

To be published in Part-I Section I of the Gazette of India Extraordinary
No.14/23/2002(SSR)-DGAD
GOVERNMENT OF INDIA
MINISTRY OF COMMERCE & INDUSTRY
DEPARTMENT OF COMMERCE
DIRECTORATE GENERAL OF ANTI-DUMPING & ALLIED DUTIES
UDYOG BHAVAN

.....

New Delhi, the 5th November, 2008

NOTIFICATION

-
Final Findings
(Sunset Review)

Subject: Anti-Dumping (Sunset Review) investigations concerning imports of D(-)Para Hydroxy Phenyl Glycine Methyl Potassium Dane Salt (PHPG DS) originating in or exported from China PR and Singapore.

No.14/23/2002(SSR)-DGAD - Having regard to the Customs Tariff Act, 1975, (hereinafter referred to as Act.) 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 (hereinafter referred to as Rules.);

A. BACKGROUND

2. Whereas, 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, the Designated Authority (herein after referred to as Authority) recommended imposition of Anti Dumping Duty on imports of PHPG DS(hereinafter referred to as subject goods) originating in or exported from China PR and Singapore (hereinafter referred to as subject countries). The preliminary findings and final findings of the Authority were published vide notifications dated 1.10.2002 and dated 24.6.2003 respectively. On the basis of findings, provisional duty and definitive anti dumping duties on the subject goods imported from subject countries were imposed by the Department of Revenue vide notifications No. 124/2002-Cus. dated 11.11.2002 and notification No. 117/2003-Cus. dated 24.7.2003 respectively.

3. The Designated Authority, in terms of section 9A (5) of said Act. received a substantiated application from M/s DCM Shriram Industries Ltd.(Unit: Daurala Organics Ltd.) requesting for review and continuation of the anti-dumping duties levied on the subject goods, for another five years on the grounds that the dumping had continued in spite of imposition of anti-dumping duty on imports of subject goods from subject countries and the domestic industry continued to suffer injury on account of dumping by the subject countries. It was also claimed that expiry of measure against the subject country would be likely to result in continuation or recurrence of dumping and injury to the domestic industry. The Designated Authority issued a Public Notice No. 14/23/2002(SSR)-DGAD dated 6.11.2007, published in the Gazette of India, Extraordinary, initiating anti-dumping (Sunset Review) investigations, to examine whether the expiry of anti dumping duty would lead to continuation or recurrence of dumping, injury or both.

B. PROCEDURE

4. In the proceedings the procedure described below has been followed:

i) After initiation of the review the Authority sent questionnaires, alongwith the initiation notification, to the known exporters/producers in the subject countries in accordance with the Rule 6(4), to elicit relevant information.

ii) Notices were also sent to the domestic industry in India seeking relevant information in accordance with the Rules;

iii) The Embassies of the subject countries in New Delhi were informed about the initiation of the investigation, in accordance with Rule 6(2), with a request to advise the exporters/producers in their countries to respond to the questionnaire within the prescribed time.

iv) Questionnaires were sent to the known importers and consumers of subject goods in India calling for necessary information in accordance with Rule 6(4),

v) Transaction-wise data of imports for the period of investigation and preceding three years were called from Directorate General of Commercial Intelligence and Statistics (DGCI&S) and have been relied upon in this investigation;

vi) Copies of the initiation notification were also sent to FICCI, CII and ASSOCHAM for wider circulation.

vii) M/s. Kaneka Singapore Co. (Pte.) Ltd., Singapore responded to the initiation notification and provided the information. The information provided by the exporter to the extent possible have been verified and relied upon in this findings.

viii) M/s DCM Shriram Industries Ltd.(Unit: M/s Daurala Organics Ltd.), being domestic industry, submitted the information/data. The Authority verified the information furnished by the domestic industry to the extent possible on the basis of Generally Accepted Accounting Principles (GAAP) to examine the injury suffered, to work out optimum cost of production, cost to make and sell the subject goods in India and so as to ascertain if Anti-Dumping duty lower than the dumping margin would be sufficient to remove injury to Domestic Industry;

ix) The Authority held a public hearing on 3.4.2008 to hear the interested parties orally, which was attended by representatives of interested parties. The written submissions received from interested parties have been considered in this findings;

x) The Authority made available the public file as per Rule 6(7) to all interested parties containing non-confidential version of all evidence submitted by various interested parties for inspection, upon request.

xi) The views expressed by various interested parties in response to the initiation notification and subsequent to the public hearing are discussed in the relevant paragraphs to the extent these are relevant as per rules and have a bearing upon the case.

xii) In accordance with Rule 16 of Rules Supra, the essential facts/basis considered for these findings were disclosed to known interested parties and comments received thereon have also been duly considered in these findings. The domestic industry, however, have not filed any comments on the disclosure statement.

xiii) Investigations were carried out for the period of investigation (POI) from 1st April 2006 to 31st March 2007. However, injury analysis have been carried out for the years 2003-04, 2004-05, 2005-06 and the period of investigation.

B.1 PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE

5. The product involved in the present investigation is D(-)Para Hydroxy Phenyl Glycine Methyl Potassium Dane Salt (PHPG DS) also known as :

(i) D(-)Para Hydroxy Phenyl Glycine Methyl Potassium 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)

6. Predominantly 'D (-) Para Hydroxyl Phenyl Glycine Base' (hereinafter referred to as "PHPG Base") is imported in to India, which is then converted in-situ to "D(-) Para Hydroxy Phenyl Glycine Methyl Potassium Dane Salt" by the various importers/manufacturers and further used for the production of Amoxicillin and Cefadroxyl, (i.e. bulk drugs).

7. In other words, PHPG Base cannot be used directly for the production of Amoxicillin etc. It is only when PHPG Base is converted to PHPGDS; the same is used for the production of Amoxicillin etc. This conversion may either be done at the PHPG/PHPGDS manufacturers' end, or at the users end, i.e. producers of Amoxicillin etc.

