

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

New Delhi ,the 5th June 2002

PRELIMINARY FINDINGS

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

No. 14/6/2002-DGAD - Having regard to the Customs Tariff Act, 1975 as amended in 1995 and the Customs Tariff (Identification, Assessment and Collection of Anti Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, thereof;

A. PROCEDURE:

2. The procedure described below has been followed:

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

M/s. Recordati, Italy

M/s DSM Deretil S.A. Spain.

Response has been received from both the exporters.

- vii. The Delegation of European Commission in New Delhi was also informed about the initiation of investigation and requested to advise the exporters/producers from their countries to respond to the questionnaire within the prescribed time;
- viii. The questionnaire was sent to the following known users/importers of subject goods:-

- M/s. Aurbindo Pharma Ltd, Hyderabad.
- M/s. Lupin Laboratories Ltd., Mumbai.
- M/s. 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.

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

- ix. Additional information regarding injury was sought from the petitioner, which was also furnished;
- x. The Authority kept available non-confidential version of the evidence presented by various interested parties in the form of a public file maintained by the Authority and kept open for inspection by the interested parties;
- xi. **** in this notification represents information furnished by the interested parties on confidential basis and so considered by the Authority under the Rules;
- xii. The investigation covered the period from 1st April 2001 to 31st December 2001;

- xiii. Copies of Initiation Notification were also sent to FICCI, CII, ASSOCHAM etc., for wider circulation.

B. PETITIONER'S VIEWS:

3. The petitioner, M/s Daurala Organics Ltd, has made the following points in their submissions: -

- i. The product under consideration in the present petition is D (-) Para Hydroxy Phenyl Glycine Base (PHPG Base). This product is also known as :

D(-) Alpha Para Hydroxy Phenyl Glycine

D(-) Alpha Para Hydroxy Phenyl Glycine Base

D(-) Para Hydroxy Phenyl Glycine

Para Hydroxy Phenyl Glycine

D(-) P-Hydroxy Phenyl Glycine Base

D(-) P-Hydroxy Phenyl Glycine, etc.,

- ii. The subject goods are imported into India, which is then converted in situ to PHPG Dane Salt (PHPGDS.) by the various importers/manufacturers and this compound is further used for the production of Amoxicillin and Cefadroxyl.
- iii. The subject goods are classified under Chapter 29 of the Customs Tariff Act at sub heading number 294200 and 29420029 under 8 digit ITC code. There is no significant difference in the subject goods produced by the petitioner and the subject goods imported from subject country/ territory, which can have any impact of price usage, quality etc. Product produced by Daurala Organics Limited (DOL) and imported from subject country/ territory has similar characteristics and therefore, both should be treated as Like Articles.
- iv. The petitioner represents the domestic industry, as they are the sole producer of the subject goods in India and therefore, fulfills the criteria as far as standing is concerned.
- v. Prior to this petition, the domestic industry was suffering from dumping of PHPG base from China, PR and Singapore and the Designated Authority had already issued the Preliminary Findings on the subject material from these countries vide 51/1/2001-DGAD dated 31/12/2001 and the duty had already come into force with effect from 15th February, 2002 vide Ministry of Finance Notification No.18/2002-Customs dated 15th February 2002. In the meantime,

producers/exporters in the subject country/ territory have also joined these countries in dumping subject material in the Indian market. Imports have started coming in from EU at a very cheap price resulting dumping and these imports are causing injury to the domestic industry.

- vi. Italy and Spain are members of European Union and there is no customs boundary in European Union. Thus, imposition of anti dumping duty cannot be effective without imposing duty against EU as a whole.
- vii. The quantum of imports from the subject country is more than the de minimus limit.
- viii. The petitioner has submitted that there is a substantial increase in exports from subject country/ territory in absolute terms, which is evident from the import data. The month wise import statistics show that exporters from Italy (EU) are reducing prices sharply after September 2001, which in their opinion cannot recover even their variable cost. The target of the exporter is just to kill the domestic industry at its nascent stage.
- ix. The petitioner is a new entrant in this field and dumping from subject country/ territory is aimed to kill this industry at its very inception.
- x. The present petition is against material retardation of the establishment of the industry. Since the petitioner is attempting to settle its commercial production in the Indian market and the imports from the subject country/ territory are preventing commercialization 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 DOL has recently started commercial production, the industry has yet to find its place in the market. Domestic Industry is unable to achieve a satisfactory level of capacity utilization and find its place in the market. Further, at nascent stage of production, it is being threatened with material injury by the exports from the subject country/ territory.
- xi. The petitioner has claimed that the technology employed by it is comparable to the technology being used by the other producers in the world. Factors such as trade restrictive practices and competition between the foreign and domestic producers, developments in technology, the export performance or the productivity of the domestic industry have not caused injury to the domestic industry.
- xii. Sharp increase in imports of subject goods at dumped prices has prevented the domestic industry not only to get its normal selling price but also prevented the domestic industry to remain in the market. The petitioners understand that European Union is having a significant freely disposable capacity indicating the likelihood of substantially increased dumped imports to Indian market taking into account the limited availability of other export markets to absorb any additional exports.

