

MINISTRY OF COMMERCE

NOTIFICATION

New Delhi, the 3rd December, 1996

FINAL FINDINGS

Subject: Anti-dumping investigation concerning imports of Low Carbon Ferro Chrome (LCFC) originating in or exported from Russia and Kazakhstan-Final Findings.

47/ADD/94—Having regard to the Customs form Act, 1975 as amended 1995 and the Customs Tariff (Identification, Assessment and Collection of Anti Dumping Duty, on Dumped Articles and for Determination of Injury) Rules, 1995-thereof.

PROCEDURE

2. The Procedure described below has been followed:

- i. The Designated Authority (hereinafter referred to as the Authority) notified preliminary Findings vide Notification No. 47/ADD/94 dated the 23rd May, 1996 and requested the interested parties to make their views known in writing within forty days from the date of its publication;
- ii. Forwarding a copy of the Preliminary Findings, all known interested parties were requested to furnish their views, if any, on the preliminary findings within forty days of the date of the letter.
- iii. The Authority also forwarded a copy of the Preliminary Findings to the Embassy of Russian and Kazakhstan in New Delhi with a request that the exporters and other interested parties may be advised to furnish views on the Preliminary Findings.
- iv. The Authority has concluded the investigation within the extended time limit allowed by the Central Government
- v. The Authority held a public hearing on 11.10.96 to hear views orally. All the parties attending the public hearing were requested to file written submission of the views expressed orally. The parties were advised to collect copy of the views expressed by the opposing parties and were requested to offer their rebuttals, latest by 24.10.96.
- vi. In accordance to Rule 16 of the Rules supra, the essential facts/basis considered for these findings were disclosed to all known interested parties and comments received on the same have also been duly considered in these findings.

PETITIONER'S VIEWS

3. The petitioner in response to the Preliminary Finding made the following submissions:

- i. Zimbabwe has been rightly adopted as a surrogate country. Even countries such as Brazil and European Union facing similar problems adopted Zimbabwe as surrogate country and imposed anti dumping duty.
- ii. The Authority should consider factors prevailing during period of investigation and the latest prices of LCFC are not relevant. It may also possible that the exporters have temporarily raised the prices to give the impression that they are nor dumping.
- iii. The custom duty has been reduced from 50% at the time of filing petition to 27% at present. If the same is considered the landed cost of the material stands further reduced.
- iv. The amount of Anti-dumping Duty recommended by the Authority is substantially and significantly less than what such rate should have been, particularly in case of M/s. Derek Raphael and Co. Ltd., London and M/s. Societe Anonym Des Minerals, Luxemburg.
- v. It appears that the fair selling price adopted by the Authority is less than the fair selling price submitted by the petitioner. The rate of Anti dumping Duty in case of the two exporters mentioned in the above para is lower by about Rs. 8000/-.

VIEWS OF EXPORTERS, IMPORTERS AND OTHER INTERESTED PARTIES

4. The importers and exporters have expressed their views and the same are briefly mentioned below:

(a) Exporters:

- i. M/s. SYNCERT replied that it was impossible to provide the information requested by the Authority in Rs. since rate of exchange kept on changing and was rather unstable. The questionnaire sent by the Authority did not give exporters fair chance to respond.
- ii. The contention of the petitioner that the information with regard to Normal Value was not available is unacceptable. Russian Ministry of Metallurgy published the price of LCFC on a monthly basis for 1993 and 1994.
- iii. Russia can hardly be compared with Zimbabwe for constructing cost of production.

- iv. Para 10 of preliminary Findings is inconclusive as the Normal value state is without unit of measurement and carbon content.
- v. LCFC imported in India had a Carbon content between 0.15% and 0.25%. Both the grades are not produced by the petitioner.
- vi. Since the prevailing market prices are much higher than the period of investigation, the whole issue is irrelevant.

