

**NO.15/20/2004-DGAD**  
**Ministry of Commerce & Industry**  
**(Department of Commerce)**  
**Directorate General of Anti-Dumping & Allied Duties**

Dated: 25th May 2005

**FINAL FINDING**

**Subject:** Mid-term Anti-dumping review investigations in the matter relating to imports of D(-) Para Hydroxy Phenyl Glycine Base (PHPG Base) from European Union : Final Findings

**A. BACKGROUND OF THE CASE**

Having regard to the Customs Tariff Act, 1975, as amended in 1995 and the Customs Tariff (Identification, Assessment and Collection of Duty or Additional Duty on Dumped Articles and for Determination of Injury) Rules, 1995 (hereinafter referred to as the Rules), vide Notification No. 14/6/2002-DGAD dated 7th March 2003, the Designated Authority (hereinafter referred to as the Authority) notified its final findings recommending definitive anti-dumping duty on import of PHPG Base (hereinafter referred to as subject goods) originating in or exported from the European Union (hereinafter referred to as subject country/territory). The definitive anti-dumping duty was imposed on the subject goods vide Customs Notification No. 71/2003-Customs dated 1st May 2003.

2. Whereas the Rules require the Authority to review, from time to time, the need for continued imposition of Anti-Dumping Duty and if it is satisfied, on the basis of positive information received by it that there is no justification for continued imposition of such duty, the authority may recommend to the Central Government for its withdrawal. Notwithstanding, the above provision, the authority is required to review, on the basis of positive information submitted by any interested party substantiating the need for a review, provided that a reasonable period of time has elapsed since the imposition of the definitive anti-dumping duty, whether continued imposition of the duty is necessary to offset dumping, whether the injury would be likely to continue or recur if the duty were removed or varied, or both. In terms of the above provision, one of the major producer and exporter from the European Union i.e. M/s. Recordati, Italy had filed a request, through the European Union, for a changed circumstances mid-term review of the anti-dumping duty in force.

3. One of the major producers and exporters of the subject goods from the EU during the period of original investigation, M/s Recordati, Italy had informed that they have discontinued the production of the PHPG Base from December 2002. It is noted by the Authority that there were only two known producers and exporters of the subject goods during the period of investigation of the original investigation during 2002-03, and another exporter besides the applicant for the current review had a *de minimus* dumping margin determined during the original investigation. This change in circumstances was considered appropriate to initiate a review.

4. Having decided to review the final findings notified vide Notification No.14/6/2002-DGAD dated 7th March 2003, the Authority therefore issued a public notice dated 29th September 2004 published in the Gazette of India , Extraordinary, initiating mid term review investigations in terms of the Rule 23 of the Anti dumping rules read with article 11.2 of the agreement on Anti dumping on 29th September 2004 , to review whether continued imposition of the duty on imports of PHPG Base originating in or exported from the European Union is necessary to offset dumping, whether the injury would be likely to continue or recur if the duty were removed or varied, or both.

## **B. PROCEDURE**

5. The procedure described below has been followed with regard to this investigation:

- i. After initiation of the review the Authority sent questionnaires, along with the initiation notification, to all known exporters/producers in the subject countries, and domestic industry in India in accordance with the Rule 6(4), to elicit relevant information;
- ii. The Embassies/High Commissions/ Representatives 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 respective countries to respond to the questionnaire within the prescribed time.
- iii. Questionnaires were sent to known importers and consumers of subject goods in India calling for necessary information in accordance with Rule 6(4).
- iv. Investigation was carried out for the period starting from 01.04.2003 to 31.03.2004 (POI). However, injury examination was conducted for a period from 2000-01 to 2002-03 and POI.
- v. request was made to the Directorate General of Commercial Intelligence and Statistics (DGCI&S) to arrange details of imports of subject goods for the past three years, and the period of investigations;

