

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

New Delhi, the 24th June 2003

FINAL FINDINGS

Subject: - Anti-dumping investigation concerning imports of D (-) Para Hydroxy Phenyl Glycine Methyl potassium Dane Salt (PHPG Dane Salt originating in or exported from the China PR and Singapore.

No. 14/23/2002-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 Methyl Potassium Dane Salt also known as PHPG Dane Salt originating in and exported from China PR and Singapore (hereinafter referred to as subject countries / territory) ;
 - ii. The Authority notified the Embassies of subject countries about the receipt of fully documented petition 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 25th June 2002 published in the Gazette of India, Extraordinary, initiating anti dumping proceedings concerning imports of D (-) Para Hydroxy Phenyl Glycine Methyl Potassium Dane Salt falling under Chapter heading 2942 of Schedule I of the Customs Tariff Act.
 - iv. The Authority forwarded copy of the said public notice to the known exporters, importers, industry associations and to the complainant and gave them an opportunity to make their views known in writing.

- v. According to sub-rule (3) of Rule 6 supra, the Authority provided a copy of the petition to all the known exporters and Diplomatic Missions of subject countries in India.
- vi. The Authority sent questionnaires, to elicit relevant information, to the known exporters from China PR and Singapore: M/s. Kaneka Singapore Co. (PTE) Ltd., Singapore and M/s Hengdian Group Jiayuan Chemical Co. Ltd., Zhejiang, China, have responded to the questionnaire.
- vii. The Embassy of China PR and High Commission of Singapore 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;
- viii. The questionnaire was sent to the known users/importers of subject goods as mentioned in the petition.

- M/s. Aurbindo Pharma Ltd, Hyderabad.
- M/s. Lupin Laboratories Ltd., Mumbai.
- M/s. Kopran Drugs Ltd., Raigad.
- M/s. Surya Pharmaceutical Ltd., Chandigarh.
- M/s. Torrent Gujarat Biotech Ltd, Ahamedabad.
- M/s. Ranbaxy Laboratories Ltd, New Delhi.
- M/s. Tini Pharma Limited, Mumbai.

None of the users/importers except for M/s. Torrent Gujarat Biotech Limited, Ahmedabad, have responded to the questionnaire after preliminary findings and public hearing.

- viii. The Designated Authority issued Preliminary Findings vide notification dated 1st October 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;
- ix. The Authority forwarded a copy of the public notice to the known importers of PHPG Dane Salt in India and advised them to make their views known in writing within forty days from the date of the letter;
- x. The Authority provided a copy of the preliminary findings to the Embassies of subject countries with a request that the exporters and other interested parties may be advised to furnish their views on the preliminary findings;
- xi. Additional information regarding injury was sought from the various interested parties, which was also received;
- xii. 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;

- xiii. The Authority sought and verified information deemed necessary for the investigation, and the investigations were carried out at the premises of Petitioner.
- xiv. 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.
- xv. The investigations covered the period of 1st July 2001 to 31st March 2002 (9 months);
- xvi. The Authority provided an opportunity to all interested parties to present their views orally on 18.12.2002. 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.
- xvii. 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.
- xviii. *** in this notification represents information furnished by an interested party on confidential basis and so considered by the Authority under the Rules;

B. Product under Consideration and Like Article

3. (i) The product under consideration in this subject investigation is

D (-) Para Hydroxy Phenyl Glycine Methyl Potassium Dane Salt also known as :

- i. D (-) PARA HYDROXY PHENYL GLYCINE DANE SALT (METHYL POTASSIUM)
- ii. D (-) ALPHA PARA HYDROXY PHENYL GLYCINE DANE SALT (METHYL POTASSIUM)
- iii. D (-) ALPHA PARA HYDROXY PHENYL GLYCINE, METHYL POTASSIUM DANE SALT
- iv. D(-) ALPHA PARA HYDROXY PHENYL GLYCINE METHYL ACETO ACETATE POTASSIUM SALT (DANE SALT) ,(Also referred to as subject goods hereinafter.)

(ii) The petitioner has represented that predominantly D (-) Para Hydroxy Phenyl Glycine Base' (hereinafter referred to as PHPG Base) is imported in India which is converted in situ to D (-) Para Hydroxy Phenyl Glycine Methyl Potassium Dane Salt " (hereinafter referred as 'PHPGDS or subject goods) by the various

importers/manufacturers and used for the production of Amoxicillin and Cefadroxyl. (i.e. bulk drugs).

(iii) PHPG Base cannot be used directly for the production of Amoxicillin and it is only when former is converted to PHPGDS; the same is used for the production of Amoxicillin etc. This conversion is either done at PHPG/PHPGDS manufacturers' end, or at the users end, i.e. producers of Amoxicillin etc.

(iv) All types of PHPG are classified in chapter heading 29.42. As per ITC eight digits classification, PHPGDS is classified in others category i.e., in 29420017. The investigation is against the product under consideration irrespective of the classification under which it is imported. Customs classification is indicative only and is in no way binding on the scope of the present investigation. There has been no comment from any of the interested parties regarding product under consideration. The Authority therefore confirms its preliminary findings regarding product under consideration.

(v) 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.

(vi) 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 and like article by any interested party in the investigation after the preliminary findings and public hearing. The Authority notes that PHPG DS produced by domestic industry has characteristics, which are similar to those of the PHPG DS imported from subject countries. In view of the above, the Authority holds that PHPGDS produced by the domestic industry and those being imported from the subject countries are Like Articles within the meaning of the rules.

C. De Minimus Limits:

4. The petitioner has represented that the statistics shown in the DGCI&S data is not representative as import data indicated by DGCI&S includes other Dane salts also which have been clubbed with the subject goods. The petitioner has relied upon the data of secondary source i.e. from International business information Services (IBIS), Mumbai. The data provided by the agency is based on Customs daily lists. The authority notes that PHPG DS is classified in 'others category' as per the Customs Tariff and hence the DGCI&S data may not be exclusive under these

circumstances. The IBIS import data for the last two years and month-wise data for the period of investigation indicate that the import from the subject countries during the POI is above the de minimus levels

D. Initiation, Standing and Domestic Industry:

5. 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 has claimed that they are the sole producer of the subject goods in India.