(b) Importers and Other Interested Parties:

- i. The Authority has not completed the investigation within the time limit prescribed under the Rules, including the extended time period.
- ii. Cost of Production worked out by the Authority for the purpose of Normal value is highly doubtful as the details of cost have not been made available. During the period of investigation the imports were cheaper, but subsequently the prices have increased. The international prices move so fast and scenario changes so rapidly that conditions necessitating dumping also disappear.
- iii. There is substantial price difference in LCFC depending upon the carbon content in the Ferro Alloy. The Authority should classify carbon content while calculating Normal Value.
- iv. The imports of LCFC have shown significant increase because of almost negligible imports in the preceding years. The Steel industry faced recession resulting in decline in production. The decline in production in case of petitioner is almost equivalent to the decline in production of stainless steel for which LCFC is used.
- v. A large number of consumers have changed technology resulting in decline in demand for LCFC.
- vi. Comparison of the prices of HCFC and LCFC are nor irrelevant for the purposes of the investigation as observed by the Authority in the Preliminary Findings. The price difference between the two in the international market s Rs. 19/- per kg. Compared to Rs. 40/- per kg in case of India.
- vii. The imposition of Anti Dumping Duty would benefit only the monopoly producer.
- viii. While disclosing the essential facts in terms of rule 16 supra, the Authority has not disclosed the data on which the cost of production is based. They have also desired to know the Normal Value and the injury margin. It has been contended that the information sought by them would be necessary for them to submit a reply.

EXAMINATION BY AUTHORITY

5. The submissions made by the petitioner, exporters, importers and other interested parties have been examined and considered by the Authority while arriving at these findings and wherever appropriate, have been dealt hereinafter. The comments made subsequent to the disclosure of the essential facts have also been appropriately dealt with hereinafter.

6. The Authority confirms, in the absence of any direct response from the exporters in the form and manner prescribed having made these findings on the basis of the facts available to it as per rule 6(8) supra.

LIKE ARTICLES AND DOMESTIC INDUSTRY

7. Under Rule 2(d) “like article” means an article which is identical or alike in all respects to the article under investigation for being dumped in India or in the absence of such an article, another article which although not alike in all respects, has characteristics closely resembling those of the articles under investigation.

8. The product under consideration which has been investigation for dumping has been defined in para 10 of the preliminary findings, which is Low Carbon Ferro Chrome (widely known as LCFC) having carbon content ranging between 0.03% to 0.20% and Chromium content ranging between 65% an 70%.

9. The Authority notes that the articles produced by the domestic industry have characteristics closely resembling those of article under investigation and therefore the criteria prescribed in the definition under Rule 2(d) are adequately satisfied. The Authority also notes that the articles imported originating from Russia and Kazakhstan have substituted the articles produced by the domestic industry-both commercially and technically.

10. The Authority confirms paras 11-13 of the preliminary findings and confirms that LCFC produced by the Domestic Industry is like article to the LCFC exported to India originating in or exported from Russia and Kazakhstan within the meaning of the rules supra.

NORMAL VALUE

11. 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 in 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 or profits, as determined in accordance with the rules made under sub-section (6):

Provided that in the case of imports 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, the normal value shall be determined with reference to its price in the country of origin.

12. The Authority had sent exporters questionnaire to all the known exporters for the purpose of determination of normal value in terms of the section cited above. However, the Authority notes that none of the exporters have co-operated with the Authority and no information has been furnished in the form and manner prescribed. None of the exporters has also offered itself for verification by the Authority.

13. The contention of M/s. SYNCRET that it was impossible to provide information requested by the Authority in Indian rupees is unacceptable. The Authority had asked for the information in US\$ along with applicable exchange rate. In view of the fact that the exporter never stated any difficulty to the Authority before the preliminary findings, the contention of the exporter is without any force.

14. The contention of exporter that the information about prices being regularly published by the Ministry of Metallurgy in Russia in 1993, 1994 remains unsubstantiated as neither any of the exporters nor any other interested parties have furnished any such published prices. The contention being unsubstantiated, is rejected.