8. All types of PHPG are classified in Chapter heading 29.42.

9. The product investigated in the original investigation was D(-)Para Hydroxy Phenyl Glycine Methyl Potassium Dane Salt (PHPG DS), therefore, the same product will be covered within the scope of this investigation.

10. The domestic industry also produces PHPG DS having similar characteristics and specifications. No argument has been extended, by any interested party, on the issue

of product under consideration or like article and therefore, the Authority holds that the product being manufactured by the domestic industry and the product being manufactured and exported from the subject country is like article as per 2(d) of Anti Dumping Rules.

C. DOMESTIC INDUSTRY

11. In the original investigation the application for anti-dumping investigation was filed by M/s DCM Shriram Industries Ltd. (Unit M/s Daurala Organics Ltd.) on behalf of the domestic industry. In the present sunset review the information/data has been provided M/s DCM Shriram Industries Ltd. It was alleged by the interested parties that there are other producers of the product as well. The Authority in order to verify the veracity of allegation called the information concerning capacity and production from M/s Surya Pharmaceuticals Ltd., Chandigarh and M/s KDL Biotech Ltd., Mumbai. However, these companies did not respond to the letters of the Authority.

C.1 INITIATION OF THE REVIEW AND ARGUMENTS RAISED

Views of Applicant Domestic Industry

12. PHPG Dane Salt is being dumped in India for past several years and imports have been coming for last so many years from Singapore and China PR. Exporter from Singapore and China PR had started reducing the prices in India to maintain and increase its share of import in India.

13. However, after the imposition of Anti dumping duty on import of PHPG Dane Salt originating in or exported from Singapore and China PR the domestic industry could make its presence felt in the domestic market only because of the level playing field granted by way of Anti Dumping duty on dumped imports from the subject countries.

14. Further, based on an application from M/s Kaneka, Singapore, the Designated Authority initiated a mid-term review investigation and the final findings of the same were issued vide Notification no. 15/13/2005-DGAD dated 18th August, 2006

15. It is important to note that the detailed findings of the Authority concluded that exporter from Singapore continues to dump the subject goods in spite of Anti

dumping duty in place. Chinese goods are also coming into India at prices even lower than the imports from Singapore.

16. In view of the above, we request the Designated Authority to continue with the imposition of Anti dumping duty on PHPG Dane Salt originating in or exported from Singapore and China PR otherwise there is likelihood of continued and intensified dumping of subject goods in a big way from Singapore and China PR

17. Countries from EU are the other major known sources of exports of the subject material to India. Although these countries are exporting the subject materials at very low prices, the Domestic Industry is in the process of approaching the Hon'ble Designated Authority separately with a request for initiation of anti dumping investigation against imports of subject material from EU

18. In a sunset review investigation, the test to be applied and examined is whether the cessation of antidumping duty in force is likely to lead to the continuation or recurrence of dumping and injury to the domestic industry. Thus, the existence of material injury is not the pre-requisite for continuation of antidumping duty even though domestic industry considers that the imports of the subject material have resulted in continued injury to them.

19. Article 3.1 of the ADA and Annexure-II of the A.D. Rules provide for an objective examination of both (a) the volume of dumped imports and the effect of the dumped imports on prices in the domestic market for the like products, and (b) the consequent impact of these imports on domestic producers of such products, with regard to the volume effect of the dumped imports.

20. The Authorities are required to examine whether there has been a significant increase in imports, either in absolute term or relative to production or consumption in the importing country. However, given that the present investigation is sun set review for continuation of existing Antidumping duty, what is relevant to examine here is whether the imports at dumped prices would continue in significant volume in the event of revocation of Anti-dumping duty. This is the most likely situation given the surplus capacity with exporter specially from Singapore in view of no domestic sale of the subject material in the domestic market and the level the export prices to India also, keeping in mind the consistent past behavior of the exporters to dump huge volume of export in India from the subject countries.

21. With regard to the effect of dumped imports on prices, the Designated Authority is required to consider whether dumping is resulting into significant price under cutting as compared to the prices of like product in India or whether the effect of such imports

is otherwise to depress prices to significant degree or prevent price increases, which otherwise would have occurred to a significant degree.

22. As already submitted the exporters from Singapore and China PR are exporting the subject material at dumped prices, which is compelling the domestic industry to reduce its prices to remain in market and in turn, resulting into losses to the domestic industry. If the anti dumping duty is withdrawn, the volume gained by the domestic industry so far will be lost and result in further suppressing the prices. This will result into the huge financial losses to the domestic industry.

23. The domestic industry is forced to sell the subject goods well below the proposed non-injurious price in the domestic market. In the event of cessation / revocation of anti dumping duty, the imports of subject countries would intensify the under cutting the prices of domestic industry, thereby leading to recurrence of injury.

24. The petitioner would like to draw kind attention of the Authority that previous investigation was not only for material injury but also for material retardation, since the domestic industry was at an infant stage. Presently, the domestic industry is only five years old, trying to make its presence felt in the market. The revocation of antidumping duty will severely affect the capacity utilization of the domestic industry that too when the domestic industry has further enhanced its capacity because of level playing field was ensured by the Designated Authority through the imposition of antidumping duty. We would once again reiterate that domestic industry has gained, because of the Anti-dumping duty, only in terms of volume not in terms of prices.

