

GOVERNMENT OF INDIA
MINISTRY OF COMMERCE & INDUSTRY
(DEPARTMENT OF COMMERCE)

NOTIFICATION

New Delhi, the 1st October 2002

PRELIMINARY FINDINGS

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

No. 14/23/2002-DGAD - Having regard to the Customs Tariff Act, 1975 as amended in 1995 and the Customs Tariff (Identification, Assessment and Collection of Anti Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, thereof;

A. PROCEDURE:

2. The procedure described below has been followed:-
 - i. The Designated Authority (hereinafter referred to as Authority), under the above Rules, received a written petition from M/s Daurala Organics Limited, Daurala, Meerut, U.P. on behalf of the domestic industry, alleging dumping of D (-) Para Hydroxy Phenyl Glycine Methyl Potassium Dane Salt also known as PHPG DS (hereinafter referred to as subject goods) originating in and exported from China PR and Singapore (hereinafter referred to as subject countries) ;
 - ii. The Authority notified the Embassy of China PR and High Commission of Singapore 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 25th June, 2002 published in the Gazette of India, Extraordinary, initiating anti dumping proceedings concerning imports of D (-) Para Hydroxy Phenyl Glycine Methyl Potassium Dane Salt falling under Chapter heading 2942 of Schedule I of the Customs Tariff Act.
 - iv. The Authority forwarded copy of the said public notice to the known exporters, importers, industry associations and to the complainant and gave them an opportunity to make their views known in writing.

- v. According to sub-rule (3) of Rule 6 supra, the Authority provided a copy of the petition to all the known exporters and Diplomatic Missions of subject countries in India.
- vi. The Authority sent questionnaires, to elicit relevant information, to the following known exporters from China PR and Singapore:

CHINA PR:

- M/s Tianjin Xiquing Guanghui Chemical Plant, Tianjin, China.
- M/s Wujin Niutang Chemical Plant, Jiangsu, China.
- M/s Hengdian Group Organic Chemical Co. Ltd., Zhejiang, China
- M/s Taixing Yangtzi Pharmaceutical & Chemical Plant, Jiangsu,China.

SINGAPORE:

- M/s. Kaneka Singapore Co. (PTE) Ltd., Singapore.
 - M/s. Kaneka Singapore Co. (PTE) Ltd., Singapore and M/s Hengdian Group Jiayuan Chemical Co. Ltd., Zhejiang, China, have responded to the questionnaire.
- vii. The Embassy of China PR and High Commission of Singapore in New Delhi was also informed about the initiation of investigation and requested to advise the exporters/producers from their countries to respond to the questionnaire within the prescribed time;
 - viii. The questionnaire was sent to the following known users/importers of subject goods:-
 - M/s. Aurbindo Pharma Ltd, Hyderabad.
 - M/s. Lupin Laboratories Ltd., Mumbai.
 - M/s. Koprana Drugs Ltd., Raigad.
 - M/s. Surya Pharmaceutical Ltd., Chandigarh.
 - M/s. Torrent Gujarat Biotech Ltd, Ahmedabad.
 - M/s. Ranbaxy Laboratories Ltd, New Delhi.
 - M/s. Tini Pharma Limited, Mumbai.

None of the users/importers except for M/s.Surya Medicare, Chandigarh, M/s. Penam Laboratories, New Delhi, M/s. Morepan Laboratories Ltd., New Delhi and M/s. Torrent Gujarat Biotech Limited, Ahmedabad, have responded to the questionnaire.