- vi. No response to the initiation notification was received from any other exporter except DSM Deretil, Spain.
- vii. No other exporter from EU including the applicant have submitted any response, in any manner, to the initiation notification.
- viii. M/s Daurala Organics Ltd , Meerut, the domestic producer of the subject goods and the original petitioner in the original investigation submitted its responses opposing the review. However, they submitted the details as required under Application Proforma and details/information submitted by them were verified by the Authority for its correctness.
- ix. The Authority has considered all views expressed and submissions made by various interested parties to the extent they are relevant for the present investigation.
- x. The Authority made available non-confidential version of the evidence presented by various interested parties in the form of a public file kept open for inspection by the interested parties;
- xi. The Authority verified the information furnished by the domestic industry to the extent possible examine the injury suffered and to work out optimum cost of production and cost to make and sell the subject goods in India on the basis of Generally Accepted Accounting Principles (GAAP) and the information furnished by the applicants so as to ascertain if Anti-Dumping duty lower than the dumping margin would be sufficient to remove injury to Domestic Industry;
- xii. The Authority also verified the data of the cooperating exporter to determine the normal value and dumping margin as per the Rules.
- xiii. The Authority held a public hearing on 19 January 2005 to hear the interested parties orally, which was attended by representatives of the domestic industry, exporters of the subject goods from the subject countries. The parties attending the public hearing were requested to file written submissions of views expressed orally and file rebuttals. The written submissions as well as rebuttals received from interested parties have been considered by Designated Authority in this finding to the extent these have been considered relevant to the investigation.
- xiv. \*\*\*\* In the Notification represents information furnished by interested parties on confidential basis and so considered by the Authority under the Rules.

## **C. PRODUCT UNDER CONSIDERATION AND ‘LIKE ARTICLE’**

6. The product involved in the original investigation and the current review is D (-) Para Hydroxy Phenyl Glycine Base (PHPG Base) falling under heading No.2942.00 in Chapter 29 of the First Schedule to the said Customs Tariff Act and ITC HS classification. This classification, however, is indicative only and, in no way, binding

on the scope of the present investigation. No argument has been extended, by any interested party, on the issue of product under consideration and like article. Therefore, the Authority confirms the product under consideration and domestic like article as per the original investigation.

#### **D. Initiation of the Review, arguments raised by various interested parties and Examination by the Authority**

7. It has been submitted by the Domestic Industry that M/s. Recordati, Italy on whose request Initiation Notification has been issued, is neither an exporter nor the foreign producer for the article which is subject to investigation as Ms. Recordati has confirmed that they have discontinued the production of the PHPG Base since December 2002. It has also been added by the domestic industry that as per the requirement for midterm review, the interested party is supposed to submit positive information to the authority to substantiate the need for review of continuation of imposition of antidumping duty. They have further added that no such information is available on the public file except the confirmation that they have discontinued the production of subject goods since December 2002.

8. The Authority has carefully examined various submissions made by the interested parties in connection with the initiation of this review investigation.

9. Rule 23 of the Anti Dumping Rules provides that the Designated Authority shall, from time to time, review the need for continued imposition of anti dumping duty and if it is satisfied on the basis of information received by it that there is no justification for the continued imposition of such duty, shall recommend to the Central Govt. for its withdrawal.

10. Article 11.2 of the Agreement provides that the Authorities shall review the need for the continued imposition of the duty, where warranted, on their own initiative or, provided that a reasonable period of time has elapsed since the imposition of the definitive anti dumping duty, upon request by any interested party which submits positive information substantiating the need for a review. Interested parties shall have the right to request the authorities to examine whether the continued imposition of the duty is necessary to offset dumping, whether the injury would be likely to continue or recur if the duty were removed or varied, or both. If, as a result of the review under this paragraph, the authorities determine that the anti dumping duty is no longer warranted, it shall be terminated immediately.