25. The domestic industry has just come out of its nascent stage only due to the situation of fair competition granted by imposing the anti dumping duty on the import of the PHPG Dane Salt, if the anti dumping duty were to be withdrawn, this will result into the increased imports from Singapore and China PR at dumped prices and will adversely affect the sales volume of the Domestic Industry significantly. Due to dumped exports from Singapore and China PR over the years, the sales volume of the domestic industry has gone down significantly in spite of imposition of Anti-dumping duty on imports from Singapore & China PR. Immediately after the imposition of Anti dumping duty on PHPG Dane Salt, the domestic industry has gained market share within India. The domestic industry has enhanced its capacity and is capable of catering to the entire domestic demand. Still, the present market share of the domestic industry is only about ***% of the total demand of the country. If anti dumping duty is withdrawn, it is sure that the domestic industry will further lose market share, which it has gained in the previous years due to level playing field provided to the domestic industry by way of anti dumping duty.

26. Before the imposition of Anti-Dumping Duty on PHPG Dane Salt, the capacity utilization for the domestic industry was only **%, however, after imposition of the Antidumping Duty capacity utilization has increased up to about **% on the enhanced installed capacity. If the existing anti dumping duty on PHPG Dane Salt is withdrawn, this will result into opening up of flood gates of the dumped goods from the subject countries, and will result into substantial decrease in the capacity utilization.

27. After the imposition of Anti dumping duty on PHPG Dane Salt, the domestic industry has reduced its losses compared to previous years as the production has increased resulting into absorption of fixed cost on higher production, in turn resulting into the lower cost of production. However, if anti dumping duty were to be withdrawn, it is sure that losses will further increase, due to lower sales volume on account of dumped imports. It will further result into higher production cost and as a consequence more losses to the Domestic Industry

28. The demand of the PHPG Dane Salt in India is more than the existing capacity of the domestic industry and domestic industry could cater to entire demand of the domestic market by debottle-necking of existing capacities. Since DO is part of a big industrial group issue of raising capital specifically for this product separately cannot be replied.

29. Main exporter from Singapore namely M/s Kaneka is an EOU and does not have any domestic sales. This unit has huge capacities. This company has been consistently dumping in spite of anti dumping duty in place. This fact has been established in the mid term review investigation recently conducted by the Designated Authority. Similarly Chinese companies are having huge capacities and are targeting the world market with dumped exports. Further these companies are operating under non market economy conditions making exports at a price which is not decided by market forces but other considerations. These companies are exporting the subject goods even lower than the export prices from Singapore. This establishes that producers from China and Singapore have huge exportable surplus capacities and have consistent practice to dump the subject goods into India. Even after imposition of Anti dumping Duty volumes from these countries are substantial. Quantum of imports has declined immediately after imposition of Anti-dumping duty and now again has started increasing. However, if the Anti-dumping duty is revoked, it is sure that quantum of imports will jump significantly as it was before the imposition of anti dumping duty. Dumped imports will further gain the market share.

Views of M/s Kaneka Singapore Co. Ltd.

30. The Price undercutting in respect of exports from Singapore is negative. Volume of imports from Spain is far higher than Singapore and China PR. Import price from Spain was lower than the import prices from Singapore and imports from Spain are admittedly at undumped price.

31. The cumulation of injury is unwarranted as conditions of competitions between M/s Kaneka and China PR does not warrant cumulative assessment. Whereas the Price undercutting in both the cases with the prevailing anti-dumping duty is negative and the same is relevant factor for causal link, for the purpose of cumulative assessment, it would be seen that there is significant difference in the landed price of imports from Singapore and China PR.

32. The selling price of M/s Daurala is far lower than what it could fetch in the market and far below the anti-dumping duty paid price of the imports. Nothing prevents M/s Kaneka from recovering a price up to 13.51 US \$ per Kg. for practically entire injury period. Therefore, the question that remains fully unanswered by M/s Daurala is why it is charging a price much below this benchmark.

33. Even though the Designated Authority had a practice of considering captive transfers on lower of cost or market price at the time of original investigations, the said methodology was not applied in this case for reasons not disclosed till this stage.

34. Continuation of injury implies material injury. The facts presented by Daurala clearly show that the domestic industry has suffered continued injury. The moot point, however, is that they suffered continued injury in spite of negative undercutting. These facts clearly demonstrate that the reasons for continued injury could not be remotely linked to imports.

Examination by the Authority

35. The Authority takes note of arguments raised by the domestic industry regarding continued injury to the domestic industry. These arguments have been taken into account while analyzing the injury to the domestic industry, likelihood of recurrence of dumping and injury to the domestic industry.

D. METHODOLOGY FOR CALCULATION OF DUMPING MARGIN

Dumping Determination: Normal Value, Export Price and Dumping Margin

Singapore

36. The Authority sent copies of the questionnaire to all the known exporters for the purpose of determination of normal value in accordance with Section 9A(1)(c). M/s Kaneka Singapore Co Ltd.(KSC) responded to the initiation notification and provided information on the prescribed Exporter's Questionnaire. It was explained that the subject goods directly dispatched from Singapore, however, the sales negotiations are conducted by M/s Kaneka Corporation (KNK), Japan. It was also explained that KSC first billed the goods to KNK which in turn make the invoices to customers in India. Complete information for sales including invoices values by KSC and KNK were provided. The information was verified by conducting on the spot verification. The verified information has been relied upon in this investigation.

Normal Value for Singapore

37. On perusal of information, it has been noticed that there is only one transaction of home sale in Singapore. The quantity of sales in Singapore was found to be insufficient for considering the same as sale made in the ordinary course of trade. Therefore, the normal value has been determined in terms of Section 9A(1)(c)(ii) on the basis of cost of production, administrative, selling and general expenses. To this, a reasonable profit was added to determine the normal value. By this method, the normal value has been determined as US\$*** per kg.