15. All the exporters have merely transshipped the goods originating from Russia and Kazakhstan and therefore the Normal Value has to be determined with reference to the country of origin i.e. Russia and Kazakhstan in terms of proviso to sub-section 1(c) of section 9A.

16. The Authority notes that in view of the market situation in Russia and Kazakhstan and in view of the non-availability of relevant information, the Authority considers it

appropriate to resort to clause (c) (ii) of section 9A for determination of the Normal Value.

17. Under clause (c)(ii) of section 9A(i) the Authority has the clear option of resorting either to sub-clause (ii) (a) or (ii) (b).

Since sufficient information is not available for working out normal Value in accordance with sub-clause (ii) (a) because of non-co-operation from the exporters, the Authority considers it appropriate to determine the normal value in terms of sub-clause (ii)(b) on the basis of cost of production with appropriate adjustments.

The Authority has, therefore worked out normal value on the basis of cost of production in the country or origin. None of the exporters has co-operated with the Authority and furnished factual information with regard to cost of production, and the information furnished by the importers is insufficient. The Authority has worked out cost of production on the basis of the best information available in accordance with the Rules which authorize the Authority to work out cost of production in the country or origin on the basis of facts available with it. The Authority has, therefore, worked out cost of production in Russia and Kazakhstan on the basis of cost data on the Indian industry. However, since power rates are reported by the petitioner to be much lower in Russia, the Authority has considered power rates prevailing in Zimbabwe for constructing cost of production in Russia and Kazakhstan. The Normal Value has been considered at US\$ 163 per MT. The same level of Normal Value have been considered for all the exporters.

18. Except as detailed in the foregoing the Authority confirms the paras 14 to 18 of the Preliminary Findings with regard to Normal Value of LCFC for Russia and Kazakhstan.

EXPORT PRICE

19. The exporters have failed to furnish ex-works export price and the absence of any co-operation from the exporters, the Authority notes that ex-works Export Prices have to be worked out on the basis of the information made available by the petitioner in the form of photocopies of Bills of Entry and Invoices in accordance with the Principle of best available information. The Authority has treated FOB export price as ex-works Export Price in the absence of any evidence on the inland freight in Russia and Kazakhstan.

20. Except as detailed in the foregoing, the Authority confirms the paras 19 to 26 of the Preliminary Findings with regard to Export Price of LCFC.

COMPARISON

21. The Authority confirms the paras 27 to 29 of the Preliminary Findings with regard to comparison of Export Price and Normal Value.

INJURY

22. The Authority had disclosed, in sufficient detail, parameters relating to material injury suffered by the Domestic Industry. The interested parties had the opportunity to comment on these parameters disclosed by the Authority in the Preliminary Findings.

23. The Authority has worked out the fair selling price in the Preliminary Findings at an optimum level of capacity utilization, thus nullifying the effects of declining demand, if any.

24. The information relief upon by the Authority in paras 32 to 39 of Preliminary Findings with regard to the injury to the Domestic Industry has also not been controverted.

25. It is clarified that the Authority has not merely relief upon the submissions of the petitioner regarding fair selling price. The Authority deputed a team consisting of Cost Accountants for on-the-spot investigation and has worked out, in detail, the fair selling price of LCFC in India for the domestic industry. Since the same is based on confidential data furnished by the petitioner, the Authority refrains from discussing the details.

26. After considering the arguments raised by the interested parties the Authority confirms paras 30 to 40 of the Preliminary Findings relating to injury to the domestic industry.

CAUSAL LINK

27. The Authority has worked out Fair Selling Price for the Domestic Industry and therefore, the effects of extraneous factors like recession in the Steel industry, if any, are nullified.

28. The information relief upon by the Authority paras 30 to 40 of Preliminary Findings with regard to the injury to the Domestic Industry has not been controverted.

29. The Authority after considering all related issues, confirms para 41 of the Preliminary Findings with regard to causal link between dumping of LCFC originating from Russia and Kazakhstan and material injury to the domestic industry.