- ix. 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;

- x. **** in this notification represents information furnished by the interested parties on confidential basis and so considered by the Authority under the Rules;
- xi. The investigation covered the period from 1st July 2001 to 31st March 2002;
- xii. Copies of initiation notice 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. There has been a regular import of PHPG DS into India in the past. However, imports declined as the manufacturer of Amoxicillin who has been using PHPGDS started importing PHPG Base and using the same for production of Amoxicillin after converting it into PHPG DS in-house. After the imposition of anti-dumping duty on PHPG Base originating in or exported from China PR and Singapore and subsequent initiation of anti-dumping investigation of PHPG Base originating in or exported from EU, it has been observed that exporters from these subject countries have started dumping PHPG DS into India and this has lead to a clear case of circumvention.
- ii. PHPG DS has started coming into India in early 2001 from China PR and this was the period when domestic industry was planning for production of PHPG DS. After the imposition of anti dumping duty on PHPG Base from China PR, next stage material i.e. PHPGDS has started coming into India at very low prices, which is still continuing with the sole idea to kill the domestic industry at its nascent stage. Imports from Singapore have been coming during last several years and they also started exporting subject material at dumped price since November 2001.
- iii. The import statistics shown by the Petitioner since 1998-99 indicate that exporters from China PR are reducing prices sharply during the period of investigation which, in their opinion, cannot recover even variable cost on international prices. The petitioner adds that China PR has created additional capacities of both the products which has resulted into surplus capacities and since Feb, 2001 almost at the time when domestic industry was planning to start its commercial production, China has started dumping the subject goods at very low prices which it still continues just to kill domestic industry at its nascent stage.
- iv. The exporters from Singapore are also reducing their prices to retain their market in India which is resulting into dumping and causing injury to domestic industry.

- v. The petitioner has submitted that conversion of PHPG Base to PHPGDS requires some additional facilities which is interchangeable for the production of other intermediates and bulk drugs with minor modifications. Hence, it is very important to impose anti-dumping duty on PHPG Base as well as PHPGDS to protect the domestic industry. The petitioner also adds that they satisfy the criteria for being the domestic industry of PHPG Base (being sole producer in India). They have started commercial production from May 2001 onwards, as they have the capacity to produce PHPGDS to the extent of 700 MTs per annum (200 MTs dedicated new plant for PHPGDS and 600 MTs combined facility), which can be made available to meet domestic or export demand.
- vi. The petitioner has submitted that in the recent amendment made under Customs Notification No.28/2001 (N.T.) dated 31st May 2001 China has been declared as non-market economy. Accordingly they have submitted constructed normal value as an indicator of normal value in China PR.
- vii. The petitioner has stated that they have tried to get the Normal Value information from Singapore Trade Development Board and accordingly wrote a letter to them for home price of the subject goods in Singapore. They have also written to them to provide third country exports in case there is no domestic sale. As per their reply, separate exports data for the subject goods to third country was not available and as per petitioner sources there is no domestic sales of subject goods. Accordingly the petitioner has claimed that the only option left for the Normal Value determination is Constructed Normal Value.
- viii. The exporters from China PR and Singapore are dumping the subject goods in India. Annexure II (iii) to the Anti Dumping Rules provide that in case imports of a product from more than one country are being simultaneously subjected to anti dumping investigations, the Designated Authority will cumulatively assess the effect of such imports, in case it determines that:
 - a. The margin of dumping established in relation to the imports from each country is more than two percent expressed as percentage of export price and the volume of the imports from each country is three percent of the imports of the like article or where the export of the individual countries less than three percent, the imports cumulatively accounts for more than seven percent of the imports of like article, and;
 - b. Cumulative assessment of the effect of imports is appropriate in light of the conditions of competition between the imported article and the like domestic articles.
 - c. The margins of dumping from each of the subject countries are more than the limits prescribed above.

- d. The quantum of imports from each of the subject country is more than the de-minimus limit. Cumulative assessment of the effects of imports is appropriate since the export from the subject countries directly compete with the goods offered by the domestic industry in the Indian market. Accordingly, the petitioner has requested that injury to the domestic industry should be assessed cumulatively from the subject countries.