Export Price for Kaneka Singapore Co. Ltd.(KSC)

38. M/s Kaneka Singapore Co. Ltd. provided transaction-wise information on export sales to India. During the POI, the exporter has made 26 transactions to India. It has been noticed that total quantity of sales to India reported by the exporter is higher than the quantity reported in the DGCI&S data. The information provided by the exporter has been relied upon in determination of the export price. For calculating the net export price, expenses on account of inland freight, documents, commission, THC, ocean freight, marine insurance and sales assistance have been deducted. By making these deductions, the net export price has been calculated as US\$ ***/kg.

Export Price for Non-cooperating exporters from Singapore

39. For non-cooperating exporters, the export price has been determined on the basis of transaction-wise details provided by DGCI&S. For calculating the net export price, expenses disclosed and verified on exports by cooperating exporters have been

adjusted. By adopting this methodology, the net export price has been calculated as US\$ ***/kg.

China PR

40. The Authority sent copies of exporter's questionnaire and questionnaire on market economy treatment to exporters in china PR, however, no exporter responded to the initiation notification and provided any information. In absence of any information, the presumption of non market economy as per para 8(2) of Annexure 1 of the AD Rules remain unrebutted. The authority, therefore, has determined the normal value in accordance with para 7 of the above said annexure. In absence of any information, the Authority has determined the normal value by adopting the method "or any other reasonable basis".

Normal Value for China PR

41. The Authority has constructed the normal value by taking the international prices of the raw material, consumption norms of the domestic industry, conversion cost of the domestic industry and by adding profit @ 5%. By this method, the normal value has been determined as US\$ ***/kg.

Export Price for Non-cooperating exporters from china PR

42. The export price has been determined on the basis of transaction-wise details provided by DGCI&S. During the POI total of *** MT of the subject goods was imported from China PR. For determination of export price, all reported transactions have been taken into account and export price has been calculated on weighted average basis. By this method the export price has been calculated as US\$ ***/kg. (Rs.*** /kg). To calculate the net export price, expenses on account of inland freight, ocean freight, marine insurance have been deducted. By this method, the net export price has been calculated as US\$ ***/kg.

Dumping Margin

43. Based on the normal value and export price as determined above, the Authority determined the dumping margin as under:

Dumping Margin

Exporter/Producer	Normal Value USD/KG.	Export Price USD/KG.	Dumping Margin USD/KG.
--------------------------	---------------------------------	---------------------------------	---------------------------------------

All exporters from China PR	***	***	***
Kaneka Singapore Co. Ltd.	***	***	***
Non-cooperating exporters from Singapore	***	***	***

The dumping margin determined is significant and above *de minimis*.

E. METHODOLOGY FOR INJURY DETERMINATION AND EXAMINATION OF CAUSAL LINK

INJURY DETERMINATION

CONTINUATION OF INJURY

Examination by the Authority

44. The Authority has taken note that for the sunset review, the relevant provisions of Section 9(A)(5) of the Customs Tariff Act read as under:

“The anti-dumping duty imposed under this section shall, unless revoked earlier, cease to have effect on the expiry of five years from the date of such imposition:

Provided that if the Central Government, in a review, is of the opinion that the cessation of such duty is likely to lead to continuation or recurrence of dumping and injury, it may, from time to time, extend the period of such imposition for a further period of five years and such further period shall commence from the date of order of such extension.”

45. Rule 23 of the Anti-dumping Rules provide for procedure for conducting sunset review. For conducting the review, the provisions of Rule 6,7,8,9/10, 11, 16,17,18,19 and 20 have been made applicable. The Authority notes that as per Rules, present state of injury is also to be assessed in the sunset review.

46. In this regard Article 3.1 of the ADA and Annexure II of the AD Rules provide for an objective examination of both, (a) the volume of dumped imports and the effect of the dumped imports on prices in the domestic market for the like products; and (b) the consequent impact of these imports on domestic producers of such products, with regard to the volume effect of the dumped imports. The authorities are required to examine whether there has been a significant increase in imports, either in absolute term or relative to production or consumption in the importing member. With regard to the price effect of the dumped imports, the authorities are required to examine whether there has been significant price undercutting by the dumped imports as compared to the price of the like product in the importing country, or whether the effect of such imports is otherwise to depress prices to a significant degree, or prevent price increase, which would have otherwise occurred to a significant degree.

47. For the purpose of assessing present state of injury, the Authority has examined the volume and price effects of dumped imports of the subject goods on the domestic industry and its effect on the prices and profitability to examine the existence of injury and causal links between the dumping and injury, if any.

(A) VOLUME EFFECT: Volume effect of dumped imports and impact on domestic industry:

48. The effects of volume of dumped imports from subject country has been examined as follows:

i) Import volumes and share of the subject country:

Particulars	Unit	2003-04	2004-05	2005-06	POI
Market share in Imports					
Singapore	MT	43.200	56.800	307.230	199.600
China PR	MT	0	12.000	55.400	263.100
Subject Countries	MT	43.200	68.800	362.630	462.700
Other Countries	MT	166.000	451.252	291.400	1148.395
Total Imports	MT	209.200	520.052	654.025	1611.095
Trend	Indexed	100	159	839	1071
Market share in Imports					
Singapore	%	20.65	10.92	46.97	12.39
China PR	%	0.00	2.31	8.47	16.33
Subject Countries	%	20.65	13.23	55.45	28.72
Other Countries	%	79.35	86.77	44.55	71.28

49. The DGCI&S has provided transaction-wise data on imports, the same has been relied on for analysis in this finding. The data shows that imports from subject countries have been rising from 2003-04 to POI. Significantly, the imports from other countries, not attracting anti-dumping duty, have also been rising.

50. It has been noted that the demand of the subject goods indicate robust growth. The market share of the subject countries in growing market rose from 20.65% to 28.72%. During the same period the share of imports from other countries declined from 79.35% to 71.28%.