6. Submissions made by the Importer M/s Torrent Biotech on standing and domestic Industry

Anti-dumping applications are filed by or on behalf of the domestic industry in terms of the provisions of the Customs Tariff (Identification, Assessment And Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995. The relevant rule is Rule 5, which is reproduced below:

"5. Initiation of investigation. –

"..... (3) The designated authority shall not initiate an investigation pursuant to an application made under sub-rule (1) unless -

(a) it determines, on the basis of an examination of the degree of support for, or opposition to the application expressed by domestic producers of the like product, that the application has been made by or on behalf of the domestic industry :

Provided that no investigation shall be initiated if domestic producers expressly supporting the application account for less than twenty five per cent of the total production of the like article by the domestic industry, and

(b) it examines the accuracy and adequacy of the evidence provided in the application and satisfies itself that there is sufficient evidence regarding

- i. dumping,
- ii. injury, where applicable; and
- iii. where applicable, a casual link between such dumped imports and the alleged injury, to justify the initiation of an investigation.

Explanation. - For the purpose of this rule 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 per cent 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.

....." (Emphasis Added)

7. A plain reading of the provisions of the Anti-dumping Rules extracted above, clearly reflect following:

- a. A conscious determination of standing is mandatory by the authority before initiation in terms of Rule 5 (3) and not thereafter. In other words, determination of standing is prerequisite condition to be satisfied before proceeding to initiate the investigation.
- b. No investigation shall be initiated by the Authority if domestic producers expressly supporting the application account for less than twenty five per cent of the total production.
- c. The application must be supported by at least those domestic producers whose collective output constitute more than fifty per cent 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.

8. In the preliminary findings, the Hon'ble Designated Authority notes that M/s. Daurala Organics Ltd. (DOL) is the sole producer of the product under consideration. It is also observed from the application as well as from the preliminary findings that

the application has been filed by the DOL who have claimed to be only producers of the product under consideration. It is respectfully submitted that the petitioners have misled the authority by claiming itself as the only producer of the product under consideration. Unfortunately, it appears from the initiation notification as well as the public file that no enquiry was made by the Hon'ble Designated Authority also to ascertain the actual total production of the subject goods in the country, which in our humble opinion is a condition precedent for the initiation of the investigation.

9. It may also be recalled that during the public hearing it was brought to the notice of the Hon'ble Designated Authority that the PHPG Salt is used only for the production of Amoxicillin. This fact has also been stated by the domestic industry in their application. Since the Designated Authority is required to determine the standing of the domestic industry to file the petition before the initiation, it was necessary that the facts should have been collected from all the available sources before initiating the investigation. . As mentioned during the course of the public hearing, the user industry apprehends that there are several other manufacturers of the subject goods the names of which have deliberately been withheld by the domestic industry from the Hon'ble Designated Authority. It may also be mentioned that TGBL is also a manufacturer of the subject goods, a fact which is in the knowledge of the domestic industry but was not brought to the notice of the Hon'ble Designated Authority. It was claimed by the Petitioners during the hearing that only producers who sell their produce could be considered as Domestic Industry is totally without any basis or backed by any provision of the Rules relating to anti-dumping. The Authority may also note that TGBL have also sold certain quantities. Similarly, we understand that there are other producers who have sold/supplied the subject goods to other manufacturers of bulk drugs. It was obligatory on the authority to first examine the claims of the Petitioners and it is only then that a determination was required to made to initiate or not to initiate the present proceedings.

10. The importer has marked as Annexure A, a list that would show that there are other producers of Dane Salt in India. Keeping the above in view it is clear that the Petitioners have deliberately withheld the crucial information on standing which has unfortunately misled the Hon'ble Designated Authority to arrive at an erroneous determination. We also would like to add that this being a pre-initiation decision cannot be corrected at this stage of the investigation, as has been held by various WTO Panel decisions.

11. Examination by the Authority

E. Period of Investigation

14. The Authority has taken POI from 1st July 2001 – 31st March 2002 being the most recent period for the investigation when this case was initiated on 25th June 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.

15. Other Views: Views of Importer M/s Torrent Gujarat Biotech Ltd

- i. D(-) Para Hydroxy Phenyl Glycine Dane Salt (Dane Salt) is an important catalyst for manufacturing Amoxicillin. The basic raw material required for manufacturing Dane Salt is D (-) Para Hydroxy Phenyl Glycine Base (Dane Base). For manufacturing 1 Ton of Amoxycillin, we require approx. 862 Kgs. of Dane Salt and for manufacturing 1 ton of Dane Salt, we require 562 kgs of Dane Base. Thus, considering the total volume of 4500/5000 MT of Amoxycillin being manufactured in the country, the total requirement of Dane Salt works out to 3800/4300 MT or 2100/2400 MT of Dane Base.
- ii. During April 2001, Daurala Organics Limited (DOL), started manufacturing Dane Base/Dane Salt with an estimated installed capacity of 400/500 MT per annum of Dane Salt as against estimated requirement of 3800/4300 MT. Thus, the production capacity of DOL is hardly 10% of the estimated domestic requirements.
- iii. The impact of the anti-dumping duty as pronounced would be as under:

The cost of Amoxicillin would go up by 20%

The exporters would be tempted to increase the price to as close to 13.87 US \$ (with 30% duty) as possible. This would negate the benefit of the negotiations and lower price to Indian importers.

- iv. There will be no inducement for further negotiations in the price of Dane Salt. The alternatives to the above anti-dumping duty could be as under:

Levy fixed Anti-Dumping Duty in addition to 30% (say – 20%). This would induce the importer to negotiate for price reduction, protect the Indian manufacturers and also benefit the customers or considering the Indian capacity, permit import of Dane Salt subject to local purchase – say 80:20. This would mean that if 20% is bought locally, 80% is allowed to be imported. This would ensure protection to Indian industry, realize the price advantage from import and help in sale of Amoxicillin at a lower price benefiting the customers.

16. The Authority has analysed the interests of other countries in the Para 47 of the findings. As regards levy of Anti-Dumping Duty in different form, the Authority has recommended the Anti-Dumping Duty as mentioned in Para 48.

F. Issues relating to the Dumping Margin

17. (1) Views of Exporter M/s Kaneka Singapore Corporation, Singapore :

Kaneka strongly refutes the charge made by the complainant that the exporter's responses were grossly insufficient, inadequate and contradictory. In fact the response filed by Kaneka was detailed and complete. Even the Designated Authority has accepted all the information provided by Kaneka.