- ix. 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 countries are preventing commercialisation of the production by the domestic industry, the imports are causing material retardation to the establishment of the industry. Though, the "nascent industry" i.e. M/s DOL has 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 utilisation 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 countries.
- x. 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.
- xi. The petitioner has submitted evidence of causal link stating that imports of PHPGDS from other countries (EU) is very less in volumes and moreover prices from these countries are comparatively very high. Additionally, the demand of the subject product is also on the increase. As the petitioner has set up a new plant, the technology employed by the petitioner is comparable to the technology being used by other producers in the world. Factors, such as, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology, the export performance or the productivity of the domestic industry has 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 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 countries.

C. EXPORTERS, IMPORTERS' AND USERS' VIEWS:

4. EXPORTERS

As stated above only M/s Kaneka Singapore Co. (PTE) Ltd , Singapore and M/s Hengdian Group Jiayuan Chemical Co. Ltd., Zhejiang, China have responded to the questionnaire. M/s Kaneka expressed the following views in their submissions:

M/s Kaneka Singapore Corporation (KSC). Singapore.

- a. They are serving the health industry of this country for two decades with their product PHPGDS, which is produced by a combination of unique enzymatic method and chemical process that is different from all the other Chinese and Indian producers, mentioned in the petition.
- b. Regarding the pricing, the exporter has said that they do not have discriminatory pricing policy based on countries and therefore, the relation of average price between those for India and countries other than India during the period of investigation does not satisfy the requirement of Anti-Dumping.
- c. The exporter has added that they sell their product with profit so that their activities do not satisfy the requirement of Anti-Dumping, overall.

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

M/s. Hengdian Group has represented that they are a limited liability company duly established in accordance with company law of China and their production plant is located at Zhe jiang Province, China. They have submitted answers to the exporters' questionnaire by submitting various appendices, which have been examined at appropriate place.

5. IMPORTERS AND USERS:

The following importers and users have made submissions for these investigations. However None of them have submitted information as per the prescribed questionnaire.

- i. Penam Laboratories Limited, New Delhi
- ii. Surya Medicare Ltd.Chandigarah
- iii. Morepan Laboraties Limited, New Delhi.
- iv. Torrent Gujarat Biotech Limited (TGBL), Ahmedabad.

1. M/s. Penam Laboratories Limited, Surya Medicare Limited and Morepen Laboratories Limited have made the identical representation. They have

represented that levying of anti-dumping duty initially from China and Singapore and subsequently from EU have now created a situation wherein the end users like them are now compelled to purchase the material from only a single source i.e. M/s. Daurala Organics Limited (DOL) and that too of inferior quality and at manufacturers' price. This has created a situation wherein the survival of the industry is at stake.

2. Users further represent that the manufacturer producing Amoxycillin Trihydrate for the domestic users are now left with no other alternative except to close down their units, as with this anti dumping duty, the survival of the industry is a big question mark. The closure of the industry would not only affect the country's growth but would also create unemployment to the people working with this industry.
3. The quality of indigenous material available from M/s. DOL is not meeting to their specifications and it does not give a required yield, which affects the commercial viability of the final product, which is a life-saving drug.
4. M/s. DOL is the only producer of this material in India and levying of anti-dumping duty on PHPG Base has already disturbed the trade and imposing of anti-dumping duty on PHPGDS will further aggravate the financial position of the industry and will make the life saving drug costlier to the domestic users.
5. M/s. Torrent Gujarat Biotech Limited has echoed the similar arguments as mentioned above. They further represent that there is no need to impose anti dumping duty in Dane Salt considering the fact that the cost of imported material is only marginally lower than that available from M/s. DOL and hence there is no dumping by China and Singapore.
6. They have further reiterated that imposition of anti dumping duty will induce the local producers to double its selling price and exploit the local market.
7. They have, therefore, requested, in the interest of domestic Amoxycillin manufacturers and in the national interest, that the proposal of levying anti-dumping duty on Dane Salt imported from the subject countries be seriously reviewed and dropped.