- xiii. The domestic industry has suffered huge losses at its nascent stage itself, in spite of a growing demand. Dumped imports from subject countries are the only reason causing material retardation of the establishment of the industry. Further, at nascent stage of production, the Domestic Industry is being threatened with material injury by the exports at dumped prices from the subject country.
- xiv. It is submitted that the Anti-dumping duty against the subject country be imposed from retrospective effect.
- xv. The anti-dumping provisions under Section 9A(3) states as under in this regard:

"If the Central Government, in respect of the dumped article under inquiry, is of the opinion that –

There is a history of dumping which caused injury or that the importers was, or should have been, aware that the exporter practices dumping and that such dumping would cause injury; and the injury is caused by massive dumping of an article imported in a relatively short time which in the light of the timing and the volume of imported articles dumped and other circumstances is likely to seriously undermine the remedial effect of the anti-dumping duty liable to be levied.

The Central Government may, by notification in the Official Gazette, levy Anti-dumping duty retrospectively from a date prior to the date of imposition of Anti-dumping duty under-section (2) but not beyond ninety days from the date from the date of notification under the sub-section, and notwithstanding anything contained in any other law for the time being in force, such duty shall be payable at such rate and from such date as may be specified in the notification.

It is evident from the above that the Central Government can impose Anti-Dumping Duty from retrospective effect in case:

- a. There is a history of dumping which caused injury;
- b. The importer was, or should have been, aware that the exporter practices dumping and that such dumping would cause injury;
- c. The injury is caused by massive dumping of an article imported in a relatively short time which in the light of the timing and the volume of imported article dumped and other circumstances are likely to serious undermine the remedial effect of the Anti-dumping duty liable to be levied.
- d. In the present case there is a clear history of dumping. Earlier the domestic industry has been injured from dumping of the subject material from the China and Singapore. The Designated Authority is conducting a detailed investigation and has already recommended preliminary findings and provisional anti-dumping duty has already been imposed by the Central Government. Now

producers/exporter from the subject country/territory are dumping subject goods and are causing injury to the domestic industry. In this case the importers are well aware that the price at which the subject material is being exported from the subject country/territory is a dumped price as the price is significantly below the reference price fixed by the Designated Authority in the earlier investigation (causing injury to the domestic industry).

- e. The injury is being caused by the producers/exporters from subject country/territory in a short period. There were little imports or nil imports from the subject country earlier. The dumping has commenced and got intensified very recently (more particularly from September, 2001). It is understood that the exporters have booked huge orders, which are under process of exportation.
- f. Most of the companies who are importing from the subject countries/territories are the companies who were earlier importing from China and Singapore.

C. EXPORTERS, IMPORTERS' AND USERS' VIEWS:

4. The Authority sent questionnaires to all the known exporters of subject country/territory for the purpose of determination of normal value in accordance with Section 9A(1)(c). The response filed by the exporters is as under:

a. M/s DSM Deretil, SA, Spain

It is seen that the exporter M/s DSM Deretil SA, Spain has not submitted any argument in their submission to the Designated Authority. However, they have responded to the questionnaire, which was sent to them along with the non-confidential copy of petition and they have submitted the data as per the different appendices mentioned in the questionnaire. They have submitted that

- i. DSM Deretil S.A. is an organization in the form of an autonomous society established and registered as per the laws of Spain by Colegio National of Barcelona.
- ii. The exporter has represented that they receive no incentive from their government on export sales. They have added that they have no sales in the Spain or in the European union (Domestic market). However they have added that they have made sales to third countries.
- iii. They maintain that there is no difference between the production cost data supplied in the questionnaire and costs normally determined by them using their accounting system.
- iv. The exporter maintains that there is no specific evidence to material changes in the level of profits on sales made by DSM Deretil S.A. to India and other

countries – due to reasons of quantities sold, conditions or terms of sale or of trade or such other factors.

b. Recordati, Italy

- i. M/s Recordati, Italy has represented that they produce the PHPG via Enzymatic route (petitioners route is chemical) since last 20 years and are reselling to Indian market at an average price in line with world market price. They have added that price level at which they sell their product in India comes after hard negotiations where quantity per order and international prices of Amoxy and Pen-G are taken into considerations.
- ii. They maintain that price erosion of both PHPG and Dane salt has been enhanced by several Chinese new producers of these commodities. They maintain that they don't have the resources to burn in an operation of dumping nor the intention to act against the interest of the petitioner.

