefore, injury to the domestic industry is required to be examined in the light of existing anti dumping duties in force. The dumped imports have been threatening further material injury to the domestic industry. It is also relevant to point out that the petitioner has commenced commercial production only with effect from April 01, and therefore, all parameters relating to the injury of the domestic industry would have to be seen in the light of this short commercial history of the domestic industry.

Imports from subject countries have increased in absolute terms. The share of imports from European Union has increased significantly during the Period of Investigation. The imports from European Union, which were nil up to August 2001, started coming in huge volumes. This may be due to the fact that Designated Authority had initiated the investigations into subject goods from China and Singapore in October 2001. This is in spite of the fact the domestic industry had just commenced commercial production. The exporters from subject countries have reduced the prices and intensified during to gain market share in India and thus materially retarded the establishment of domestic industry at its nascent stage. The domestic industry could not optimize its capacity, which it could have otherwise achieved in the absence of dumped imports. The sales of the domestic industry have not increased in spite of increase in demand. The selling price of the domestic industry has declined during the period of investigation due to availability of dumped imports to the consumers, albeit with changed sources. The exporters from the subject countries have significantly reduced prices. The domestic industry has lost sales, as imports of subject goods are available at dumped prices. The domestic industry has a tendency to retain its employees. Further, the petitioner has set up new facilities for the subject goods. However, should the present trend continue, the domestic industry will be forced to curtail its employment level. The domestic industry has reduced the already sub-optimal selling prices to match the landed price of the exports resulting in losses. The domestic industry could not sell at the prices which can recover even its cost of

production leave aside fair return on capital employed. It may thus, be seen that the domestic industry has suffered material injury. Further, the domestic industry is threatened with material injury due to dumped imports. Equally important to note is that since the domestic industry has commenced commercial production only recently, the imports are retarding establishment of the domestic industry.

## **EXAMINATION BY AUTHORITY**

### **L. INJURY:**

22. Under Rule 11 supra, Annexure –II, when a finding of injury is arrived at, such finding shall involve determination of the injury to the domestic industry, "... taking into account all relevant facts, including the volume of dumped imports, their effect on prices in the domestic market for like articles and the consequent effect of such imports on domestic producers of such articles...." In considering the effect 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.

For the examination of the impact on the domestic industry in India, the Authority also considered such further indices having a bearing on the state of industry as capacity utilization, production, sales, net sales realization, profitability, etc. The Authority took into account various parameters indicating injury to the domestic industry, which are as follows:

#### **(a) Quantum of imports and export price**

The information with regard to the quantum of imports of the subject goods has been based on the statistics compiled from Customs Daily Lists. The Authority notes that there has been an increase of 562.5% in the volume of imports of the subject goods from the subject countries during the Period of Investigation over 2000-01. Further the average export price from the subject countries has also declined during the Period of Investigation against 2000-01.

#### Imports from European Union

Period	Qty(MT)	Value(Rs Lakhs)	Average price Rate/US\$MT	%share of Imports
98-99	129	1850553	14259	18.82
99-00	128	1861378	14486	13.11
2000-01	24	169.01	14907.85	2.38

POI (April-December) 2001	135	749.49	11577.14	12.12
POI (2001-02) Annualised	180	999.33	11577.14	12.12

### Month Wise imports from European Union

Period 2001	Qty (Kg)	Value (Rs.Lakhs)	Rate/US\$MT
April	Nil	Nil	Nil
May	Nil	Nil	Nil
June	Nil	Nil	Nil
July	Nil	Nil	Nil
August	Nil	Nil	Nil
Sept	45000	251.79	11816.9
Oct	Nil	Nil	Nil
Nov	60,000	332.99	11502.15
December	30,000	164.71	11367.49

### **b) Changes in market share held by Indian producers and imports from the subject countries:**

The Authority observes that M/s DOL is the new entrant in manufacture of the subject goods in India and the exporters from subject countries have intensified dumping of the subject goods into India so as to ensure that domestic industry does not get any market share and also materially retard the establishment of the industry at its nascent stage itself.

### **(c) Production and Capacity utilisation of the petitioner:**

THE domestic Industry has commenced production during the POI and has only achieved a utilization of \*\*\*\*% of its existing installed capacity during period of investigation. Keeping in view the demand in the country the same is far below than what could have been achieved by the Domestic Industry.

### **(d) Insignificant gain of market share:**

Domestic industry is at nascent stage, hence no past trends are available but domestic industry is unable to increase its sales volume, in spite of huge demand of the subject goods in the country, because of dumped imports from subject countries.