D. EXAMINATION AND FINDING BY AUTHORITY:

6. The submission made by the domestic industry, exporters and other interested parties have been examined and considered while arriving at these findings and wherever appropriate have been dealt hereinafter.

E. PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE:

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

- i. D (-) PARA HYDROXY PHENYL GLYCINE DANE SALT (METHYL POTASSIUM)
- ii. D (-) ALPHA PARA HYDROXY PHENYL GLYCINE DANE SALT (METHYL POTASSIUM)
- iii. D (-) ALPHA PARA HYDROXY PHENYL GLYCINE, METHYL POTASSIUM DANE SALT
- iv. D(-) ALPHA PARA HYDROXY PHENYL GLYCINE METHYL ACETO ACETATE POTASSIUM SALE (DANE SALT)

The petitioner has represented that predominantly D (-) Para Hydroxy Phenyl Glycine Base' (hereinafter referred to as PHPG Base) is imported in India which is converted in situ to D (-) Para Hydroxy Phenyl Glycine Methyl Potassium Dane Salt " (hereinafter referred as 'PHPGDS') by the various importers/manufacturers and used for the production of Amoxicillin and Cefadroxyl. (i.e. bulk drugs).

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

All types of PHPG are classified in chapter heading 29.42. As per ITC eight digits classification, PHPGDS is classified in others category i.e., in 29420017. The investigation is against the product under consideration irrespective of the classification under which it is imported. Customs classification is indicative only and is in no way binding on the scope of the present investigation.

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.

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 DS produced by domestic industry has characteristics, which are similar to those of the PHPG DS imported from subject countries. In view of the above, the Authority hold that PHPGDS 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:

The petitioner has represented that the statistics shown in the DGCI&S data is not representative as import data indicated by DGCI&S includes other Dane salts also which have been clubbed with the subject goods. The petitioner has relied upon the data of secondary source i.e. from International business information Services (IBIS), Mumbai. The data provided by the agency is based is based on Customs daily lists. The authority notes that PHPG DS is classified in 'others category' as per the Customs Tariff and hence the DGCI&S data may not be exclusive under these circumstances. The IBIS import data for the last two years and month-wise data for the period of investigation indicate that the import from the subject countries during the POI is above the de minimus levels.

F. DOMESTIC INDUSTRY:

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

G. NORMAL VALUE, EXPORT PRICE AND DUMPING MARGIN:

9. Under Section 9A(1) (c) of the Customs Tariff Act 1975, Normal value in relation to an article means:

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

Provided that in the case of import of the article from a country other than the country of origin and where the article has been merely transhipped 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.

10. CHINA PR:

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

The Authority sent questionnaires to all the known exporters for the purpose of determination of normal value in accordance with Section 9A(1)(c). Only one of the exporters from China PR i.e. M/s. Hengdian Group Jiayuan Chemical Co. Ltd., China P.R. has responded to the Authority. It has been observed that M/s. Hengdian Group Jiayuan Chemical Co. Ltd., China P.R. has not furnished the complete information in the prescribed format. In the Appendix 1 of the exporters questionnaire, they have not indicated the invoice numbers of the transaction done in the domestic market. In the Appendix II they have not submitted any information about customers names and their addresses to which they have exported the subject goods during the period of investigation. Other details mentioned as mentioned in the Appendix like invoice numbers & date, bill of lading no etc has also not been furnished by the Exporter. It appears from the data supplied that they have supplied the material to another group company who have exported the subject goods to India. In Appendix III, the exporter has not given information about the CIF prices for exports to India and exports to other countries. In the Appendix IV, they have not indicated anything about the charges/expenses, which are required to be adjusted before the FOB cost. Additionally, they have also not shown any charges on overseas freight, insurance, shipping and others. In the Appendix V, they have not shown any charges towards storage/handling costs. In the Appendix VII, they have not submitted any data for the licensed/installed capacity of the firm for the production of the subject goods. They have also not given an account of other products manufactured by their company in terms of their quantity and value during the period of investigation. Though they have submitted the replies to the appendices 8,9 and 10, they have not commented upon direct and indirect subsidy given by the Government, if any, on production, procurement, sale and transportation of raw material, utilities, finances, etc. They have also not submitted the Profit and Loss account and balance sheet for the complete POI.