11. The domestic industry has argued that under Article 11.2 of ADA read with Rule 23 of Indian Antidumping Rules, substantiation of grounds of review are mandatory

and the applicant has failed to do so. Therefore, the initiation of the review is flawed. The Authority notes that the applicant exporter had provided positive information, as required under Article 11.2 of ADA, with regard to the fact that the only known exporter and producer to whom the antidumping duty was imposed had discontinued production since December 2002. It may be recalled that during the original investigation, there were only two known producers and exporters of the subject goods and one of the producer and exporter M/s. DSM Deretil had *de minimus* dumping margin. The authority further notes that the review has been initiated at the request of M/s. Recordati, Italy through the European Union. The European Union is the Government of the exporting country and is a member of WTO and hence the request for review has been correctly made by an interested party. Further, M/s. Recordati was in production during the original period of investigation and hence continues to be an interested party. There is also positive information as mentioned above substantiating the need for review in as much as the only other producer of PHPG Base has already been held to have not dumped the subject goods. On the basis of above, the authority concludes that the midterm review of antidumping duty imposed on PHPG Base from EU has been correctly initiated.

## **E. DUMPING DETERMINATION**

### **E.1 Spain**

12. The only known exporter/manufacturer from EU, M/s DSM Deretil, Spain apart from M/s Recordati, Italy (applicant to the investigation) filed its questionnaire response after initiation of the review. The authority recalls that M/s. Recordati, Italy had submitted a request for a review of the antidumping duty imposed on residual exporters and producers from EU apart from M/s. DSM Deretil stating that it had closed its operation since December 2002. The European Commission in a communication to the authority had also confirmed about the presence of only two producers and exporters from EU and had requested for a review investigation citing the fact that only other exporter and producer from EU M/s. Recordati had closed its operation for subject goods and hence the request for a review. The questionnaire response submitted by the exporter was also verified by the Authority as per the procedure prescribed and the dumping margin has been determined as follows. However, it is pertinent to note that the applicant himself had not submitted any information as required in the exporter's questionnaire.

#### **E.1. DSM Deretil, Spain.**

Normal Value, Export price and Dumping Margin:

13. M/s DSM Deretil, Spain filed a detailed questionnaire response with regard to domestic as well as export sales of subject goods by its Plant near Almeria. Detailed information submitted by the producer and exporter M/s. DSM Deretil, were verified by the Verification team and a detailed confidential verification report was issued to the cooperating exporter.

14. During the period of investigation i.e. 1st April 2003 to 31st March 2004, DSM Deretil had made \*\*\*\*\* sales of the subject goods to three different customers within the European Union. The Appendix 1 of the questionnaire response had provided the complete details of these transactions. \*\*\*\*\* of these transactions, accounting for a quantity of \*\*\*\*\* MTs, was made to Recordati, Italy. \*\*\*\*\* MTs was sold to \*\*\*\*\* and a sample consignment of \*\*\*\*\* kilograms was made to \*\*\*\*\*. The fact that Recordati had purchased PHPG Base from DSM Deretil also establishes the fact that Recordati had discontinued the production of this particular product.

15. During the period of review, DSM Deretil had effected only \*\*\*\*\* sales to India, for a total quantity of \*\*\*\*\* MTs. Appendix 3A with various deductions was also verified with reference to the above documents. In addition, document in support of the commission paid to the agent in India was also verified. In this connection, the invoice of the agent for the various transactions effected in the POI, which clearly showed the \*\*\*\*\* transactions and the remittance made by DSM Deretil was made available and verified. The price at the ex-factory was accordingly revised after verification to US\$ \*\*\*\*\* per kg.

16. The export sales to other countries - other than to India and the European Union – have been reported in Appendix 2A. It was verified that export transaction to all other countries, other than Iran, were below the cost of production and these sales have to be discarded being not in the ordinary course of trade. The quantity exported to \*\*\*\*\* was \*\*\*\*\* kgs as compared to the quantity of \*\*\*\*\* MT exported to India. The ex-factory price to \*\*\*\*\* as appearing in Appendix 3C was verified with the documents provided. The gross selling price was thus revised to US\$ \*\*\*\*\* per kg. being the weighted average price for the \*\*\*\*\* transactions. The weighted average price at the ex-factory level for both the transactions to Iran was US\$ \*\*\*\*\* per kg.