### **(e) Reduction in selling price, price erosion, price undercutting, price suppression or price depression:**

In order to analyze the effect of dumped imports on the selling price of the Domestic Industry an analysis of the monthly sales realisation of the subject goods has been made as under:

Period	Qty Sold/Kg	Net Sales Realization (Rs/Kg)
April-2001	****	100
May-2001	****	100
June-2001	****	100
July-2001	****	89.47
August-2001	****	91.42
September-2001	****	79.06
October 2001	****	75.61
November	****	75.72
December	****	78.34

Indexed Figures considering April 2001 as 100

The table above indicates that the monthly average sales realisation during the Period of Investigation has declined from \*\*\*\* Rs/ Kg. during April 2001 to \*\*\*\* Rs/ Kg. during December 2001 showing a decrease within the Period of Investigation itself. This is mainly due to decrease in the average import price by the exporters after the starting of the commercial production by the Domestic Industry.

**(f) Evidence of lost contracts or declining sales:**

It has been observed that because of the sharp decrease in the export prices by the exporters, the Domestic Industry could not gain contracts/orders at the prices which could recover the cost of production leave aside a fair return on capital employed. The petitioner could sell the subject goods at substantial losses only.

**(g) Employment:**

The domestic industry has submitted that as the industry is at its nascent stage, protection from unfair trade practice is vital and urgent otherwise the manpower deployed will lose their jobs.

**(h) Profitability:**

It has been observed that the Domestic Industry has attempted to sell the subject goods by matching the prices being offered by the exporters resulting in huge losses.

The present petition is regarding impact of dumped imports causing material retardation to the establishment of the industry. Since the petitioner is attempting to

achieve commercially viable production in the Indian market and the imports from the subject territory are preventing such commercialisation of production by the domestic industry, the imports have caused material retardation to the establishment of the industry. As a "nascent industry" , M/s Daurala Organics Ltd. has recently started production and is yet to find its place in the market. The Authority notes, therefore, that domestic Industry is unable to achieve a satisfactory level of capacity utilisation and find its place in the market, because, at this nascent stage the domestic industry is being threatened with material retardation, by imports at dumped prices from the subject territory.

### 23. Price Undercutting and Price Underselling

Price Undercutting during POI			
Country/Territory	Net selling Price petitioner	Landed Price from subject country	Price Undercutting
<b>EU</b>			
DSM, Deretil, Spain	****	****	(-)****
Recordati, Italy	****	****	****

In considering the effect of the dumped imports on prices, it is considered necessary to examine whether there has been a significant price undercutting by the dumped imports as compared with the price of the like product in India, or whether the effect of such imports is otherwise to depress prices to a significant degree. The Authority has compared the landed value of imports of subject goods from subject countries during the POI with the net sales realization and has found that there has been a significant price under-cutting by the dumped imports from subject country/territory (except DSM Deretil, Spain). The landed value of imports has been found to be lower than the domestic industry's net sales realization.

The Authority has also examined the claim of the petitioner that the domestic industry is suffering on account of the losses. The Authority notes that price underselling is an important indicator to make an assessment of the injury. The Authority has worked out the Non-injurious price for the product under consideration and compared the same with the landed value to arrive at the extent of price underselling. The analysis shows a significant incidence of price underselling causing injury to the domestic industry. The imports have had significant suppressing/ depressing effect on the prices in the domestic market, as the domestic industry has not been able to raise its selling price in view of the dumped imports.

### Selling Price / Profitability

24. The authority notes that selling prices of the domestic industry is significantly below the price, which would have permitted the domestic industry, a fair recovery of

its cost of production and earn a reasonable return. Thus, the dumped imports have prevented the domestic industry from effecting legitimate price increase to realize a reasonable price. The industry has suffered material injury on account of depressed selling prices resulting in non-recovery of cost of production and has therefore suffered financial losses.

The Authority has examined the contention of the domestic industry that it is facing threat of material injury apart from material injury. The Authority notes that as per 3.7 of Agreement of Anti Dumping, a determination of threat of material injury shall be based on facts, and not merely on allegation, conjecture or remote possibility. The change in circumstances, which could create a situation in which the dumping would cause injury, must be clearly foreseen and imminent. In making a determination regarding the existence of a threat of material injury, the Authority has analysed factors laid down as per 3.7(i) –(iv) of the Agreement on Anti-Dumping and as per Annexure II of the Anti Dumping Rules made under the Customs Tariff Act.

There has been a significant rate of increase of dumped imports into the domestic market from subject country during the POI over the previous year.

The petitioner has claimed that EU is having large unutilized capacity to manufacture the subject goods. Though the major exporter from EU, M/s Recordati, Italy which has exported 90% of the subject goods during the POI and which has responded to this petition, has not indicated capacity of their plant and inventory of their finished goods in their exporters questionnaire. However the Authority notes that none of the interested parties to the investigation has disputed the claim of the domestic Industry with regards to the unutilized capacity.

On the basis of these findings as mentioned above, the Authority notes that the petitioner is suffering from a further threat of injury apart from the material injury it has suffered already.