As communicated to the known exporters and to the Embassy of China PR the Authority proposes to examine the claim of the petitioner in the light of Para 7 and 8 of the Annexure I of the Anti dumping Rules as amended. The Authority notes that since the information supplied by the exporter is not in accordance with the format of

exporters questionnaire and they have not submitted information as indicated in the abovementioned paragraph, the test of domestic sales in the ordinary course of trade is not possible in the given circumstances and a determination of normal value as per provisions contained in Section 9A(i) c (i) & (ii) read with rule 2 (i) and (ii) of the Annexure I of the Anti dumping rules can not be made. The Authority also notes that the exporter has not furnished necessary information/sufficient evidence as mentioned in the sub paragraph (3) of the paragraph 8 to enable the Designated Authority to consider the following criteria as to whether

- i. the decision of concerned firms regarding prices, costs and inputs, including raw materials, cost of technology and labour, output, sales and investment, are made in response to the market signals reflecting supply and demand and without significant State interference in this regard, and whether costs of major inputs substantially reflect market values;
- ii. the production cost and financial situation of such firms are subject to significant distortions carried over from the former non-market economy system, in particular in relation to depreciation of assets, other write-offs, barter trade and payment via compensation of debts;
- iii. such firms are subject to bankruptcy and property laws which guarantee legal certainty and stability for the operation of the firms; and
- iv. the exchange rate conversions are carried out at the market rate"

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

Under the circumstances Normal value under the rules is determined on the basis of facts available as per rules 6 (8). Therefore the information available on the estimated costs of the production in the country of origin plus selling, administrative and general expenses and a reasonable amount of profit after making reasonable adjustments has been taken as the basis for working out the normal value of the subject goods in China PR.

The Normal value determined by the Authority for M/s Hengdian group Jiayuan Chemical Co Ltd, comes to US\$ ****.

EXPORT PRICE:

The Authority notes that there is no dedicated customs classification for the subject goods as the same is classified in others category. As DGCI&S data for the period do

not reflect all the transactions during POI, the Authority has relied on the data furnished from the secondary sources i.e. IBIS, Mumbai for calculating the quantum of exports from China PR to India. The Authority notes that **** kgs of subject goods have been exported from China PR during the POI for Rs **** and weighted average export price per kg of the exports come to US\$****. However the authority notes that M/s. Hengdian Jiayuan has exported ****MT to India during the POI for a value of US \$**** with the unit price of US \$ ****/MT. Though the exporter as per appendix II has not submitted the customers name and address in India along with the detailed information as per said appendix, the Authority has accepted the above transaction for calculating export price for exporters from China to India for the limited purpose of preliminary determination subject to further examination and verification. The Authority has made adjustment towards inland freight and insurance as suggested by the exporter. However, other adjustments, namely, overseas freight and insurance, handling and shipping expenses have been applied as per the data furnished by the exporter from Singapore and net export price at Ex-factory level comes to US\$****/kg

DUMPING MARGIN:

11. The principles governing the determination of normal value, export price and the dumping margin as laid down in the Custom Tariff Act and the Anti Dumping Rules are elaborated in Annexure I to the Rules. The normal value for China P.R. based on the best information available works out to US\$ ****/Kg. The net ex factory export price worked out on the basis of similar parameters and allowing adjustments works out to US\$ **** per Kg. The dumping margin for exports of the subject goods from China PR is assessed by the Authority at US \$ ****/Kg or 87% of the export Price.

Other Exporters from China PR

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

The Normal value determined by the Authority for other exporters from China PR comes to US\$ ****. The export price for other exporters from China PR has also been calculated taking into account the transaction made by M/s. Hengdian Jiayuan for exports made to India. The export price at ex-factory for other exporters comes to US \$ ****/Kg.