(2) In paragraph 1 and 2 on page 4 of the written submission, the complainant has stated that Kaneka Japan, Sumit International Singapore, Sumitomo Corpn. India Pvt. Ltd, Delhi, and Sampark International Pvt. Ltd, New Delhi are directly or indirectly related/interested parties to each other in terms of selling arrangements, financing/funding, providing services/intermediates etc. Hence, in the absence of response from the related parties, involved in the transactions the submissions cannot be said to be complete in all respect. In this connection, it is submitted that rule 2 (c) of the Rules defines "interested party" to include:

- i. an exporter or a foreign producer or the importer of an articles subject to investigation for being dumped in India, or a trader or business association a majority of the members of which are producers, exporters or importers of such an article;
- ii. the Government of the exporting country; and
- iii. a producer of the like article in India or a trade and business association a majority of the members of which produce the like article in India;

(3) From the above definition of interested party, it is clear that a person has to be either an exporter or a foreign producer or an importer or a trader or a business association in which majority of the members are exporters or producers or importer of the article. Kaneka Japan, Sumit International Singapore, Sumitomo Corpn. India Pvt. Ltd, Delhi, and Sampark International Pvt. Ltd, New Delhi are neither the exporters nor producers nor importers nor traders nor a business association. These companies are only acting as a selling agent of Kaneka and are paid commission for their services. Therefore, they do not qualify as an interested party and are not required to file any response to the questionnaire provided by the Designated Authority.

(4) In its submission, the complainant has observed that during the last two years and POI there is a declining trends in overall production of M/s. KSC as well as decline in production of the product under consideration. This is factually incorrect and we like to point out that there was an increase in production of PHPGDS during the calendar year 2001 as compared to the calendar year 2000. The decline in overall production is due to the fact that there has been a decline in the production of other products manufactured by Kaneka.

(5) The complainant in its written submission has also stated that the cost of goods sold consists of "variable cost" and "fixed cost" and does not include the overhead cost such as sale cost, general and administration cost, interest expenses, and exchange loss/gain. This is not correct because the details of cost of production clearly provide for general administrative cost, interest cost and other manufacturing overheads. Further, we also like to point out that in our response to the questionnaire provided by the Designated Authority, it is clear that the price at which the PHPGDS was exported to India was more than the price at which it was exported to other countries.

(6) The complainant has in its written submission stated that the depreciation for "manufacturing facility only" has been taken into account and the depreciation of the common facilities have not been taken into account. In this connection we like to submit that the depreciation relating to other than the manufacturing facility, such as depreciation of assets for administration, has already been included in the selling and administration cost. Depreciation relating to the manufacturing facilities of PHPG Base is already included in depreciation expenses stated in the PHPGDS cost sheet, and hence, there is no need to add the depreciation relating to the manufacturing facilities of PHPG Base in the cost of PHPGDS.

(7) The complainant has also stated that storing expenses for finished goods etc. has not been taken into account. In our written submission we have clearly stated that the finished goods are stored in the warehouse owned by Kaneka and therefore there is no expense incurred for storing the finished goods.

(8) As regards the consumable, we like to submit that the consumable relating to the manufacture of PHPG Base has been included in the manufacturing overhead. Therefore, the cost of consumables taken into account for the manufacture of PHPGDS does include consumables used in the manufacture of PHPG Base.

(9) We deny to have ever stated in our confidential and non-confidential information that when the productivity is high in order to shorten cycle time of each batch, it may be necessary to use more utility cost to cool and heat the product more quickly and so consumption of utility becomes worse.

(10) The complainant has stated that from the balance sheet it has been observed that there is no considerable disposal on the existing assets rather there is a substantial addition in the plant and machinery of the company. In view of the reasons given above, it is concluded that the total depreciation amount cannot be less than previous year's figures. This indicates that the company has not charged full depreciation to the products during the period of investigation. In this connection it is submitted that in the notes to the financial statement, the auditors have explained as to how the depreciation is charged. Further, the auditors have not indicated at any place that there has been a change in the method of claiming depreciation. The reason for the decline in the depreciation for the year 2001 is that the cost of the assets are written off over their estimated useful lives of the assets. From the latest balance sheet it is clear that net book value has gone down and hence some of the assets, which are still in use, have fully depreciated and no depreciation is being provided on them.

(11) The Complainant has submitted that the exporter has indicated that in lieu of interest, company is paying profit to Kaneka Japan apart from dividend. Accordingly, for determination of normal value, the Authority proposes to add reasonable profit to the cost of production so arrived to determine Normal Value of the product under consideration during the period of investigation. In this connection we like to submit that the amount of profit to Kaneka Japan shown in the factory cost and profit of exports to India is already included in the final price of PHPGDS as commission paid to Kaneka Japan. This has been clearly explained in the footnotes to the appendix. Therefore, the amount of profit should not be added to Normal value.

(12) As regards Appendix 7 B, Kaneka has already provided the Designated Authority with the explanation. We are not dealing with it here. Further, Kaneka also like to state that they have provided the Designated Authority with the detailed costing of PHPGDS and the Designated Authority did not find any anomalies, inconsistencies and discrepancies in our submission. In fact, except for the difference in the price of HPG in Appendix 7 and Appendix 8, the Designated authority has accepted all other data provided by Kaneka. By its letter dated November 29, 2002, Kaneka explained the reason for difference and at the time of oral hearing we were informed that the Designated Authority have received the aforesaid letter and were examining the implication.

(13) The Complainant has also stated that the exporter has granted interest-bearing credit in case the credit period extends to 180 days or more. However, the exporter has granted interest free credit period in case the credit period is 120 days. In this connection, we like to submit that interest free credit period of 180 days is permissible under Foreign Exchange Management Act, 1999 and Kaneka has provided the maximum interest free credit period permissible under the law. Further, allowing the importer a credit period greater than 120 days is a business decision arrived at after

negotiation between the exporter and the importers. And it has got nothing to do with the pricing of the product.