## **M. CAUSAL LINK**

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

- i. Substantial imports of subject goods from subject countries /territories at dumped prices forced the domestic industry to reduce its selling prices to unremunerative level, which has resulted in a situation of price undercutting in the Indian market.
- ii. The imports from subject countries/territories suppressed the prices of the product in the Indian market to such an extent that the domestic industry was

prevented from recovering its full cost of production and earn a reasonable profit from the sale of subject goods in India.

The Authority notes that imports of subject goods from the European Union during the POI accounted for 21.2% of the total imports into this country. It is also noted that dumped imports from subject territory account for more than 90% of the total imports from the European union during the POI. Imports from subject country/territory have increased from 2% of the total imports during the previous year to 21% of the total imports in the POI. Thus volume injury is clearly established. In examining the price effect, the Authority notes that the low priced imports from the subject country/territory has forced the petitioner to sell at suppressed prices and incur losses on the sale of the subject goods during the period of investigation. Dumped imports of subject goods have prevented the domestic industry from realizing a reasonable remunerative selling price in the domestic market. The domestic industry in its attempts to match the dumped import prices was forced to sell below its non-injurious price, which resultantly, the domestic industry was unable to recover.

Imports from other countries have been much less during the POI as against previous years and prices from these countries are higher. The Authority could not find any evidence of contraction of demand, change in pattern of consumption, trade restrictive practices of and competition between the foreign and domestic producers. It is also noted that developments in technology have not been a cause for injury to the domestic industry.

The landed value has been determined for the subject goods after adding onto the weighted average c.i.f. export price, the applicable level of customs duties (except duties levied under Section 3, 3(A), 8B, 9, 9(A) and 1% towards landing charges.

While determining the non-injurious price for the like articles for the domestic industry, the Authority has used the actual cost of production of the subject goods to determine optimum cost of production for the domestic industry which would take into account the normated best consumption norms and the actual price of the raw materials which are consumed for the production of the subject goods during the period of investigation. For calculation of injury margin, it is proposed to compare the ex-factory non-injurious price determined for the period of investigations with the landed value of the imported goods.

## **26. Duty up to dumping margin:**

The Authority recommends 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.

## **N. INDIAN INDUSTRY'S INTEREST:**

27. 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.

The Authority recognizes that the imposition of anti dumping duties might affect the price levels of the products manufactured using 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. 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 subject goods.

The Authority notes that the imposition of anti dumping measures would not restrict imports from European Union in any way, and therefore, would not affect the availability of the product to the consumers.

## **O. CONCLUSIONS:**

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

- i. D (-) Para Hydroxy Phenyl Glycine Base has been exported to India from European Union below its normal value;
- ii. The Indian industry has suffered material injury.
- iii. The Domestic Industry, on account of the injury being suffered, is also facing material retardation in the establishment of new industry to manufacture D (-) Para Hydroxy Phenyl Glycine Base.
- iv. The material injury and material retardation is on account of dumped imports from subject territory.
- v. The Authority considers it necessary to impose definitive anti dumping duty on all imports of D (-) Para Hydroxy Phenyl Glycine Base from subject country/territory in order to remove the injury to the domestic industry. The margin of dumping determined by the Authority is indicated in the paragraphs above. The Authority proposes 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. For the purpose of determining injury, the landed value of imports is compared with the Non Injurious Price of the petitioner company determined for the period of investigation.

vi. Accordingly, the Authority recommends that the definitive Anti dumping duties be imposed from the date of notification to be issued in this regard by the Central Government on all imports of D (-) Para Hydroxy Phenyl Glycine Base also known as D (-) Alpha Para Hydroxy Phenyl Glycine, D (-) Alpha Para Hydroxy Phenyl Glycine Base, D (-) Para Hydroxy Phenyl Glycine, Para Hydroxy Phenyl Glycine Base, Para Hydroxy Phenyl Glycine, D (-) P – Hydroxy Phenyl Glycine Base, D (-) P – Hydroxy Phenyl Glycine falling under Custom Heading 2942 originating in or exported from European Union pending final determination. The Anti-Dumping duty shall be the difference between the amount mentioned in column 3 of the following table and the landed value of imports per Kg. on all the imports of subject goods falling under Chapter 29 of the Customs Tariff, originating in or exported from the subject territory/country mentioned below: -

Country/Territory	Producer/exporter	Amount US\$/kg (3)
European Union	DSM Deretil, Spain	NIL
	All other exporters/producers	21.60

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

29. Subject to the above, the Authority confirms the preliminary findings dated 5th June 2002.

30. An appeal against this order shall lie before the Customs, Excise and Gold (Control) Appellate Tribunal in accordance with the Act, supra.

**(L.V.SAPTHARISHI)**  
DESIGNATED AUTHORITY