

# MINISTRY OF COMMERCE

## NOTIFICATION

the 12th April, 1999

## FINAL FINDINGS

**Subject:** Anti-Dumping investigations concerning import of Industrial Sewing Machine Needles from Japan, Korea RP and China.

**23/1/97-ADD.**—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

1. The procedure described below has been followed subsequent to the preliminary findings :

- a. The Designated Authority (hereinafter also referred to as the Authority) notified Preliminary Findings vide notification dated 2/12/98 with regard to anti-dumping investigations concerning import of industrial sewing machine needles from Japan, Korea RP and China and requested the interested parties to make their view known in writing within forty days from the date of its publication;
- b. The Authority forwarded a copy of the preliminary findings to the known interested parties, who were requested to furnish their views, if any, on the said findings within forty days from the date of the letter.
- c. The Authority also forwarded a copy of the preliminary findings to the Embassies of Japan, Korea RP, and China in New-Delhi with a request that the exporters and other interested parties may be advised to furnish their view on the said findings;
- d. The Authority provided an opportunity to all interested parties to present their views orally on 14/1/99. All parties presenting views orally were requested to file written submissions of the views expressed orally; The parties were advised to collect copies of the views expressed by the opposing parties and offer rejoinders, if any;
- e. The Authority made available the public file to all interested parties containing non-confidential version of interested submitted and agreement made by various interested parties;

- f. Arguments raised by the interested parties before announcing the preliminary findings, which, have been brought out in the preliminary findings notified have not been repeated here for the sake of brevity. However, the arguments raised by the interested parties, have been appropriately dealt with in the preliminary findings and/or these findings;
- g. In accordance with Rule 16 supra, the essential facts/ basis considered for these findings were disclosed to know interested parties and comments received on the same, have been duly considered in these findings;
- h. \*\*\* In this notification represents information furnished by an interested party on confidential basis and so considered by the Authority under the Rules.

## **B. PRODUCT UNDER CONSIDERATION**

2. The product under consideration is Industrial Sewing Machine Needles. Such needles are used mainly in sewing textile garments and leather products. Industrial sewing machine needles are classified under Chapter 84 of the Customs Tariff Act, 1975, under tariff classification HS Code No. 8452.30.

## **C. LIKE ARTICLES**

3. Industrial Sewing Machine Needles in the eight systems/types manufactured and sold by the domestic industry has characteristics closely resembling needles in the eight systems imported from Japan, Korea RP and China, The Authority has considered characteristics such as technical specifications, manufacturing process, technology, function and uses. There is no argument disputing that needles produced by the domestic industry in the systems/sizes under investigation are like articles and are substitutable by the needles imported from the subject countries both commercially and technically. Hence the needles produced by-the domestic industry have been treated as Like Articles as per the definition contained in the Anti-Dumping Rules, to the goods exported from Japan, Korea RP, and China.

## **D. DOMESTIC INDUSTRY**

4. The petition was filed by M/s. Altek Lammertz Needles Ltd., Chennai. In their petition to the Authority, the petitioner had stated that they were the sole manufacturers of the product investigated. It was however brought to the notice of the Authority by other interested parties that M/s. TVS Sewing Needle, Madurai, was also manufacturing the product under consideration. In response to the Authority's request for information in this regard, this was confirmed by M/s. TVS Sewing Needles, Madurai, who however expressed their unwillingness to participate further in the investigations for reasons best known to them.

5. The petitioner, therefore, had made an incorrect assertion in stating that they were the sole manufacturers of the product under consideration, In response to the request for information sought by the Authority, M/s TVS Sewing Needles clarified that their company was incorporated in the year 1962 and they are manufacturers of both Household and Industrial Sewing Machine needles. Their production (in numbers) of industrial sewing machine needles during the period of investigation 1996-97 was 8,41,720. The petitioner's production during January-March, 1997 alone was 10,45,000 numbers. The petitioner therefore accounted for more than 50% of the total production of the like article by the domestic industry in India and therefore satisfied the definition of domestic industry.

6. Since M/s. TVS had expressed unwillingness to participate further in the investigations and had disclosed information only on their production of industrial sewing machine needles during the period of investigation, the Authority is not in a position to comment either on the range of industrial sewing machine needles manufactured by them or on their individual prices.