IMPORTERS' AND USERS':

8. Only one user, namely, M/s. Torrent Gujarat Biotech Limited (TGBL) has responded to this petition. Their submissions are as follows:

- a. There is no justification for fixing anti dumping duty on PHPG Base, imported from European Union considering the fact that the domestic industry maximum production capacity is only 300 MT as against an estimated demand of 2200-2500 MT/per annum.
- b. The quality of the indigenous material available does not meet strictly to their specifications, which does not give them required yield and thus it affects the commercial viability of the finished product.
- c. The landed prices of PHPG Base at the prevailing price of US \$ 11 per kg. Works out to be Rs.870.50 per kg. Including the duty, freight and the clearing charges etc. which is closer to the prevailing price of the local manufacturers M/s. Daurala Organics Limited. This indicates that the import price is parity with indigenous prices.
- d. M/s DOL Ltd. is the only producer of this India and imposing of anti dumping duty on the subject material will become monopoly business which is against the MRTP Act.

M/s TGBT has responded to the importers' questionnaire and has submitted information as in Annexure I to VII. They have also submitted annual report of their company for the year 2000-2001 and 1999-2000.

D. EXAMINATION AND FINDING BY AUTHORITY:

9. The submissions made by the petitioners, importers, exporters and other interested parties, to the extent filed before the Authority have been examined and considered while arriving at these findings and wherever appropriate have been dealt hereinafter.

E. PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE:

10. The product under consideration in this investigation is PHPG Base. (Para Hydroxy Phenyl Glycine Base). The subject goods is imported in India which is then converted in situ to PHPG Dane Salt(PHPGDS) as PHPG cannot be used directly for the production of Amoxycillin etc. This conversion is done either at PHPG/PHPGDS manufacturers' end or at the users' ends i.e. producers of Amoxycillin etc. It is classifiable under Chapter 29 of the Customs Tariff Act under sub heading 2942.00. As per ITC eight-digit classification PHPG is classified in "Others' categories' under chapter 29 i.e. 2942.0029. The present investigations are in respect of the product under consideration irrespective of the classification under which they are imported. Customs classification is indicative only and is in no way binding on the scope of the present investigation.

11. 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.

12. 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. The Authority notes that PHPG base produced by domestic industry has characteristics, which are similar to those of the PHPG base imported from subject countries. In view of the above, the Authority holds that PHPG Base produced by the domestic industry and those being imported from the subject countries are Like Articles within the meaning of the rules for the purpose of injury determination.

De Minimus Limits

13. The petitioner has represented that the statistics shown in the DGCI&S data is not representative as other organic compounds under category "Others" are also cleared from the same heading 294200. Since the DGCI&S data does not give accurate import data for PHPG Base, the petitioner has relied upon the data of secondary source i.e. from International business Information Services, Mumbai (IBIS). The data provided

by the agency is based on Customs daily lists. The authority notes that PHPG Base is classified in "Others category" as per the Customs Tariff and hence the DGCI&S data may not be reliable under these circumstances. The IBIS import data for the last three 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.

F. Domestic Industry

14. The petition has been filed by M/s Daurala Organics Limited, Daurala, Meerut, UP on behalf of domestic industry. The petitioner is the sole producer of PHPG in India. Accordingly, the petitioner satisfies the criteria of standing to file the petition on behalf of domestic industry in terms of Rule 5(3) of the Rules supra. The Authority also considers this petitioner as domestic industry within the meaning of Rule 2(b) supra.