18. Views of the Exporter M/s Jiayuan Chemical Co. Ltd., Zhejiang, China PR

1. In the replies to the Questionnaire, our client – the only cooperating party from China in this proceeding – formally made a written request to individual treatment, in particular the concerned company submitted that it has independent rights and powers to manage its production, select customers, decide prices, etc. To this end, we have supplied a valid copy of Business of License and a copy of Articles of Association, etc. Such information would have sufficiently provided the Indian Authority a ground to evaluate whether the concerned company is operating its production and commercial activities independence of the State control/influence.
2. Again, in the absence of written procedural rules provided, our client is formally re-iterating its request for being treated separately to distinguish itself from all the other non-cooperating parties in this proceeding would be amount to punishing its cooperation in good faith with the Authority. This is of no difference from using ‘facts available’, makes its efforts totally useless and conveys a wrong message of the Chinese business community that no company stands a good chance in the Indian anti-dumping proceeding.
3. This gives rise to a legal question i.e. whether the petitioner is legally qualified as a representative industry, given that many pharmaceutical companies are also converting PHPG Dane Salt, other producers have such capabilities but no commercialize such conversion. If we exclude other operators who have not been concerting the product concerned, but the conversion activities by pharmaceutical companies must be considered as producers of like product for PHPG DS. In other words, a representative of 50% not to oppose to the complaining actions shall be passed and 25% clearly supported such petition must be obtained.
4. We strongly state to the Indian Authority that the companies in today’s Chinese economic operation are no longer subject to a ‘complete and substantially state monopoly’. This is the sole reason that Canada has granted a full "market economy status" to an entire sector industry in the recent Car Window Shields Case; the United States are systematically granting all the Chinese cooperating companies individual treatment ; and the EU has, through procedural rules, granted companies’ market economy status.
5. Those remarkable moves indicate their readiness to objectively assess each company’s economic operation and also to avoid any unreasonable legal bias against the Chinese cooperating companies, because some rules that were used in early time are not clearly supported by the WTO rules any more.

6. We are, however, extremely surprised to read that the Indian Authority has used "facts available" in order to determine normal value for our client. As we know well, facts available can only be applied in a special situation; for instance, a cooperating company is purposefully impeding the investigation, or supplying false information. In some cases at WTO, the Panel Reports have clearly criticized some investigating authorities to disregard the entire supplied information, although non-confidential summaries were not furnished for some parts of the submission.

They have submitted further comments in response to the query made by the Authority to respond to market economy treatment as per 8.3 of the Annexure 1 to the Anti Dumping rules.

7. During the complete period of investigation, the Respondent has exported subject goods to India through the third party, Hengdian Group Import & Export Co. Ltd which is in Hangzhou, Zhejiang, China. The information about the export price to Indian included in the Appendix-3, Appendix-4, Appendix-8 which was provided in July 2002 is actually the domestic sale price on which the Respondent sold the subject goods to Hengdian Group Import & Export Co. Ltd.
8. Hengdian Group Import & Export Co., Ltd, quoted export price to its Indian customers, entered into contracts and exported the subject goods in its name. After making contract with its Indian customers, Hengdian Group Imports & Export Co. Ltd purchased the subject goods from the domestic suppliers including the respondent and the purchasing price was negotiated and decided in response to the signal of the market.
9. Besides the subject goods, the Respondent produces other 8 kinds of product. So the Respondent can not submit a vast amount of data regarding other products including their quantity and value by such short deadline, so the Respondent pleads for a relatively sufficient time to prepare the data required by the Indian Authority.
10. The Respondent is a limited liability company with investment contributed by 2 shareholders, who are all independent legal person. There is no local/regional authority or state involvement in setting price/quantities.
11. The wage is determined on the base of the qualification, merits and workloads. So to speak, the rate of wage of the Respondent is determined by an average level of wage, on which base, the level can be adjusted upwards according to the performance of each employee. The salary is paid on a draw base monthly. As for the information about the number of skilled workers, unskilled workers, managers and the average wage paid to each of these categories in the POI, please see Annex iii (vi) which have been provided on January 29, 2003.

12. Being an independent legal identity, the right to develop business to form cooperation, to merge with another entity or economic organization, etc. is fully granted and protected by the laws of China. To form a joint venture or introduce foreign investment is one of the rights enjoyed by the corporate entities in China, including the Respondent. In this regard, it should highlight that any legal entities in China can set up any types of cooperation involving foreign companies. The law does not prohibit companies from establishing cooperation with foreign companies, such as formation of equity joint venture, cooperative joint venture or technology transfer, etc. However, it is the decision of a company whether or not it deems necessary or economically justified to form a joint venture or utilizing foreign capital. For instance, the Respondent deals with a certain range of products for imports and exports, legally speaking, if a chance arises to its best interests and benefits, it will effectively form a cooperation with one or more foreign companies to tap on a new product or new market.
13. The Respondent was established in 1994, so its production cost and financial situation is not subject to significant distortions carried over from the former non-market economy system, in particular in relation to depreciation of assets, other write-offs, barter trade and payment via compensation of debts.
14. Since the Respondent is formed under the relevant laws of China, including the bankruptcy and property laws, and has duly obtained a Independent legal persons status, its corporate activity shall be regulated and protected by all the laws without any derogation or exemption. So the legal certainty and stability for the operation of the Respondent are guaranteed by the laws of China including the bankruptcy and property laws.
15. The Respondent would like to point out that a legal corporate entity is subject to no restrictions whatsoever in terms of converting different foreign currencies for its international business purpose in China. As a matter of fact, the issue of currency convertibility in China has been undergoing a gradual process of liberalization, and consequently, this has by and large facilitated the companies' flexibilities and capabilities to develop international commercial activities.
16. The Respondent hereby submits that it is an independent legal person operating its commercial activities in response to the signal of market. Its business activities are freely developed with no interference or any degree of control by the government. It therefore, respectfully requests the Indian Authority to treat it as a company operating in a market-oriented manner and to assess its exports sales, especially dumping determination separately.

Response of the Domestic Industry after the Disclosure

18A On going through the "Disclosure" (para 2.25) it is noted that the information submitted by the exporter could not be fully reconciled with the data provided in the Annual account which is mainly due to their providing data mostly in the nature of "Management Information System/Reports".

18.B Considering the above, we feel the Authority should summarily reject their cost data etc.

While going through the para 2.13 of the "Disclosure", we are unable to understand whether the incidence of interest has been considered to arrive at the ex-factory export price. We strongly feel that the as the exporter is providing credit to its customers, there is a financial implication while offering credit and therefore the incidence of the same to be taken in the pricing of the product.

18C Response of the Exporter M/s KSC after the disclosure

1. The designated authority has not given any explanation as to how they calculated the normal value at US \$ *****/kg from the costing records presented by M/s. Kaneka Singapore Corporation, the ex-factory price of PHPG DS during the POI comes to US \$ *****/kg from goods exported to India and whereas during the same period for the goods exported to countries other than India, the ex-factory price works out to US \$ *****/kg. The ex-factory price for different countries are determined on the basis of market mechanism such as demand and supply of a particular commodity in that particular country

19. Examination by the Authority

Under Section 9A(1) (c) of the Customs Tariff Act 1975, 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.