51. It has also been noted that the share of subject countries grew significantly in 2005-06 before declining in POI. The share of other countries declined significantly in 2005-06 before rising in POI.

ii) Demand, Production and Market Shares

Particulars	Unit	2003-04	2004-05	2005-06	POI
Demand	MT.	***	***	***	***
Trend	Indexed	100	131	144	299

Domestic Industry	MT.	***	***	***	***
Export Sales	MT.	***	***	***	***
Total Imports	MT.	209.200	520.052	654.025	1611.095

Market Share in demand

Domestic Industry (merchant sales)	%	***	***	***	***
Imports from Singapore	%	***	***	***	***
Imports from China	%	***	***	***	***
Imports from other countries	%	***	***	***	***

52. The demand of the subject goods has been calculated by addition of domestic sales of the domestic industry and all imports from all countries.

53. The above data indicate that demand grew by 199% in POI as compared to base year. The market share of domestic industry declined from ***% to ***% in POI. The share of subject country increased from approximately ***% in base year to ***% in POI. Significantly, the share of other countries not attracting duty also increased from ***% to ***% during the same period.

54. The domestic industry have significant export activity, therefore, the analysis on demand has also been done by including the export sale in addition to the domestic sale. The demand calculated by this method indicate that growth in demand was at higher rate, it grew by 328% in POI as compared to base year. The market share of the domestic industry declined from ***% to ***% in POI. The share of subject countries during the same period increased from ***% to ***%. The share of other countries not attracting anti-dumping duty also increased from ***% to ***%.

a) Capacity, Capacity Utilisation and Production of the Domestic Industry

Particulars	Unit	2003-04	2004-05	2005-06	POI
Capacity	MT	***	***	***	***
Trends	Indexed	100	135	168	168
Production	MT	***	***	***	***
Trend	Indexed	100	198	286	275
Capacity Utilization	%	***	***	***	***

55. The above data shows that the domestic industry has increased capacity in 2004-05 and 2005-06. There was no capacity addition during the POI. The capacity increased by 35% in 2004-05 and 68% in 2005-06 and POI as compared to base year.

56. The production of the subject goods grew consistently by 98% in 2004-05, 186% in 2005-06 and 175% in POI as compared to base year. The capacity utilization improved significantly in POI as compared to base year. Significantly, the higher capacity utilization was achieved even

though the domestic industry had added capacity in 2004-05 and 2005-06. It has also been noted that production has increasingly been used for export purpose. In 2003-04, it was 17.59% which increased to 65.85%, 84.97% and 84.67% in years 2004-05, 2005-06 and 2006-07 respectively.

b) Sales of Domestic Industry

Particulars	Unit	2003-04	2004-05	2005-06	POI
Sales - Domestic	MT	***	***	***	***
Trend	Indexed	100	71	58	58
Sales - Exports	MT	***	***	***	***
Total Sales	MT	***	***	***	***
Trends	Indexed	100	190	295	285

57. The above data shows that domestic sale of the domestic industry have declined to 58% in POI as compared to base year. On the other hand, the export sale increased dramatically and it increased to 1325 (indexed) as compared to 100 of base year. Total sale increased to 285 (indexed) as compared to 100 of the base year.

(B) Price Effect of the Dumped imports on the Domestic Industry

58. The impact on the prices of the domestic industry on account of dumped imports from the subject country has been examined with reference to the price undercutting, price underselling, price suppression and price depression, if any. For the purpose of this analysis the weighted average cost of production, weighted average Net Sales Realisation (NSR) and the Non-Injurious Price (NIP) of the domestic industry (worked out on the basis of the costing information of the domestic industry) have been compared with landed value of imports from the subject country.

Price Undercutting - China

Particulars	Unit	2003-04	2004-05	2005-06	POI
Export Price	Rs./MT		259.00	319.00	303.28
Landed Value	Rs./MT		313.91	370.52	344.60
NetSalesRealisation	Rs./MT	***	***	***	***
Price Undercutting	Rs./MT		***	***	***
Price Undercutting	%		***	***	***

Price Undercutting - Singapore

Particulars	Unit	2003-04	2004-05	2005-06	POI
Export Price	Rs./MT	293.44	307.00	350.74	343.63
Landed Value	Rs./MT	370.46	372.08	407.38	390.45
Net Sales Realisation	Rs./MT	***	***	***	***
Price Undercutting	Rs./MT	***	***	***	***
Price Undercutting	%	***	***	***	***

Price Undercutting – Subject Countries

Particulars	Unit	2003-04	2004-05	2005-06	POI
Export Price	Rs./MT	293.44	299.02	345.85	326.37
Landed Value	Rs./MT	370.46	362.41	401.70	370.84
Net Sales Realisation	Rs./MT	***	***	***	***
Price Undercutting	Rs./MT	***	***	***	***
Price Undercutting	%	***	***	***	***

Price Underselling

(Value in Rs./KG)

Net Sales Realisation	***
Non Injurious Price	***
Landed Value (Singapore)	390.45
Price Underselling (Singapore)	***
Price Underselling (%)	***
Price Underselling range	negative
Landed value (China PR)	344.60
Price Underselling (China PR)	***
Price Underselling (%)	***
Price Underselling range	5-10%
Landed value (Subject Countries)	370.84
Price Underselling (China PR)	***
Price Underselling (%)	***
Price Underselling range	0-5%

59. A comparison for subject goods during the period of investigation was made between the weighted average landed value of dumped imports and the domestic selling price in the domestic market. In determining the net sales realization of the domestic industry, taxes, the rebates, discounts and commission offered by the domestic industry have been adjusted.

60. The export price from the subject countries has shown rising trend. The export price has increased from 2003-04 to 2005-06, however, there was slight decline in the POI. During the same period, the customs duty declined from 25% in base year to 12.5% in POI. The landed value from the subject countries continued to increase till 2005-06, however, there was slight decline in the POI. The selling price of the domestic industry continued to be same in 2003-04 and 2004-05 though there was rise of price by Rs.4/kg. in 2005-06. In the POI, the price declined by Rs.12/kg. The undercutting of selling price by imports (with anti-dumping duty) from subject countries continued. From China PR, the undercutting was positive in 2005-06 and POI. In the POI, it was in the range of 5-10%. From Singapore, the undercutting was negative in 2005-06 and POI.