## **E. ON INITIATION**

7. Arguments by exporters/importers ;

### **(A) Relationship with Lammertz :—**

- i. Producers related to the exporters of the like articles are specifically excluded from the definition of "Domestic Industry", The Annual Report for the year 1996-97 of the petitioner shows that the letter has obtained permission from the Government of India to increase the equity of M/s. Lammertz Industrienadel GmbH to 51% in their equity capital, the equity holding is sufficient to establish the petitioner's close relationship with the German company.
- ii. The conduct of the petitioner was affected by the relationship with M/s. Lammertz and was the fundamental reason for the withdrawal of the petition against Germany. This relationship is clearly within the purview of the definition of "related" provided in the footnote to paragraph 1 of Article 4 of the Agreement on Anti-Dumping. One is deemed to control another when the former is legally or operationally in a position to exercise restraint or direction over the latter. The statement of the petitioner that "related" as a concept is not defined in the law is meritless and needs to be disregarded.

### **(B) Withdrawal of petition against Germany :—**

The withdrawal of the petition vis-a-vis Germany is a ploy between the petitioner and its collaborator to marginalize all competition from the Indian market, There is no

reference of this withdrawal in the Preliminary Findings. This is the first time that a petitioner has been allowed to withdraw the petition against one country after the case for anti-dumping investigation has been initiated.

**(C) Imports from Germany by the petitioner :—**

The petitioner has imported five out of eight systems from Germany. These five systems cannot be the subject matter of this petition. The petitioner cannot import the product under consideration and at the same time claim to be hurt by the said imports.

**8. Arguments by petitioner :**

**(A) About relationship with Lammertz :—**

- i. Other interested parties have submitted that since the petitioner is "related" to Lammertz, Germany, the enquiry is terminated. The expression "related" has not been used in Section 9A of the Customs Tariff Act, 1975; neither has it been defined in the Act to be applicable generally. However, in the definition of domestic industry, Rule 2(b) of the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, the expression "related" has been used. But again the same has not been defined.
- ii. A mere Shareholding or directorships does not by itself warrant treating the exporters from outside India and domestic manufacturers as related persons. Moreover a shareholding merely entitles for a dividend. It has no relationship to the prices charged.
- iii. During the period of investigation, Lammertz held only 27.6% in the equity of the company. Even as on date, the holding is not 50% as alleged by the respondents, but 36.8% only. Lammertz does not hold a majority stake in the company.
- iv. According to the agreement between S. Ganesh and Lammertz, the former will be the Managing Director of the company as loans from financial institutions were given on his credibility. Lammertz does not have any full-time director on the Board.

**(B) Withdrawal against Germany—**

- a. The imports from German companies were less than 5% numbers which is less than one fifth of imports from Japan and Korea R.P. Further proof on injury caused by German imports could not be provided.
- b. Lammertz's share as percentage of German imports into India is less than 10%. Lammertz does not export any of the systems in the designated sizes.

c. On imports from Germany:-

It is a standard practice to import needles in small quantities in each system and size prior to freezing design parameters and start of production. Needles of competitors were purchased as well for comparison purposes. No imports whatsoever were made in the eight systems investigated after commencement of commercial production. Other interested parties are twisting statistics by comparing imports made by the petitioner over a twelve-month period with their production for three months,

9. Authority's Position:

**(A) About relationship with Lammertz:-**

- i. The concept of "related" has been elaborated in the footnote to Article 4.1(1) of the WTO Agreement which states that producers shall be deemed to be related to exporters or importers only if (a) one of them directly or indirectly controls the other, (b) both of them are directly or indirectly controlled by a third person, or (c) together they directly or indirectly control a third person, provided that there are grounds for believing or suspecting that the effect of the relationship is such as to cause the producer concerned to behave differently from non-related producers. One shall be deemed to control another when the former is legally or operationally in a position to exercise restraint or direction over the latter.
- ii. Given the above definition of the concept of "related" in the Agreement, and on further information called for from M/s. Altek Lammertz Needles Ltd., and a reexamination of the facts submitted by the petitioner in the course of the present investigations, the Authority considers the petitioner as being related to Lammertz Industrienadel GmbH, Germany on account of the following reasons;
  - a. Lammertz Industrienadel GmbH, Germany holds substantial share capital in the petitioner's equity which as per Government of India approval can be increased upto 51% holding, the shareholding of Lammertz was 27.6% during the period of investigation;
  - b. the status of the petitioner is that of a joint venture with Lammertz Industrienadel GmbH, a German exporter of needles;
  - c. the petitioner has been provided with plant and machinery, technology, know-how, designs and drawings that are proprietary and closely held by a German company viz., Leo Lammertz Nadelfabrik GmbH & Co., Aachen, Germany,
  - d. required technical training has been imparted to engineers of Altek at LLN's plant in Germany.