Thus, the dumping margin in case of Non-co-operative/other exporters of PHPGDS from China PR is assessed by Authority at US\$ ****/Kg or 87% of Export price.

12. Singapore

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

(a) NORMAL VALUE:

The exporter has claimed in the appendix I of the Exporters' Questionnaire that they do not have any domestic sales. As regards determination of normal value, the Authority notes that the normal value can be determined, in the absence of domestic sales, by taking either a comparable representative price of the like article when exported from the exporting country to an appropriate third country or by taking cost of production of the said article in the country of origin along with reasonable addition for administrative, selling and general costs, and for profits, as determined in accordance with the Rules made under sub-section (6). In this case, the Authority notes that the exporter M/s Kaneka Singapore Corporation, hereinafter referred to as KSC, has made exports to various countries including India during the POI. While scrutinising the exports from M/s KSC, the Authority notes that they have made exports to India during July –December 2001 while they have exported to other countries during entire POI ie July – March 2002. The Authority has determined normal value for M/s Kaneka Singapore Corporation as per information submitted by them after constructing the costs and adding the profit as claimed by them as per section 9A(i)©ii(b) of the Anti Dumping Rules.

The company has submitted factory costs and profit of exports to India in the Appendix 8 wherein they have submitted unit selling price at the ex factory level. On scrutiny of the same, it has been observed that the costs of HPG, a raw material consumed from the captive production, has been considered much lower than the valuation made by the company itself in the periodical valuation as specified in the Appendix 7. The Authority has therefore calculated the same using the data as submitted by the exporter in the Appendix 7. Other costs elements as claimed by the company has been accepted by the Authority and unit selling price has been determined by adding the profit as claimed by the exporter in the Appendix 8C.

The Constructed normal value at the Ex factory level has been arrived at US \$****.

EXPORT PRICE:

The exporter has exported **** Kg. of PHPGDS to India for a total value of S\$\$****. Accordingly, the average export price of PHPG during the period of investigation works out to US\$****per kg. The exporter has claimed adjustments on account of discount, inland freight, insurance, overseas freight, insurance, etc. to arrive at the Ex-factory export price to India. The Authority notes that most of the exports have been made by M/s Kaneka Singapore Corporation (KSC) via their principal M/s Kaneka Corporation (KC), Japan and these have been further supplied to India by M/s Summit Chemicals Asia Pte. Ltd. (SCAP), Singapore. While determining the export price to India, the authority has taken the first transaction from M/s Kaneka Singapore Corporation to India through M/s. Kaneka Corporation, Japan and APC Pharmaceuticals & Chemicals Ltd., Hong Kong as the FOB export price with applicable adjustments towards inland freight, insurance, handling charges, overseas freight, insurance and shipping charges as suggested by the exporter in the Appendix IV of the Exporters' Questionnaire. This has been done to neutralise any commissions arising out of the exporter's sales through their parent company and other intermediates like SCAP and APC subject to further examination and verification by the Authority. After considering all adjustments, the Ex-factory price for export sales to India works out as US \$ ****/Kg.

The Authority also notes that US \$ **** has been charged towards usance period interest as interest charges for **** days has been claimed in one of invoices. However, the Authority has not made any adjustments on this account for calculating net export price at ex-factory level, for the purpose of Preliminary determination subject to further verification and examination.

The dumping margin in case of M/s KSC from Singapore is assessed by Authority at US\$**** per Kg or 12.01% of the export price.

13. OTHER EXPORTERS FROM SINGAPORE:

The Authority provided opportunity to the known exporters from Singapore to furnish information relevant to the investigations and offer comments, if any, in accordance with the Section cited above. The Authority wrote to the Embassy of Singapore in India also. However, no other exporters from Singapore have responded to the Authority's request for information. The claim made by the petitioner with the regard to the determination of normal value has also not been disputed by the other interested party (ies).). Under the circumstances Normal value under the rules is determined on the basis of facts available as per rules 6 (8). The Authority has determined the normal

value for other exporters as the same as has been determined for the only exporter from Singapore i.e.