17. It may be recalled that during the original investigation also, the sale price to an appropriate third country (\*\*\*\*\* in the original investigation) was taken for the determination of normal value in view of the fact that there was no sale in the domestic market by the exporter in the original investigation. In the review also, the same country is being taken as the appropriate third country for the determination of normal value as the sales made in the home market are verified to be not in the ordinary course of trade.

18. The export price to India, at the ex-works level (\$ \*\*\*/Kg), was higher than the ex-works price to Iran. (\$ \*\*\*/kg) Thus, dumping margin was proved to be negative during the period of review.

## E. 2 Other producers and exporters from EU

19. The Domestic industry has not named any known exporter and producer except DSM Deretil , Spain in their application proforma who are known to be producing and exporting the subject goods to India and in the EU (besides M/s. Recordati, Italy which they have also submitted, is closed down. They have also confirmed the submissions made by M/s DSM Deretil, Spain that the only other producer and exporter have discontinued the production since December 2002. Additionally, there is no allegation of dumping from any other producer and exporter except M/s DSM Deretil, Spain. With regard to few entries of PHPG Base appearing in the transaction wise statement, the authority notes that these imports could be for a product other than the subject goods as many inconsistencies in the data provided by DGCI&S and other secondary source have been noticed by the authority. The Authority in this regard has also requested the importer M/s KDL Biotech to submit information with regard to imports, if any, made by them during the POI from EU but no reply has been submitted by importer till date despite reminders to them. With this in view the authority accepts the import data as verified by the authority submitted by only cooperating producer and exporter from European Union i.e. M/s. DSM Deretil (and also the submission made in this regard by domestic industry and European Commission) and concludes that there is no import of dumped subject goods from EU during the period of investigation of the current review.

20. During the original investigations also, it was determined that there were only two producers and exporters from the EU during the POI and it was determined that DSM Deretil, Spain had *de- minimus* dumping margin during the original investigations. The other producer and exporter M/s Recordati had not cooperated in the original investigations and hence it had got the residual dumping margin.

21. During the review investigations, M/s DSM Deretil, Spain had represented that there are no other producer and exporter of subject goods in the EU other than themselves. They have also cited the fact which was later verified by the Authority that they are now supplying the subject goods to M/s Recordati as the latter had closed its operation for the subject goods. It is also recalled that in the request for a review, the European Commission had explicitly confirmed the fact of only two producers in the EU and they had based the request for a review due to the closure of operation by one of the major producer and exporter, M/s. Recordati, Italy while the other producer M/s. DSM Deretil had *de minimus* dumping margin during the original investigation.

22. No other representation has been received from any of the importers and other interested parties in this regard concerning subject investigation. In view of the above, the Authority has decided not to impose any residual dumping margin on the other producers as none is known to exist.

**Examination by the Authority with regard to Continuation/Revocation of antidumping duty:**

23. M/s. Daurala Organics Limited, the domestic industry, has submitted that the test to be applied and examined in the current investigation is whether the cessation of antidumping duty in force is likely to lead to continuation or recurrence of the injury to the domestic industry. They have also added that the existence of material injury is not the prerequisite for continuation of anti dumping duty even though domestic industry considered that the imports of the product involved have resulted in continued injury to them. It is also added that the most relevant thing is to examine here is whether the imports at dumped prices would continue to be imported in significant volume in the event of revocation of antidumping duty. They have further added that this is the most likely situation given the surplus capacity with the EU exporters and the level of export prices to India also, keeping in mind previous volume of exports in India. However, subsequent to the issuance of disclosure statement, no reply has been received from the domestic industry.