CHINA PR:

M/s. Hengdian Group Jiayuan Chemical Co. Ltd., China.

20. The Authority sent questionnaires to all the known exporters for the purpose of determination of normal value in accordance with Section 9A(1)(c). Only one of the exporters from China PR i.e. M/s. Hengdian Group Jiayuan Chemical Co. Ltd., China P.R. has responded to the Authority. The Authority had pointed out the deficiencies in the response submitted by the cooperating exporter from China PR and had asked the exporter to submit the information in the form and manner of the exporter questionnaire. The Authority had also asked the exporter on 15th January and 17th February 2002 to furnish costing information pertaining to format C-1, C-2, A and B and the necessary information as mentioned in the subparagraphs 3 of the Para 8 of the Annexure –1 and as mentioned in the page 37 of the preliminary findings to enable the Authority whether

- a. The decision of concerned firms regarding prices, costs and inputs, including raw materials, cost of technology and labour, output, sales and investment, are made in response to the market signals reflecting supply and demand and without significant State interference in this regard, and whether costs of major inputs substantially reflect market values;
- b. The production cost and financial situation of such firms are subject to significant distortions carried over from the former non-market economy system, in particular in relation to depreciation of assets, other write-offs, barter trade and payment via compensation of debts;

Such firms are subject to bankruptcy and property laws which guarantee legal certainty and stability for the operation of the firms; and

The exchange rate conversions are carried out at the market rate.

The Authority finds that the producer/exporters have furnished comments with regard to procurement of raw material and other relevant inputs for manufacturing the product concerned and the names and addresses of suppliers along with their constitution. They have also commented on the fact that how labour had been organized for production purposes and remuneration of skilled as well as non-skilled workers have been submitted. They have also added that being an independent legal entity, the right to develop business, to form cooperation, to merge with another entity or economic organization etc. is fully granted and protected by the laws of China. The law does not prohibit companies from establishing cooperation with foreign companies, such as formation of equity joint ventures or technology transfer. They have also added that its production cost and financial situation is not subject to significant distortions carried over from the former non-economy system, in particular in relation to declaration of assets, other right offs, barter trade and payment via compensation. They have further added that their business activities are fully developed with no interference or any degree of control by the Govt. They have requested the Authority for an individual treatment in the light of these submissions.

21. The Authority has examined the contention of the exporter with regard to its submissions for the market economy treatment. The Authority notes that the cooperating firm has not produced any supporting evidences/documents with regard to rebutting the presumptions as mentioned under 8(3) of the Annexure I to the anti dumping rules. The firm has also not submitted any copies of invoices form the suppliers; nor they have given any documents in support of the comments made in the preceding paragraph.

22. The Authority notes that in the absence of information as mentioned above, a determination of normal value as per provisions contained in Section 9A(i) c (i) & (ii) read with rule 2 (i) and (ii) of the Annexure I of the Anti dumping rules can not be made. The Authority is therefore unable to apply the principles set out in the paragraph 1 to 6 and is constrained to proceed as per the facts available.

23. Under the circumstances Normal value under the rules is proposed to be determined on the basis of facts available as per rules 6 (8). Therefore the information available on the estimated costs of the production in the country of origin plus selling, administrative and general expenses and a reasonable amount of profit after making reasonable adjustments has been taken as the basis for working out the normal value of the subject goods in China PR. The Normal value determined by the Authority for M/s Hengdian Group Jiayuan Chemical Co Ltd, comes to US\$ ***/kg.

EXPORT PRICE:

24. The Authority notes that there is no dedicated customs classification for the subject goods as the same is classified in others category. As DGCIS data for the period do not reflect all the transactions during POI, the Authority has relied on the data furnished from the secondary sources i.e. IBIS, Mumbai for calculating the quantum of exports from China PR to India. Subsequent to the preliminary findings, the exporter has submitted that they are exporting the subject goods through their group company M/s. Hengdian Group Import & Export Co. Ltd. They have also mentioned that Hengdian Group Import & Export Co. Ltd. quoted its export prices to its Indian customers, entered into contracts and exported the subject goods in its name. They have provided information with regard to various adjustments before and after FOB in terms of trade, insurance, commission, etc. The authority accepts the sales price structure for exports to India as mentioned in Annexure 3 and the net export price at the ex factory level has been determined as per the adjustments claimed by the exporter. Therefore, the ex factory export price for the cooperating exporter works out at US \$*****/kg.

DUMPING MARGIN:

25. The principles governing the determination of normal value, export price and the dumping margin as laid down in the Custom Tariff Act and the Anti Dumping Rules are elaborated in Annexure I to the Rules. The normal value for China P.R. based on the best information available works out to US\$ *****/Kg. The net ex factory export price worked out on the basis of allowing adjustments as claimed by the exporter works out to US\$ **** per Kg. The dumping margin for exports of the subject goods from China PR is assessed by the Authority at US \$ *****/Kg or 72% of the export Price.

Other Exporters from China PR

26. The Authority provided opportunity to the known exporters from China PR to furnish information relevant to the investigations and offer comments, if any, in accordance with the Section cited above. The Authority wrote to the China High Commission of China in India also. However, no other exporters from China have responded to the Authority's request for information. The claim made by the petitioner with the regard to the determination of normal value has also not been disputed by the other interested party (ies). Under the circumstances Normal value under the rules is determined on the basis of facts available as per rules 6 (8). Therefore the information available on the estimated costs of the production in the country of origin plus selling, administrative and general expenses and a reasonable amount of profit after making reasonable adjustments has been taken as the basis for working out the normal value of the subject goods in China PR.

27. The Normal value determined by the Authority for other exporters from China PR comes to US\$ ***/kg. The export price for other exporters from China PR has also been calculated taking into account the average price of exports made to India. The export price at ex-factory for other exporters comes to US \$ ***/Kg. Thus, the dumping margin in case of Non-co-operative/other exporters of PHPGDS from China PR is assessed by Authority at US\$ ***/Kg or 72% of Export price.