M/s KSC, Singapore. The Authority has taken the weighted average export price during the POI for exports to India by the same exporter.

The Normal value determined by the Authority for other exporters from Singapore comes to US\$ **** and the export price has been determined at US\$****.

Thus, Authority assesses the dumping margin in case of Non-co-operative/other exporters of PHPGDS from China PR at US\$ ****/Kg or 12.01% of Export price.

I. INJURY:

14. Under Rule 11 supra, Annexure –II, when a finding of injury is arrived at, such finding shall involve determination of the injury to the domestic industry, ".... taking into account all relevant facts, including the volume of dumped imports, their effect on prices in the domestic market for like articles and the consequent effect of such imports on domestic producers of such articles...." In considering the effect the dumped imports on prices, it is considered necessary to examine whether there has been a significant price undercutting by the dumped imports as compared with the price of the like article in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree.

J. CUMULATIVE ASSESSMENT OF INJURY

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

The Authority notes that the margin of dumping and quantum of imports from subject countries are more than the limit prescribed above. Cumulative assessment of the

effect of the imports from China P.R. and Singapore is appropriate since the export prices from these countries were directly competing with the prices offered by the Domestic Industry in the Indian market and displacing domestic producers here.

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

Views of the Petitioners

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

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

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

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

Imports of PHPGDS from Non Alleged Sources During the Period of Investigation, the capacity utilisation of the domestic industry has been very low though the demand has been there.

There has been a significant decline in the net sales realisation during the POI.

Because of the sharp fall in the export price, the importers are forcing them to match the imported price. The petitioner is not in a position to provide the subject material at such a low price, which can not recover the even marginal cost resulting into loss of customers.

As the industry is at its nascent stage, protection from unfair trade is vital and urgent otherwise manpower deployed will loose their jobs.

Domestic industry is operating at loss from its beginning itself.

The present petition is against the material retardation of the establishment of the domestic industry.

EXAMINATION BY AUTHORITY

17. (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 364% in the volume of imports of the subject goods from China PR during the Period of Investigation over 2000-01. Even during the POI there has been a substantial increase of imports from China PR. Further the average export price from China PR has also declined during the Period of Investigation as against 2000-01. Even during the POI there is a marked decline in the exports price from China PR as illustrated in the table below. Though exports from Singapore has not exhibited an increasing trend in the POI as against 2000-01 in quantity terms, the average export price has declined significantly during the POI as against previous year and also during the POI as illustrated in the table below:

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

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

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

Decline in the export price during POI from subject countries.

Country	China PR	Singapore
Period POI (July-March) 2002		
July	100	100
August	-	-
September	82.35	85
October	-	79

November	-	85
December	-	85
January	-	-
February	66.38	-
March	-	-

Indexed Figure taking base month July 2001 as 100.

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

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

(d) Insignificant gain of market share:

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

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

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

Period	Qty Sold/Kg	Net Sales Realization (Rs/Kg)
July-2001	****	100
August -2001	****	-
September-2001	****	-
October-2001	****	-
November -2001	****	89
December-2001	****	89
January 2002	****	89
February 2002	****	87
March 2002	****	85

Index figures considering July 2001 as 100.

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

(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 Authority notes that there is no change in the employment pattern of the domestic industry though they have urged that without protection from unfair trade practice, 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.