G. Examination of Normal Value, Export Prices and Dumping Margin

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

- i. The comparable price, in the ordinary course of trade, for the like article when meant for consumption in the exporting country or territory as determined in accordance with the rules made under sub-section (6); or
- ii. When there are no sales of the like article in the ordinary course of trade in the domestic market of the exporting country or territory, or when because of the particular market situation or low volume of the sales in the domestic market of the exporting country or territory, such sales do not permit a proper comparison, the normal value shall be either:
 - a. Comparable representative price of the like article when exported from the exporting country or territory or an appropriate third country as determined in accordance with the rules made under sub-section (6); or
 - b. The cost of production of the said article in the country of origin along with reasonable addition for administrative, selling and general costs, and for profits, as determined in accordance with the rules made under sub-section (6)";

Provided that in the case of import of the article from a country other than the country of origin and where the article has been merely transshipped through the country of export or such article is not produced in the country of export or there is no comparable price in the country of export, the normal value shall be determined with reference to its price in the country of origin.

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

Normal Value

16. M/s DSM Deretil has replied that they have no domestic sales. They have given information in their response to their questionnaire in the prescribed format. As per Appendix –1 they have replied that they do not have any domestic sales and they have also added that they don't have any sales in the European Union for that product. As per Appendix –3 they have given an account of their sales to other countries and India, which is further split in month wise details of the sales. In the Appendix-4 & 6 they have given price structures and sales arrangements for sales to India and other countries. However they have given partial and incomplete information in the Appendix-7 of the questionnaire. Information with regards to the quantity and value for other products are not specified. As per appendix 8 and 10, they have not given complete information relating to financial and interest costs though in the annexure to these Appendices they have submitted some costs calculations with regards to the cost of the capital. They have also submitted their corporate balance sheets for the last three years.

The Authority notes that firm has submitted detailed information regarding the sales price structure for the exports to other countries and India though complete information relating to finance and interests costs have not been submitted and also the details regarding company's other product and their values are incomplete. The Authority also notes that exporter has not submitted transaction wise details in respect to third countries sales though they have submitted month wise details in respect to sales to third country which show that these sales are in ordinary course of trade. The Authority after examining the submissions of the exporter has come to a conclusion that by not giving all information as per the questionnaire, the authority is prevented to accept the submissions of the exporter in totality unless such a claim is supported by full information as required in the questionnaire. However since they have given adequate information regarding exports to other countries as per appendix-3 and 6, the authority accepts exporters submission for the normal value calculation strictly for the limited purpose of preliminary findings subject to further investigation and verification. The Authority has determined normal value as US\$ **** after taking account the sales price to third country (as a representative and appropriate third country) after making adjustments on account of inland freight, insurance, overseas freight, overseas insurance.

EXPORT PRICE:

17. The exporter has exported **** Kg. of PHPG to India for a total value of US\$****. They have given transaction wise details for export sales made to India and

the Authority notes that these sales have been made under ordinary course of trade. 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, overseas insurance etc. to arrive at the ex-factory export price to India. However it is seen that the exporter has claimed less freight for exports to India as compared to exports to appropriate third country, which is nearer to EU. The authority has made adjustments taking the same freight as exports to Iran in the case of exports to India also and after considering the same the ex-factory price for export sales to India works out as US \$ ****/Kg. after making adjustments on account of inland freight, insurance, overseas freight, overseas insurance subject to further verification/investigation. The Authority has also taken into account commission at the rate of ****% of Export price as part of the adjustments to determining ex factory export price to India.

The dumping margin in case of M/s DSM Deretil S.A. from Spain is assessed by Authority at Rs **** per Kg or 6.68% of the export price. ,

M/s Recordati, Italy :

18. M/s Recordati has submitted their submissions in generalised form and they have commented only on the technology used by them and by the Petitioner. They have not submitted any information in the form and manner prescribed in Exporters Questionnaire. The Authority has, therefore, proceeded on the basis of Rule 6(8), i.e. best information available and has determined the normal value in respect of Recordati as per the information furnished by the domestic industry on the basis of constructed cost of production. As regards determination of export price the domestic industry has asked export price to be computed as average export price after taking into account total shipment from Italy during the POI and their actual CIF prices of their shipment. The Authority has assessed the ex-factory price for export sales to India as submitted by the domestic industry which works out as US \$ **** or Rs ****/Kg. after making appropriate adjustments on account of inland freight, insurance, overseas freight, Commission and overseas insurance.

Thus, the dumping margin in case Recordati is assessed by Authority at Rs**** per Kg. or 93.19% of export price.