INDIAN INDUSTRY'S INTEREST AND OTHER ISSUES

30. The Authority notes that LCFC having varying carbon content result from the same identical production process, and does not require any special equipment, extra material, extra processing to produce LCFC of varying carbon content.

31. The contention of the M/s. All India Induction Furnace Association (AIIFA) that the investigation had not limit starts from the date of initiation and not from the date of dumping allegation. In the instant case the investigation were initiated on and the final findings are required to be notified by 5th December, 1996 as the period of 12 months was extended by a further 6 months as detailed in para supra.

32. The current rate of customs duty, changes in selling price of LCFC by the petitioner and any other changes subsequent to the investigation period are outside the scope of this investigation. However, any party to the investigation may request the Authority for review of the present findings, in accordance with the Rules supra.

33. As regards the argument that the producers in Kazakhstan have stopped production from June 93, the Authority notes that anti- dumping duty is payable upon importation of an article and the fact of production is irrelevant for the purpose.

34. With regard to lower Anti Dumping Duty than requested by the petitioner, it is found that the petitioner's calculations are based on customs duty @ 30%. Custom duty during 1994-95 was @ 50% which was brought down to 30% in the following year.

35. It is incorrect to say that petitioner is not producing LCFC having carbon content between 0.15% and 0.25%. it is clear even from the evidence attached by the AIIFA that FACOR is quoting its prices for the said grades.

36. FACOR is not a monopoly producer. AIIFA, who has raised the argument, it self has attached evidence that the product is being produced by others also in India. Notwithstanding the factual inaccuracies in the argument, the issue is also irrelevant in the present proceedings as the right of a single producer can not be restricted under the Anti Dumping Act, so long as the petitioner satisfies the criterion of Domestic Industry. Moreover, it is observed that the domestic producers are facing direct competition from imports of LCFC from various sourcing and they are not in a position to dictate or manipulate the prices or the market of LCFC.

Moreover the purpose of anti-dumping duties, as detailed in paras 42 to of the Preliminary Findings, is to remove dumping which has caused injury to the domestic industry and to re-establish a situation of fair competition and not to restrain imports from any specific source.

37. The contention with regard to price difference of LCFC and HCFC is incorrect and irrelevant to the present proceedings. The Authority has, however, not done a detailed investigation with regard to HCFC, the same being an article beyond the scope of the present investigation.

38. Decline in demand for LCFC, if any, has been taken care of by considering fair selling price at normative level of capacity utilization.

39. The current national and international prices of LCFC are irrelevant for the present investigation and, therefore the arguments in this regard are rejected.

40. It is clarified that the Authority has worked out Normal Value, Export Price and fair selling price for LCFC having 66.1% Cr. Content and distinction with regard to Carbon content has been ignored.

41. Except as detailed in the foregoing, the Authority confirmed the paras 19 to 26 of the Preliminary Findings.

FINAL FINDINGS

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

- i. LCFC originating in or exported from Russia and Kazakhstan has been exported to India below its normal value;
- ii. The domestic industry has suffered material injury;
- iii. The injury has been caused to the Domestic Industry by the exports originating in or exported from Russia and Kazakhstan.

43. The Authority therefore, confirms paras 47 to 49 of the Preliminary Findings and recommends imposition of final anti-dumping duties on all imports of LCFC originating in or exported from Russia and Kazakhstan at the rates specified below:

S. No.	Name of the Exporter and Place	Normal Value (US\$/MT)
I	Country of Origin – Russian	
	Derek Raphael & Co., London	10,900
	Norcalloys SA, Luxemburg	17,400
	Norcalloys LP, New York	18,600

	Societe Anonyme Des Minerals, Luxemburg	12,300
	SYNCRET BV, Rotterdam	16,900
	Exporters other than above	18,600
II.	Country of Origin- Kazakhstan	
	Societe Anonyme Des Minerals Luxemburg	18,500
	Exporters other than above	18,500

44. Subject to above, the Authority confirms the preliminary findings dated 23.5.1996.

DIPAK CHATTERJEE,
Designated Authority