18. In considering the effect of the dumped imports on prices, it is considered necessary to examine whether there has been a significant price undercutting by the dumped imports as compared with the price of the like product in India, or whether the effect of such imports is otherwise to depress prices to a significant degree. For the examination of the impact on the domestic industry in India, the Authority considered such further indices having a bearing on the state of

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

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

There has been a significant rate of increase of dumped imports into the domestic market from China PR during the POI over the previous year. During the POI also, there has been a substantial increase of imports from China PR

There is a substantial unutilised capacity of the exporters with regard to the availability of subject goods. The Authority notes from the response of M/s KSC, Singapore that their quantity of closing stock which was ****MT during January – July 2001 increased to **** MT (July-December 2001) and even during January to March period, the closing stock of the subject goods are at **** MT which is more than three times of the total exports to India from Singapore. Though the only exporter from China PR which has responded to this petition, M/s Hengdian group Jiayuan Chemical Co ltd, has not indicated installed capacity of their plant in their exporters questionnaire, the petitioner has claimed that China PR is having large unutilised capacity to manufacture the subject goods.

It is also noted that the exporter from Singapore has a substantial capacity to manufacture PHPG DS at a short notice as it continues to carry a significant unutilised

capacity for the production of major raw material of the subject goods i.e. PHPG Base at its same plant.

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

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

K. CAUSAL LINK:

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

- i. Substantial imports of subject goods from China PR and Singapore at dumped prices forced the domestic industry to reduce its selling prices to unremunerative level, which has resulted in a situation of price undercutting in the Indian market.
- ii. The imports from China PR and Singapore suppressed the prices of the product in the Indian market to such an extent that the domestic industry was prevented from recovering its full cost of production and earn a reasonable profit from the sale of subject goods in India.

21. The Authority, therefore, notes from the above that the imports from the subject countries especially China PR have been at a price below the net selling price of the domestic industry. Imports from other countries have been much less and prices from these countries are higher. Further, the imports from both the subject countries into India have been at a price lower than the non-injurious price for the domestic industry. The Authority could not find any evidence of contraction of demand, change in pattern of consumption, trade restrictive practices of and competition between the foreign and domestic producers. It is also noted that developments in technology has

not been a cause for injury to the domestic industry. These parameters collectively and cumulatively indicate that the petitioner has suffered material injury due to the dumped imports.

L. INDIAN INDUSTRY'S INTEREST:

22. 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 China PR and Singapore in any way, and therefore, would not affect the availability of the product to the consumers. The consumers could still maintain two or even more sources of supply.

M. CONCLUSIONS:

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

- i. D (-) Para Hydroxy Phenyl Glycine Methyl Potassium Dane Salt has been exported to India from China PR and Singapore 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 suffering material retardation in the establishment of new industry to manufacture D (-) Para Hydroxy Phenyl Glycine Methyl Potassium Dane Salt.
- iv. The injury has been caused cumulatively by the imports from the subject countries.

24. The Authority considers it necessary to impose an anti dumping duty provisionally, pending final determination, on all imports of D (-) Para Hydroxy Phenyl Glycine Methyl Potassium Dane Salt 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.

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 Methyl Potassium Dane Salt also known as: D (-) PARA HYDROXY PHENYL GLYCINE DANE SALT (METHYL POTASSIUM), D (-) ALPHA PARA HYDROXY PHENYL GLYCINE DANE SALT (METHYL POTASSIUM), D (-) ALPHA PARA HYDROXY PHENYL GLYCINE METHYL POTASSIUM DANE SALT, D (-) ALPHA PARA HYDROXY PHENYL GLYCINE METHYL ACETO ACETATE POTASSIUM salt (DANE SALT) falling under Custom Heading 2942 originating in or exported from Peoples Republic of China and Singapore 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: -

Serial Number	Country/Exporter	Amount (US\$per Per kg)
a.	China PR	
	1. M/s Hengdian Group Jiayuan Chemical Co. Ltd, Zhejiang, China	16.16
	2. Other Exporters	16.16
b.	Singapore	
	1.M/s Kaneka Singapore Corporation, Singapore.	13.87
	2. Other Exporters	13.87

25. 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.

N. FURTHER PROCEDURE:

26. 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