- e. the main raw-material (needle wire) and main chemical required in the manufacture of industrial sewing machine needles have been sourced by the petitioner from Germany alongwith other raw materials that include polishing brush, milling cutters and rubber bonded wheel;
- f. the petitioner was appointed as the sole distributor for Lammertz needles and engaged in trading activity for the same in the Indian domestic market;
- g. during the period of investigation, Altek had imported needles for purposes of testing, seeding and sampling to customers; a total of 1,49,200 numbers of needles were imported in the eight systems being the subject matter of this investigation, by the petitioner during the period of investigation;
- h. the constitution of the Board of the petitioner company is such that out of six Directors three are from Lammertz, ICICI is stated to have recently nominated one Director thereby increasing the total strength to seven;
- i. the petitioner had imported semi-finished needles in the year 1996 from Germany, during trial production stage for purposes of training their employees and setting up the plant.

The above reflects the commitment and active engagement of Lammertz in the commercial activities and business interests of the petitioner and sufficiently establishes the fact that the two are "related" as per the definition of the concept in the WTO Agreement on Anti-Dumping and Rule 2 (b) of the Customs Tariff Act, 1975, The petitioner being thus related to the exporter shall be deemed not to form part of the domestic industry within the meaning of the Rules.

**(B) Withdrawal against Germany:—**

- a. The petitioner took recourse to the provisions of the Customs Tariff Act, 1975, which contain the operational provisions and conform to the WTO Agreement on Anti-Dumping, It is the prerogative of any petitioner if he chooses to withdraw a complaint made by him against any exporter(s) before the Authority.
- b. The said request of the petitioner to withdraw the complaint against Germany was taken note of and provisional anti-dumping duties were not recommended against exports from Germany, The acceptance was therefore tacit in the nature of timings issued vide Notification No. 23/1/97 ADD dated 2-12-98.
- c. Official statistics demonstrate that Germany accounted for 9.7% of total exports of industrial sewing needles to India during the period investigated. The share of Lammertz's in these exports is not known to the Authority as Lammertz was not a respondent and did not figure in the list of German exporters against whom the petition was also initially filed. Consequently, the petitioner's statement that Lammertz does not export any of the systems in the designated sizes is unsubstantiated and hence unacceptable.

**(C) Imports from Germany:—**

The petitioner has imported five out of the eight systems, which are the subject matter of the petition. The imports were in substantial numbers. The reasons cited by the petitioner for the said imports are immaterial to the present investigations and they have not been investigated further in view of the conclusion that is arrived at in the following para.

**F. CONCLUSION**

10. The Authority observes that the petitioner is related to the exporter. This relationship has been elaborated in the aforesaid paragraphs. In view of the above, the petitioner does not satisfy the definition of "domestic industry" and does not therefore qualify to file an anti-dumping petition before the Designated Authority in terms of the provisions contained in Rule 2 (b) of the Anti-Dumping Rules under the Customs Tariff Act, 1975. Hence the requirement of enumerating the Authority's position in matters pertaining to normal value and export price, dumping margins, injury and establishment of causal link between dumped imports and injury, does not arise.

11. It is therefore considered necessary to withdraw the antidumping duties recommended provisionally, vide Notification No. 23/1/97/ADD dated 2.12.98. On imports of industrial sewing machine needles, classified under Chapter 84 of the Customs Tariff Act, 1975, under tariff classification HS Code No. 8452.30, pertaining to the eight systems being the subject matter of this investigation, originating in or exported from Japan, Korea R.P, and China.

12. In view of the above, the Designated Authority recommends withdrawal of the provisional duties in terms of the provisions of Rule 18, sub-rule (4). The provisional duty already imposed and collected, if any, shall be refunded.

**RATHI VINAY JHA,**  
Designated Authority