OTHER EXPORTERS FROM EU

19 .The Authority provided opportunity to the known exporters from EU to furnish information relevant to the investigations and offer comments, if any, in accordance with the Section cited above. The Authority wrote to the Delegation of EU in India also. However, no other exporters from EU have responded to the Authority's request

for information. The petitioner has represented that weighted average export price should be arrived at based on the statistics compiled from Customs Daily Lists for the POI with regards to imports from EU. Adjustments on account of freight, marine insurance, commission, port handling etc., to arrive at net export price should be considered. As regards export price the domestic industry has asked export price to be computed as average export price after taking into account total shipment from EU during the POI and their actual CIF prices of their shipment. The Authority has assessed the ex-factory price for export sales to India as submitted by the domestic industry which works out as US \$ *****/Kg or Rs *****/kg. after making adjustments on account of inland freight, insurance, overseas freight, overseas insurance and values as made in the case of M/s Recordati, Italy. The Authority has determined the Normal Value in respect of other exporters from EU as per the information furnished by the domestic industry on the basis of constructed cost of production.

Thus, the dumping margin in case of non-co-operative/other exporters of PHPG Base from EU is assessed by Authority at Rs ***** per Kg. or 93.19%.

H. INJURY:

20. Rule 11 of Anti Dumping Rules reads as follows:

Determination of Injury:

- i. In the case of imports from specified countries, the Designated Authority shall record a further finding that import of such article into India causes or threatens material injury to any established industry or materially retards the establishment of any industry in India;
- ii. The designated authority shall determine the injury to domestic industry, threat of injury to domestic industry, material retardation to establishment of domestic industry and a causal link between dumped imports and injury, taking into account all relevant facts, including the volume of dumped imports, their effect on price in the domestic market for like articles and the consequent effect of such imports on domestic producers of such articles and in accordance with the principles set out in Annexure II to these rules."

21. The principles for determination of injury set out in Annexure-II of the Anti-Dumping Rules lay down that:

- a. Determination of injury shall involve 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 like article and (b) the consequent impact of these imports on domestic producers of such products.

- b. While examining the volume of dumped imports, the said Authority shall consider whether there has been a significant increase in the dumped imports, either in absolute terms or relative to production or consumption in India. With regard to the effect of the dumped imports on prices as referred to in sub-rule (2) of Rule 18 the Designated Authority shall consider whether there has been a significant price under-cutting by the dumped imports as compared with the price of like product in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increase which otherwise would have occurred to a significant degree.

Views of the petitioners

22. (i) Prior to filing this petition, the domestic industry had been suffering from dumping of PHPG base from China PR and Singapore and the Designated Authority had conducted investigations in respect of imports of PHPG from above mentioned countries and provisional duties have been imposed on above mentioned countries. In the meantime exporters from subject countries have also joined these countries in dumping subject goods in the Indian market.

(ii) There has been a substantial increase in imports from subject countries in absolute terms, which is evident from the import data.

(iii) The quantum of imports from each of the subject country is more than the de-minimus limit.

(iv) The petitioner is a new entrant. But 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. Market share of imports from subject countries has increased as described in the above table.

(v) During the period of investigation the petitioner has achieved only 38% of its existing capacity.

(vi) The selling price of the domestic industry has declined during the period of investigation. Because of the sharp fall in the export price the importers are forcing the petitioners to match their price with the imported price. However the domestic industry is not in a position to provide the subject material at such a low price, which cannot recover even the marginal cost, resulting in a loss of customers. Therefore, the industry has not been able to realize a fair price even after imposition of anti-dumping duty on imports from various sources as imports have started from newer sources.

(vii) As the industry is at its nascent stage and protection from the unfair trade is vital and urgent otherwise the manpower deployed will lose its jobs.

(viii) As regards profitability, the domestic industry has been operating at a loss from the very beginning.

I. Examination by the Authority

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

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

(a) Quantum of imports and export price

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

Period	Qty(MT)	ValueRs Lakhs	Average price Rate/US\$MT	%share of Imports
2000-01	24	169.01	14907.85	2.38%
POI (April-December) 2001	135	749.49	11577.14	12.12%
POI (2001-02) Annualised	180	999.33	11577.14	12.12%

Imports from European Union

Month Wise imports from European Union

Period 2001	Qty(Kg)	Value(Rs in Lakhs)	Rate/US\$MT
April	Nil	Nil	Nil
May	Nil	Nil	Nil
June	Nil	Nil	Nil
July	Nil	Nil	Nil
August	Nil	Nil	Nil
Sept	45000	251.79	11816.90
Oct	Nil	Nil	Nil
Nov	60,000	332.99	11502.15
December	30,000	164.71	11367.49

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

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

(c) Production and Capacity utilisation of the petitioner:

The Authority observed that the petitioner has only achieved a utilization of ****% of its existing installed capacity during period of investigation. Keeping in view the demand in the country the same is far below than what could have been achieved by the Domestic Industry.