61. The data on cost of sales shows that cost of sales declined by Rs.43/kg. in POI as compared to immediate preceding year whereas the selling price declined by Rs.13/kg. during the same period.

62. The price underselling is an important indicator of assessment of injury; thus, the Authority has worked out a non injurious price and compared the same with the landed value to arrive at the extent of price underselling. The non-injurious price has been evaluated for the domestic producer by appropriately considering the cost of production for the product under consideration during the POI. The analysis shows that the underselling from China PR was in the range of 5-10% whereas in the case of Singapore it was negative. In respect of subject countries, it was less than 5%.

Examination of other Injury Parameters

63. After having examined the effect of dumped imports on the volumes and prices of the domestic industry and major injury indicators like volume and value of imports, capacity, output, capacity utilization and sales of the domestic industry as well as demand pattern with market shares of various segments in the earlier section, other economic parameters which could indicate existence of injury to the domestic industry have been analysed hereunder as follows:

(i) Profits and Actual and Potential Effects on Cash Flow

(Merchant sale)

Particulars	Unit	2003-04	2004-05	2005-06	POI
Profitability					
Cost of sales weighted	Rs./MT	***	***	***	***
Trend	Indexed	100	94	101	91
Selling Price	Rs./MT	***	***	***	***
Trend	Indexed	100	100	102	98

Profit/ Loss	Rs./MT	***	***	***	***
Trend	Indexed	-100	-34	-99	-29
Profit/Loss(PBIT)	Rs. Lacs	***	***	***	***
Trend	Indexed	-100	-19	-70	-13
Cash Profit	Rs. Lacs	***	***	***	***
Trends	Indexed	-100	-19	-68	-15

64. The profitability of the merchant sales of the domestic industry has been analyzed from the records of the company:

65. The data shows that the cost of sales declined to 91 (indexed) as compared to 100 of the base year. During the same period, the selling price declined to 98 (indexed). In terms of rupees, the cost of sales declined by Rs.29/kg. in POI as compared to base year whereas the selling price declined by Rs.6/kg. during the same period. As compared to immediate preceding year the cost of sales declined by Rs.34/kg. and selling price declined by Rs.13/kg during the same period. Consequently, the profitability improved and loss per unit declined to -29 (indexed) in POI as compared to -100 of the base year. Profit/loss and cash profit show similar trend. Loss (indexed) declined from -100 in base year to -16.46 in the POI. Similarly, the cash profit improved to -15 in POI as compared to -100 in the base year.

66. The domestic industry is a multi-product company therefore it was not possible to determine the actual magnitude of cash-flow of the product. The loss per unit has declined in POI as compared to base year. In the indexed form it was -29 in POI as compared to -100 of the base year. The profit/loss in PBIT shows similar trend. The loss in indexed form was -17 as compared to -100 of the base year.

67. The domestic producer being a multi-product company, therefore, it is not possible to determine the cash flow for the like article. However, the cash profit has been determined and the trend shows that the position of cash profit has improved during the POI as compared to base year.

(ii) Employment and Wages

Particulars	Unit	2003-04	2004-05	2005-06	POI
Employee	Nos.	***	***	***	***
Trend	Indexed	100	149	151	154
Wages paid to employees	Rs. Lacs	***	***	***	***
Trend	Indexed	100	145	228	254

68. The number of employees increased by 54% in POI as compared to base year. The wages paid to employees increased by 154% in POI as compared to base year.

(iii) Productivity

Particulars	Unit	2003-04	2004-05	2005-06	POI
Production	MT	***	***	***	***
Productivity per Day	MT	***	***	***	***
Trend	Indexed	100	197	285	274
Production per day per employee	Kg.	***	***	***	***
Trend	Indexed	100	137	189	179

69. The data shows that productivity calculated as a production per day improved significantly in POI as compared to base year. The productivity increased by 175% in POI as compared to base year. In terms of production per employee per day, it increased to 179 (indexed) in POI as compared to 100 of base year.

(v) Inventories

Particulars	Unit	2003-04	2004-05	2005-06	POI
Average inventories	MT	***	***	***	***
Trend	Indexed	100	359	497	308
No. of days sales	Days	***	***	***	***

70. The data on inventory shows that average inventory has increased. However, in terms of days sales (domestic and export sale), the inventory increased from less than 2 days in 2003-04 to 4 days in POI. As per accounting practice of the company, the material packed for sale for which the invoice has already been made is not shown as export sale unless the bill of lading is received by the company.

(vi) Return on Investment and Ability to Raise Capital

Particulars	Unit	2003-04	2004-05	2005-06	POI
-------------	------	---------	---------	---------	-----

NFA	Rs. Lacs	***	***	***	***
Working Capital	Rs. Lacs	***	***	***	***
Capital Employed- NFA Basis (Total)	Rs. Lacs	***	***	***	***
Trend	Indexed	100	109	119	119
Capital Employed- Domestic	Rs. Lacs	***	***	***	***
Trend	Indexed	100	40	24	24
Return on Capital Employed (Domestic)	%	***	***	***	***
Trends	Indexed	-100	-47	-298	-53

71. The domestic industry has increased the capital employed during POI as compared to base year. The increase in capital employed is on account of net fixed assets and working capital. The total capital employed increased by 19% during POI as compared to the base year. The return on capital employed improved in POI as compared to base year, though it remained negative from base year to POI.

vii) Factors affecting prices

72. Evaluation of export prices from subject countries shows that the prices have been from base year to POI. The customs duty has, however, been declining from base year to POI. From 25% in 2003-04 it declined to 12.5% during POI. The landed value of the subject goods increased from 2003-04 to 2005-06 though it declined in POI. The cost of sales of the domestic industry declined to 91 in POI as compared to the base year.