M/s. Kaneka Singapore Corporation (Pte) Ltd (KSC), Singapore.

a) NORMAL VALUE:

28. The exporter has claimed in the appendix I of the Exporters' Questionnaire that they do not have any domestic sales. As regards determination of normal value, the Authority notes that the normal value can be determined, in the absence of domestic sales, by taking either a comparable representative price of the like article when exported from the exporting country to an appropriate third country or by taking 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). In this case, the Authority notes that the exporter M/s Kaneka Singapore Corporation, hereinafter referred to as KSC, has made exports to various countries including India during the POI. While scrutinizing the exports from M/s KSC, the Authority notes that they have made exports to India during July –December 2001 while they have exported to other countries during entire POI i.e. July – March 2002. The Authority has determined normal value for M/s Kaneka Singapore Corporation as per information submitted by them after constructing the costs and adding the profit as claimed by them.

29. The company has submitted factory costs and profit of exports to India in the Appendix 8 wherein they have submitted unit selling price at the ex factory level. The information submitted by the exporter could not be fully reconciled with the data provided in the annual accounts. The information provided are mostly in the nature of management information system/reports. The Authority has gone into the records maintained by the exporter with regards to Annual accounts and has derived the costs of sales of the subject goods from the Annual /periodical account. The company charges **% profit for itself and **% for the parent company. These profits have been added to the cost of sales to arrive at the normal value based on the cost of production. The Authority has taken into account the data as submitted by the exporter in the Appendix 7. The normal value based on the cost of production for the cooperating exporter has been determined as US\$ ***/kg as per section 9A(i)©ii(b) of the Anti Dumping Rules.

EXPORT PRICE:

30. The exporter has exported **** Kg. of PHPGDS to India for a total value of \$ **** Accordingly, the average export price of PHPG during the period of investigation works out to US\$****per kg. The exporter has claimed adjustments on account of discount, inland freight, insurance, overseas freight, insurance, etc. to arrive at the Ex-factory export price to India. The Authority notes that most of the exports have been made by M/s Kaneka Singapore Corporation (KSC) via their principal M/s Kaneka Corporation (KC), Japan and these have been further supplied to India by M/s Summit Chemicals Asia Pte. Ltd. (SCAP), Singapore. While determining the export price to India, the authority has taken the first transaction from M/s Kaneka Singapore Corporation to India through M/s. Kaneka Corporation, Japan and APC Pharmaceuticals & Chemicals Ltd., Hong Kong as the FOB export price with applicable adjustments towards inland freight, insurance, handling charges, overseas freight, insurance and shipping charges as suggested by the exporter in the Appendix IV of the Exporters' Questionnaire. This has been done to neutralise any commissions arising out of the exporter's sales through their parent company and other intermediates like SCAP and APC. The Authority has not made any adjustments on account of interest being paid on account of exports as it has taken into account ex factory export price netting back all the commissions and other charges of their parent company and other dealers. The Ex. Factory price for the export sales to India for this cooperative exporter works out as US \$ ****/Kg. Hence, the Authority confirms the ex factory export prices as determined the preliminary determination for the final findings. Thus, Authority assesses the dumping margin in case of cooperative exporter of PHPGDS from Singapore at US\$ ****/Kg or 8.07% of Export price.

OTHER EXPORTERS FROM SINGAPORE:

31. The Authority provided opportunity to the known exporters from Singapore to furnish information relevant to the investigations and offer comments, if any, in accordance with the Section cited above. The Authority wrote to the Embassy of Singapore in India also. However, no other exporters from Singapore have responded to the Authority's request for information. The claim made by the petitioner with the regard to the determination of normal value has also not been disputed by the other interested party (ies).). Under the circumstances Normal value under the rules is determined on the basis of facts available as per rules 6 (8). The Authority has determined the normal value for other exporters as the same as has been determined for the only exporter from Singapore i.e. M/s KSC, Singapore. The Authority has taken the weighted average export price during the POI for exports to India by the same exporter. The Normal value determined by the Authority for other exporters from Singapore comes to US\$ ****/kg and the export price has been determined at US\$****/kg.

32. Thus, Authority assesses the dumping margin in case of Non-co-operative/other exporters of PHPGDS from Singapore at US\$ ***/Kg or 8.07% of Export price.

G. INJURY

33. 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.

CUMULATIVE ASSESSMENT OF INJURY

34. Annexure II (iii) under Rule 11 supra further provides that "in case where imports of a product from more than one country are being simultaneously subjected to Anti Dumping investigation, the Designated Authority will cumulatively assess the effect of such imports, only when it determines that the margin of dumping established in relation to the imports from each country is more than two percent expressed as percentage of export price and the volume of the imports from each country is three percent of the imports of the like article or where the export of the individual country is less than three percent ,the imports cumulatively accounts for more than seven percent of the imports of like article, and cumulative assessment of the imports is appropriate in light of the conditions of competition between the imported article and the like domestic articles"

35. The Authority notes that the margin of dumping and quantum of imports from subject countries are more than the limit prescribed above. Cumulative assessment of the effect of the imports from China P.R. and Singapore is appropriate since the export prices from these countries were directly competing with the prices offered by the Domestic Industry in the Indian market and displacing domestic producers here.

36. For the examination of the impact of the imports on the domestic industry in India, the Authority considered such indices having a bearing on the state of the industry as production, capacity utilisation, sales quantum, stock, profitability, net sales realisation, the magnitude and margin of dumping, etc. in accordance with Annexure II (iv) of the Rules supra.`

37. Views of the Petitioners

1. Imports from the subject countries form a substantial part of domestic demand and the quantum of imports from each of the subject country is more than De Minimus.
2. The Petitioner is a new entrant. However the exporters from subject countries are dumping the subject goods in India to make sure that domestic industry cannot get any market share and to kill it at its nascent stage itself.

Imports of PHPGDS into India from Subject countries (% of total Imports)

Country	Singapore	China
Period	% Of Total Import	% Of Total Imports
99-00	22.35	00.00
00-01	75.67	10.25
2001-2002	66.31	19.88
POI	54.66	30.38

Period	Country	Qty (Kg)	Value	% of Imports
99-00	EU	66000	800307	77.65
00-01	Do	8000	97466	14.08
01-02	Do	17750	206066.56	13.81

Imports of PHPGDS from Non Alleged Sources

3. During the Period of Investigation, the capacity utilisation of the domestic industry has been very low though the demand has been there.
4. There has been a significant decline in the net sales realisation during the POI.
5. Because of the sharp fall in the export price, the importers are forcing them to match the imported price. The petitioner is not in a position to provide the subject material at such a low price, which can not recover the even marginal cost resulting into loss of customers.
6. As the industry is at its nascent stage, protection from unfair trade is vital and urgent otherwise manpower deployed will loose their jobs.
7. Domestic industry is operating at loss from its beginning itself.
8. The present petition is against the material retardation of the establishment of the domestic industry.