(d) Insignificant gain of market share:

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

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

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

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

Indexed Figures considering April 2001 as 100

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

(f) Evidence of lost contracts or declining sales:

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

(g) Employment:

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

(h) 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.

25. The present petition is basically regarding 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, at 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 being threatened with material retardation, by imports at dumped prices from the subject countries.

J. Causal Link

26. In determining whether injury (material/threat/material retardation) 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 European Union at dumped prices forced the domestic industry to reduce its selling prices to un-remunerative level, which has resulted in a situation of price undercutting in the Indian market.
- ii. The imports from European Union 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.
- iii. The Authority, therefore, notes from the above that the imports from the subject countries have been at a price below the selling price of the domestic industry. Further, the imports into India have been at a price lower than the non-injurious price for the domestic industry. As a consequence thereof the domestic industry is suffering financial losses. The petitioner was also prevented from increasing the level of capacity utilisation. These parameters collectively and cumulatively indicate that the petitioner has suffered material injury due to the dumped imports.

K. INDIAN INDUSTRY'S INTEREST:

27. The purpose of anti dumping duties in general is to eliminate dumping which is causing injury to the domestic industry and to re-establish a situation of open and fair competition in the Indian market, which is in the general interest of the country.

The Authority recognizes that the imposition of anti dumping duties might affect the price levels of the products manufactured using subject goods and consequently might have some influence on relative competitiveness of these products. However, fair competition on the Indian market will not be reduced by the anti dumping measures. On the contrary, imposition of anti dumping measures would remove the unfair advantages gained by dumping practices, would prevent the decline of the domestic

industry and help maintain availability of wider choice to the consumers of subject goods.

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

L. CONCLUSIONS:

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

- i. D (-) Para Hydroxy Phenyl Glycine Base has been exported to India from European Union below its normal value;
- ii. The Indian industry has suffered material injury and facing threat of further injury.
- iii. The Domestic Industry, on account of the injury being suffered, is facing material retardation in the establishment of new industry to manufacture D (-) Para Hydroxy Phenyl Glycine Base.
- iv. The Authority considers it necessary to impose an anti dumping duty provisionally, pending final determination, on all imports of D (-) Para Hydroxy Phenyl Glycine Base from subject countries 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 proposed to be compared with the Non Injurious Price of the petitioner company determined for the period of investigation.
- v. Accordingly, the Authority recommends that the provisional anti dumping duties be imposed from the date of notification to be issued in this regard by the Central Government on all imports of D (-) Para Hydroxy Phenyl Glycine Base also known as D (-) Alpha Para Hydroxy Phenyl Glycine, D (-) Alpha Para Hydroxy Phenyl Glycine Base, D (-) Para Hydroxy Phenyl Glycine, Para Hydroxy Phenyl Glycine Base, Para Hydroxy Phenyl Glycine, D (-) P – Hydroxy Phenyl Glycine Base, D (-) P – Hydroxy Phenyl Glycine falling under Custom Heading 2942 originating in or exported from European Union pending final determination. The Anti-Dumping duty shall be the difference between the amount mentioned in column 3 of the following table and the landed value of imports per Kg. to be imposed from the date of Notification to be issued in this regard by the Central Govt. on all the imports of subject goods falling

under Chapter 29 of the Customs Tariff, originating in or exported from the countries mentioned below: -

S. No.	Exporter/Country	Amount (US\$ Per Kg.)
1.	DSM Deretil S.A., Spain	21.38
2.	Recordati, Italy	21.81
3.	Other exporters from European Union	21.81

- vi. 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.

M. FURTHER PROCEDURE:

29. The following procedure would be followed subsequent to notifying the preliminary findings: -

- a. The Authority invites comments on these findings from all interested parties and the same would be considered in the final findings;
- b. Exporters, importers, petitioner and other interested parties known to be concerned are being addressed separately by the Authority, who may make known their views, within forty days from the date of preliminary findings. Any other interested party may also make known its views within forty days from the date of publication of these findings;
- c. The Authority would provide opportunity to all the interested parties for making oral submissions, which have to be rendered thereafter in writing;
- d. The Authority would conduct further verification to the extent deemed necessary;
- e. The Authority would disclose essential facts before announcing final findings.

L.V. SAPTHARISHI
DESIGNATED AUTHORITY