CONCLUSION ON INJURY

73. The demand of subject goods grew by 199% in POI as compared to base year. The capacity of the domestic industry has increased by 68% in POI during the same period. The production increased by 175% in POI as compared to base year. The capacity utilization (enhanced capacity) has improved substantially and it was above 90%. During the POI and immediate preceding year, the capacity utilization was above 90%. The domestic sales of the domestic industry has shown declining trend and declined to 58 (indexed) in POI as compared to 100 of the base year. The export sales on the other hand shows rising trend and it rose by 185% in POI as compared to base year. The average inventory in terms of sales was 4 days in POI as compared to 1.4 days in the base year. The total sales indicate that though the domestic sales have declined despite expansion in the capacity, the domestic industry has substantially increased the export sale.

74. During the POI, the cost of domestic sales declined to 91 (indexed) in POI as compared to the 100 of base year. During the same period, the selling price also declined to 91 (indexed) as compared to 100 of the base year. In terms of rupees, the cost of sales declined by Rs.39/kg. in POI as compared to base year whereas the selling price declined by Rs.6/kg. during the same period. As compared to immediate preceding year the cost of sales declined by Rs.44/kg. and selling price declined by Rs.13/kg during the same period. Profit/loss per unit shows that loss per unit declined to -29 (indexed) in POI as compared to -100 of the base year. Total loss (PBIT) shows similar trend and it declined to -13 (indexed) in POI as compared to 100 during the same period. Similarly, the return on capital employed on the domestic sales shows improvement though it remained negative throughout the injury period.

75. The above parameters indicate that on domestic sale, the domestic industry continue to suffer injury in terms of declining sales. In terms of profits and return on capital employed, the performance improved, however, it continued to suffer losses.

OTHERS KNOWN FACTORS

Volume and prices of imports from other sources

76. It has been seen that total Imports from all countries increased significantly in POI. It was 1611 MT in POI. The share of imports from other than subject countries was 71.28% in POI. It was noticed that from the data provided by DGCI&S that the export price by the other countries during POI was comparable with export price of Singapore. The imports from other countries were mainly from Spain. The Authority notes that the imports from other countries are competing with the imports from subject countries and are also competing with the domestic industry. In the application for sunset review, the domestic industry has indicated that they would be filing application against the other countries for initiating the investigation. The Authority has noted that no such application has been filed by the domestic industry.

Contraction in demand and / or change in pattern of consumption

77. Demand of the product under consideration has registered a significant growth. Contraction in demand is not a possible reason, which could have contributed to injury to the domestic industry.

Trade restrictive practices of and competition between the foreign and domestic producers

78. The subject goods are freely importable and there are no trade restrictive practices in the domestic market. Therefore, this factor could not have been reason to cause injury to the domestic industry

Development of technology and export performance

79. Technology for production of the product has not undergone any change. Developments in technology are not a factor of injury.

80. The domestic industry has significant export activity. The exports of the domestic industry increased by 185% in POI as compared to base year. It has also been noted that production has increasingly been used for export purpose. In 2003-04, it was 17.59% which increased to 65.85%, 84.97% and 84.67% in years 2004-05, 2005-06 and 2006-07 respectively.

Productivity of the Domestic Industry

81. Productivity of the domestic industry measured as production per day and per employee have improved considerably during POI as compared to base year.

CAUSAL LINK

82. The data shows that demand of the subject goods has increased significant in POI as compared to base year. Even with the enhanced capacity of the domestic industry is not sufficient to meet the demand in the country. In view of the gap in supply and demand, the imports are bound to take place. The share of the domestic industry in domestic sale has declined significantly in POI as compared to base year. The share of the Singapore rose from 2003-04 to 2005-06 before declining in POI. The share of China PR continued to rise from base year to POI. The share of imports of other countries mainly Spain increased substantially from base year to POI. The Authority has noted that the imports from Spain were at the comparable prices as that of Singapore. The Authority has also noted that the domestic industry has improved its exports significantly and more than 80% of its production has been accounted for export sale indicating that domestic industry has been concentrating on the export sale.

83. The Authority has also noted that domestic industry has been selling the subject goods below the reference price i.e. the price below which imports cannot come into the country. No reasonable explanation has been provided as to why the domestic industry continued to sell the product below the reference price. The Authority further notes that the selling price of the domestic industry has not changed from 2003-04 to 2005-06 though the capacity increased by 35% in 2004-05 and 68% in POI as compared to base year. In addition to that the domestic industry was in a position to utilize its capacity above 90% by increasing its export activity.

84. The above analysis indicate that the decision of the domestic industry concerning selling price, capacity addition and production was not contingent on the imports and prices further indicating that there is no causal link between imports from subject countries and injury to the domestic industry on domestic sale.

LIKELIHOOD OF CONTINUANCE OF DUMPING & Injury

Submissions by the domestic industry

85. Injury to domestic industry would recur in the event of revocation of existing anti dumping duty. The purpose and the scope of the present review is to establish whether or not cessation of existing Anti dumping duty is likely to lead to continuance or recurrence of dumping or injury. Such a likelihood may for example be indicated by evidence of continued dumping and injury or evidence that reversal of injury, partly or solely, due to existing measures or existing circumstances of the exporter or market conditions are such that they would indicate the likelihood of further injurious dumping.

86. Dumping and injury resulting there from must be established in the anti dumping proceedings indicated in pursuant to Rule-5 of the Anti Dumping Rules, 1995, while the focus shifts in a review under Rule-23 of the Anti Dumping Rules, 1995 read with first proviso of section-9A (5) of Customs Tariff Act, 1975 to the likelihood of continuation / recurrence of dumping and injury.