24. With regard to the observations made by the domestic industry, the producer and exporter from European Union have submitted that they cooperated to the fullest extent in this investigation as they did during the original investigation and the information submitted by them establishes that the dumping margin is nil. They have further requested the authority to examine all the data pertaining to the dumping margin by verifying the records at the premises of the producer. They have also submitted that during the period of investigation, DSM Deretil had exported only two consignments of PHPG Base, despite having a zero antidumping duty. It has also been added by the exporter that the allegation that M/s. DSM Deretil had increased the sale of PHPG Base after imposition of antidumping duty is incorrect.

25. The Authority has examined the contention of the domestic industry as well as the producer and exporter from the European Union. As mentioned in the earlier paragraphs, the Authority had verified the records at the premises of the producer and exporter and had established that the dumping margin is negative with regard to exports made by the cooperating producer and exporter M/s. DSM Deretil. The authority also has not found truth in the allegation that the sale of PHPG Base by M/s. DSM Deretil after imposition of antidumping duty has increased.

26. With regard to the allegation made by the domestic industry whether the imports at dumped prices would continue to be imported in significant volume in the event of revocation of antidumping duty, it has been examined that after December 2002, there is only one producer in the European Union of the subject goods and this producer M/s. DSM Deretil had a zero antidumping duty and yet had exported only a very small quantity of the subject goods. After the verification of the cooperating exporter, it has been established that the price of even this quantity is an undumped price. Hence the contention of the domestic industry that there is surplus capacity with EU and exports would increase in significant volumes appears to be unfounded. Further, when the only producer did not export significant quantity despite zero antidumping duty, there is no basis to presume that the quantity will increase significantly if the duty is removed. Hence, the authority has not found any reasons for likelihood of dumping if the antidumping duty is withdrawn.

27. As per the rule 23 of the antidumping rules, the designated authority shall, from time to time, review the need for continued imposition of the antidumping duty and shall, if it is satisfied on the basis of information received by it that there is no justification for the continued imposition of such duty recommend to the Central Government for its withdrawal. Article 11.2 of the Agreement on Antidumping which deals with the midterm review states that “interested parties shall have the right to request the authorities to examine whether the continued imposition of the duty is necessary to offset dumping, whether the injury would be likely to continue or recur if the duty were removed or varied or both. If, as a result of the review under this paragraph, the authorities determine that the antidumping duty is no longer warranted, it shall be terminated immediately”. In this subject investigation, it is noted that there is only one producer of the subject goods in the European Union and no dumping margin has been determined with respect to the said producer. It is also concluded from the preceding paragraph that there is no likelihood of dumping of subject goods from subject country/territory if the antidumping duty is withdrawn. Hence, in view of the aforesaid facts, the authority does not consider it relevant to conclude any finding with regard to the current injury or recurrence of injury to the domestic industry as the issue of existence or recurrence of injury is irrelevant in the present investigation in view of the fact that the cause of action i.e. either the continued dumping or likelihood of dumping is absent in the present investigation.

## **F. Conclusions:**

28. The authority has after considering the foregoing come to the conclusion that

- i. No dumping margin for the subject goods has been established with regard to imports from European Union and there is no likelihood of continued dumping of subject goods from European Union.
- ii. In view of the above, the continued imposition of antidumping duty on the subject goods from the European Union is not necessary to offset dumping and injury to domestic industry.

29. Having concluded that the no dumping margin for the subject goods has been established on account of imports of subject goods from the European Union and there is no likelihood of dumping of the subject goods from European Union, the Authority finds no justification for continuation of the duty against European Union and therefore, in terms of Rule 23 of the said Rules recommends revocation of duty in force against European Union. Hence, in view of the above, the Authority recommends withdrawal of the anti dumping duty imposed vide notification 71/2003-Customs dated 1st May 2003.

## **G. Further Procedures**

30. An appeal against this order shall lie before the Customs, Excise and Service tax Appellate Tribunal in accordance with the relevant provisions of the Act.

**(Dr. Christy Fernandez)**  
DESIGNATED AUTHORITY