37A. Views of the Domestic Industry after the Disclosure

We had submitted vide our letter dated 20th January 2003 certain documents on "confidential basis" evidencing that contractual formalities were completed by KSC as well as payments confirmation was established at a very low price for supply of 14.4 MT of PHPGDS though the material landed into India immediately after the period of

investigation. We, therefore, again request that the Authority must consider the above transaction for the purpose of determination of export price.

We would like to submit that for residual exporters in case of Singapore, the imposition of Anti-Dumping should be to the level of "NIP"

37B: Views of the Exporter M/s. KSC

1. The authority has failed to examine the decline in the prices in the context of the trend of the international prices of PHPG DS and has taken the mere allegation by the complainant as evidence.
2. There is no evidence given by the complainant to prove that there was a loss of contract due to imports of PHPG DS from Singapore. Also, It is not possible for the complainant to get the market share in the first few months of the production.
3. Inability to Raise capital has got nothing to do with dumping for losses the complainant is making . The exporter has further added that the cost of the production of complainant is high because of the complainant has started operations two months prior to the POI. The exporter has also added that the authority has not given any evidence or reasons as to how the complainant has suffered the loss by import of PHPG DS from Kaneka Singapore. They have further submitted that there is no evidence that has been provided to prove that the complainant has suffered any material injury because of imports from KSC.

EXAMINATION BY AUTHORITY

(a) Quantum of imports and export price

38. 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 364% in the volume of imports of the subject goods from China PR during the Period of Investigation over 2000-01. Even during the POI there has been a substantial increase of imports from China PR. Further the average export price from China PR has also declined during the Period of Investigation as against 2000-01. Even during the POI there is a marked decline in the exports price from China PR as illustrated in the table below. Though exports from Singapore has not exhibited an increasing trend in the POI as against 2000-01 in quantity terms, the average export price has declined significantly during the POI as against previous year and also during the POI as illustrated in the table below:

0	Countries	Qty	Share of Subject countries in total imports
98-99	Singapore	****	62%

	China	****	
99-00	Singapore	****	78%
	China	****	
00-01	Singapore	****	96%
	China	****	
POI Ann	Singapore	****	95.7%
	China	****	

Source: Transaction wise data from secondary sources for imports from China PR for all periods and for imports from Singapore for 98-99 and exporters confidential data for subsequent period

(ii) Decline in export price from subject countries as compared to previous year.

Country	China PR	Singapore
Period		
99-00	-	100
00-01	100	93.78
POI	83	86.92

Indexed figure taking 99-00 as base year for Singapore and 00-01 as base year for China PR.

(iii) Decline in the export price during POI from subject countries.

Country	China PR	Singapore
Period POI (July-March) 2002		
July	100	100
August	-	-
September	82.35	85
October	-	79
November	-	85
December	-	85
January	-	-
February	66.38	-
March	-	-

Indexed Figure taking base month July 2001 as 100.

(b) Changes in market share held by Indian producers and imports from the subject country (ies):

The Authority notes 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. The Authority notes that Domestic Industry is not able to gain any market share despite putting up plant and commissioning the production with significant capacity

(c) Production and Capacity utilisation of the petitioner:

The Authority notes that the petitioner has achieved capacity utilization of ****% for all kinds of Dane Salts of its existing installed capacity during period of investigation. However, for the production of subject goods the capacity utilization is only ****% of the installed capacity. The low capacity utilization for the subject goods has been due to the absence of any orders for the premium item PHPGDS and consequently the firm was made to utilise the unutilised capacity for making other Dane Salts with slight modifications in the plant. The Authority notes that keeping in view the demand of PHPGDS in the country, the capacity utilisation of the plant for the subject goods is far below than what could have been achieved by the Domestic Industry.

(d) Insignificant gain of market share:

The Authority notes that the 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 demand of the subject goods in the country, because of dumped imports from subject countries.

(e) Evidence of Lost Contract:

It has been claimed that because of sharp decline in the export price by the exporters, importers are forcing the domestic industry to match the export price and at such price the domestic industry cannot recover even its marginal costs. It is also claimed that the domestic industry is unable to sell the material at such a low price resulting to loss of contracts/customers. The authority notes that the domestic industry has been forced to match the export price resulting into losses, it cannot conclusively ascertain injury because of the lost contracts.

(f) Reduction in selling price, price erosion,

The Authority has analysed the impact of dumped imports on the selling price of the domestic industry by comparing the monthly net sales realisation of the subject goods during the period of investigation.:

Period	Qty Sold/Kg	Net Sales Realization (Rs/Kg)
July-2001	****	100
August -2001	****	-

September-2001	****	-
October-2001	****	-
November -2001	****	89
December-2001	****	89
January 2002	****	89
February 2002	****	87
March 2002	****	85

Index figures considering July 2001 as 100.

The table above indicates that the monthly average net sales realisation during the Period of Investigation has declined from Rs *****/Kg. to Rs *****/ Kg. during July 2001 to March 2002 showing a substantial decrease within the Period of Investigation itself. This is mainly due to decrease in the average export price by the exporters after the starting of the commercial production by the Domestic Industry. The Authority notes that the domestic industry has suffered price injury due to decline in selling price.

(g) Employment:

The Authority notes that there is no change in the employment pattern of the domestic industry though it has been claimed that without protection from unfair trade practice, manpower deployed will loose their jobs. The Authority could not conclusively confirm injury due to this parameter.

(h) Cash Flow and Working Capital

It has been claimed by the exporters that exports from subject countries have not only declined the prices sharply but have also been offering higher credit period up to 180 days or more. The importers/users in India are also demanding the level of credit period from the domestic industry resulting into the blockage of valuable working capital. The Authority notes that the domestic industry is facing adverse cash flow.

(j) Ability to raise capital investment:

The demand of the subject goods in India is more than the existing capacity of the domestic industry and company plans to raise its capacity with a view to cater to domestic demand as well as the export demand. It is claimed that due to dumped imports from subject countries the domestic industry is doubtful to achieve the target or even the raise capital from the market unless remedial action is taken to prevent dumped imports from subject countries. The Authority notes that firm's ability to raise capital investment is limited in the current scenario.