87. Primary practical importance for the concept of injury as applied by the Designated Authority in original investigation whether there is injury or threat of material injury, while investigation and concept of injury applied in review petition is the continuation or reoccurrence of injury in case of revocation of existing measures. It follows from the fact that injury analysis in the review proceedings focuses basically on future development of the situation of the domestic industry and the manufacturers and the exporters of the subject goods in their country of origin.

88. The reasons for differences in the two concept of injury are fundamentally different circumstances. On the one hand, new Anti dumping proceedings are initiated in pursuant to Rule-5 of the Anti Dumping Rules, 1995 and on the other hand, review proceedings are initiated in pursuance of Rule-23 of Anti Dumping Rules, 1995. The circumstances in the later case are necessarily affected by the measures in force because of the situation of the domestic industry would usually be worse, if level playing field against the dumped imports is not ensured by the Designated Authority.

89. The existence of Anti dumping measures is applied for elimination of the injury. A review investigation may lead to finding of no or reduced injury, because of the existing measures. Consequently, within the framework of review investigation, the various injury factors cannot be interpreted meaningfully in the same way as in original Anti Dumping investigation. The analysis is, therefore to concentrate on hypothetical elements i.e. effect of cessation (or a repeal) of Anti Dumping measures.

90. The surplus production capacity in the exporting countries play an important role for assessing the likelihood of recurrence of injury. The absence of the imports originating in the country concerned or reduction in import volume are not, however, sufficient in themselves to justify the cessation or repeal of anti dumping measures. Neither do such circumstances in the review proceeding preclude commutation of potential injury caused by imports from different countries.

91. The domestic industry submits that in view of the past practice of Singapore and Chinese exporters with respect to exports to India, anti dumping duty needs to be continued.

Likelihood of Continuation of Dumping

92. The subject goods are being exported at very low and dumped prices. The Chinese and Singapore exporters have continued dumping even after the imposition of Anti-dumping duties. Thus, in a situation where the Chinese and Singapore producers have been able to export significant volumes in spite of anti dumping duties, it is natural that the volumes would only increase, if the present anti dumping duties are revoked. Dumping is likely to continue in significant manner in case anti dumping duties is not extended for another five years.

93. There are no changes in the parameters/circumstances prevailing at the time of original investigation and at present. It is evident from the data submitted above that Dumping margins are not only more than de-minimus but also

significant. The circumstances, which were prevalent at the time of original investigations, continue to exist presently. It is evident that there is a likelihood of continuation of dumping. Following are some of the considerations which reflects that the dumping would continue at aggravated level in the event anti-dumping duties are revoked or not extended for the next five years.

Surplus capacities with Chinese and Singapore producers and their Export Orientation.

94. The capacities created by producers in China PR are significantly higher than demand in their local market. The huge volume of exports being made by the Chinese producers to third country markets makes it evident that the volume of imports would increase significantly in the event of revocation of anti dumping duty. Further it is clear that M/s Kaneka, Singapore from Singapore is basically an export-oriented unit. There are no domestic sales of the subject materials in Singapore. The exporter has built up huge capacities for exports only and India is the main target. Further the exporter's credentials of indulging into dumping practices even after imposition of Anti Dumping Duty by the Designated Authority has been duly established in the recently concluded Mid Term review. This being the history and behavior of M/s Kaneka, Singapore, it can be concluded that cessation of Anti Dumping Duty will lead to further intensified dumping and consequent material injury to the Domestic Industry.

95. Looking at the export price trend to India and their prevailing CIF prices to India, it is inevitable that the manufacturers of the subject goods in the event of revocation of present duty, the producers of the subject country would dump their surplus capacity into India at abnormally low prices.

Examination by the Authority

96. As has been analysed in the earlier section of this findings that dumping is continuing from subject countries. In absence of any explanation from cooperating exporters and any information from China PR, there is likelihood of continuation of dumping.

LIKELIHOOD OF CONTINUANCE OF INJURY

97. As has been analysed earlier, the injury to the domestic industry on the domestic sale continues. However, it has been noticed that the selling price of the domestic industry is not contingent or linked with the export price of the subject countries. Significantly, the exports from other countries were at comparable prices with that of Singapore. The domestic industry had, however, shown no interest in targeting the exports from other countries indicating further that the selling price of the domestic industry is not affected because of the imports from other countries. The Authority further notes that more than 80% of the production of the subject goods has been assigned for export purpose indicating that the domestic industry is mainly concentrating on export activity.

98. It is likely that the domestic industry may continue to suffer injury on the domestic sale, however, the existence of anti-dumping duty has not improved the performance of the domestic industry in the last five years indicating that factor(s) other than the dumping are dictating the prices of the domestic industry. The Authority, therefore, concludes that injury to the domestic industry and domestic sale is unlikely to impact the overall performance of the domestic industry.

I. FINAL FINDINGS

99. The Authority after considering the foregoing concludes that:

- a. Subject goods originating in or exported from subject countries have been exported to India below their normal value, resulting in dumping;**
- b. The domestic industry has suffered injury;**
- c. The injury to the domestic industry was however not linked to the dumped imports from the subject countries;**
- d. And discontinuation of anti-dumping duties on the subject goods from subject countries may not impact on the performance of the domestic industry.**

K. Recommendations

100. In view of the findings that anti-dumping duty has not impacted the performance of the domestic industry in the last five years, therefore, the Authority hereby recommend not to continue with the anti-dumping duty on the subject goods from the subject countries.

101. An appeal against this order, after its acceptance by the Central Government, shall lie before the Customs, Excise and Service tax Appellate Tribunal in accordance with the relevant provisions of the Act.

(R. Gopalan)
Designated Authority