(j) Increase in stock and return of investment

The authority notes that since there is no past trend, comparison of increase and decrease in stock cannot be ascertained. Therefore, the Authority could not confirm any injury due to inventory position. However, It is also noted that return on the investment by the domestic industry is negative.

(k) Profitability :

It has been observed that the Domestic Industry could sell the subject goods at prices so as to match the same being offered by the exporters resulting in huge losses. The Authority notes that the domestic industry is incurring losses since they commenced production.

Price Undercutting, Price underselling, Price depression and Price suppression

39. 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. For the examination of the impact on the domestic industry in India, the Authority considered such further indices having a bearing on the state of industry as production, sales, stock, profitability, net sales realisation etc. On examination of the evidence, it has been found there has been a sharp price undercutting immediately after the domestic industry has started its trial run and continued further during much of the POI. Additionally, domestic industry is prevented to utilise its present capacity and capacity utilisation has been very low during the POI for the subject goods. However, the most significant parameter evidencing injury and threat of further injury is the price undercutting and price underselling. As per the evidence available with the authority it is seen that the firm could not increase the prices of subject goods during POI to the level where it could recover its cost of production along with fair return on capital employed. The Authority has also analysed the landed price of the imported subject goods with the cost of production of subject goods by domestic industry and notes that landed imports are depressing/suppressing the selling price in the domestic market.

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.

Price Undercutting and Price Underselling

Price Undercutting during POI			
Country	Net selling Price petitioner	Landed Price from subject country	Price Undercutting
M/s KSC, Singapore	****	****	****
M/s Hengdian, China PR	****	****	****

H. Threat of Injury

40. 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.

- a. There has been a significant rate of increase of dumped imports into the domestic market from China PR during the POI over the previous year. During the POI also, there has been a substantial increase of imports from China PR
- b. There is a substantial unutilised capacity of the exporters from the subject countries with regard to the availability of subject goods. The Authority notes from the response of M/s KSC, Singapore that their quantity of closing stock which was ****MT during January – July 2001 increased to **** MT (July-December 2001) and even during January to March period, the closing stock of the subject goods are at **** MT which is more than three times of the total exports to India from Singapore. The Authority notes that M/s Hengdian group from China PR is having an unutilized capacity of ****kg as per the submissions made by them.
- c. It is also noted that the exporter from Singapore and China PR has a substantial capacity to manufacture PHPG DS at a short notice at it continues to carry a significant unutilised capacity for the production of major raw material of the subject goods i.e. PHPG Base and subject goods PHPG DS at its same plant.

K. Material retardation

41. In addition to the material injury and threat of injury, the present petition is also concerned with the impact of dumped imports causing material retardation of the establishment of the industry. Since the petitioner is attempting to settle its production in the Indian market and the imports from the subject countries are preventing commercialisation of the production by the domestic industry, the imports are causing material retardation to the establishment of the industry. Though, the "nascent industry" i.e. M/s Daurala Organics Ltd. has recently started production, the industry is yet to find its place in the market. Domestic Industry is unable to achieve a satisfactory level of capacity utilisation and to find its place in the market, because, at the nascent stage itself the domestic industries is facing material retardation, by imports at dumped prices from the subject countries.

L. CAUSAL LINK:

42. 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 China PR and Singapore 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 China PR and Singapore 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.

43. The Authority, therefore, notes from the above that the imports from the subject countries especially China PR have been at a price below the net selling price of the domestic industry. Imports from other countries have been much less and prices from these countries are higher. Further, the imports from both the subject countries into India have been at a price lower than the non-injurious price for the domestic industry. 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 has not been a cause for injury to the domestic industry. It is also noted that there has been rapid increase in imports from subject countries and these countries carry a significant unutilised capacity for the manufacture of the subject goods. Though, the "nascent industry" i.e. M/s Daurala Organics Ltd. has recently started production, the industry is yet to find its place in the market. Domestic Industry is unable to achieve a satisfactory level of capacity utilisation and to find its place in the market, because, at

the nascent stage itself the domestic industries is facing material retardation, by imports at dumped prices from the subject countries.

These parameters collectively and cumulatively indicate that the petitioner has suffered material injury, threat of injury and material retardation due to the dumped imports.

44.. The landed value is determined for the subject goods after adding onto the weighted average CIF 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.

45. 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 has compared ex-factory non-injurious price determined for the period of investigations with the landed value of the imported goods.

46. 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.

M. INDIAN INDUSTRY'S INTEREST:

47. 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 subject countries in any way, and therefore, would not affect the availability of the product to the consumers.

N. CONCLUSIONS:

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

- i. The subject goods have been exported to India from subject countries below its normal value;
- ii. The Domestic Industry has suffered material injury and is facing threat of material injury also.
- iii. The Domestic Industry, on account of the injury being suffered, is also facing material retardation in the establishment of new industry to manufacture subject goods.
- iv. The material injury, threat of injury and material retardation is on account of dumped imports from subject countries/ territories
- v. The Authority considers it necessary to impose definitive anti dumping duty on all imports of D (-) Para Hydroxy Phenyl Glycine methyl potassium Dane Salt from subject countries/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 by the Central Government on all imports of D (-) Para Hydroxy Phenyl Glycine Methyl Potassium Dane Salt also known as: D (-) PARA HYDROXY PHENYL GLYCINE DANE SALT (METHYL POTASSIUM), D (-) ALPHA PARA HYDROXY PHENYL GLYCINE DANE SALT (METHYL POTASSIUM), D (-) ALPHA PARA HYDROXY PHENYL GLYCINE, METHYL POTASSIUM DANE SALT, D(-) ALPHA PARA HYDROXY PHENYL GLYCINE METHYL ACETO ACETATE POTASSIUM SALT (DANE SALT) falling under Custom Heading 2942 originating in or exported from China PR and Singapore. 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/countries mentioned below: -

Country/Territory	Producer/exporter	Amount US\$/kg (3)
China PR	M/s Hengdian Group Jiayuan Chemical Co Ltd	16.16
	Other Producers/Exporters	16.16
Singapore	Kaneka Singapore Corporation, Singapore	13.51
	Other Producers/exporters	13.51

vii. 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.

49. Subject to the above, the Authority confirms the preliminary findings dated 1st October 2002.

50. 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