

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

NOTIFICATION

FINAL FINDINGS

New Delhi: 1st September 2003.

Subject: Anti-dumping investigation concerning import of measuring tapes originating in or exported from China PR - Final Findings.

No. 14/31/2002-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

1. The Procedure described below has been followed:

- i. The Designated Authority (hereinafter also referred to as the Authority) notified preliminary findings vide Notification No. 14/31/2002-DGAD dated the 31st January 2003 with regard to Anti Dumping investigations concerning imports of Measuring Tapes originating in or exported from China PR and requested the interested parties to make their views known in writing within forty days from the date of its publication;
- ii. The Authority forwarded a copy of the Preliminary Findings to known interested parties, who 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 copy of the Preliminary Findings to the Embassy/High Commission/Representative of subject country in New Delhi with a request to furnish their views on the Preliminary Findings;
- iv. The Authority held a public hearing on 1st May 2003 to hear the interested parties orally, which was attended by representatives of the domestic industry, user industries and user industries. The parties attending the public hearing were requested to file written submissions of views expressed orally.

- Designated Authority has considered the written submissions thus received from interested parties in these findings;
- v. The Authority made the public file available to all interested parties containing non-confidential version of the evidence submitted by various interested parties, for inspection, upon request;
 - vi. Arguments raised by interested parties before announcing of Preliminary Findings, which have been brought out in the Preliminary Findings notified earlier have not been repeated herein for sake of brevity. However, arguments raised after the preliminary findings by the interested parties have been appropriately dealt with in the Preliminary Findings and/or these findings;
 - vii. In accordance with Rule 16 of the anti dumping Rules supra, the essential facts/basis considered for these findings were disclosed to known interested parties and comments received on the same have also been duly considered in these findings;
 - viii. Investigation was carried out for the period starting from 1st April 2001 to 30th June 2002;
 - ix. **** in the Notification represents information furnished by interested parties on confidential basis and so considered by Authority under the Rules.

B. Product under consideration AND LIKE ARTICLES:

VIEWS OF M/S Sudesh Enterprises

2. In the preliminary findings product under consideration has been defined as measuring tapes and its parts and components. Neither the preliminary findings nor the petition have cared to identify or give names of the parts or components which are sought to be covered by these findings. It is submitted that a steel strip acquires the characteristics of a component part of a measuring tape only after certain processes are carried out. In absence of identification of the parts and components, their quantum of imports, no conclusion can be reached that the parts have been imported at dumped prices or that they caused injury to the petitioners.

3. From the preliminary findings, it appears that the normal value has been calculated only for steel tape and fibreglass tapes however normal value has not been calculated for the parts/components. Similarly the export price is only for the tapes and not the parts. In the absence of determination of the dumping and injury margin, the recommendation of duty is not justified.

VIEWS OF PETITIONERS

4. The product under consideration in the present petition is Measuring Tapes and its parts and components thereof so long as imports of parts and components constitute imports of Measuring Tapes. Measuring Tapes produced by the domestic industry and Measuring Tapes imported from China are comparable in terms of characteristics such as physical & Chemical characteristics, manufacturing process & technology, functions and uses, product specifications, pricing, distribution & marketing and tariff classification of the goods.

C. EXAMINATION BY AUTHORITY

5. The product under consideration is "Measuring Tapes", its parts and components etc., all type of steel measuring and fibre glass tapes and their parts or components are the subject matter of the present petition. It is generally used for measuring the length, breadth etc. of an object. It is used by foreman, mason, carpainter, forestry departments and tailors etc. Measuring Tapes are manufactured from tempered high quality carbon steel blade, phosphated and coated with special enamel to withstand corrosion and rust. Measuring tapes are used for :-

- a. high precision professional jobs;
- b. measuring depth, width, or length of an object;
- c. contraction and surveys.

6. In technical terms the measuring tapes are defined in terms of length and width of a tape, raw material used i.e. steel or fibre glass and, finally precision with which dimensions are marked on the tape. It is classified under Chapter 90 of the Customs Tariff Act under sub-headings 9017, 9017.80, 9017.8001, 9017.90. The petitioner has stated that subject goods are being imported under above-mentioned sub-headings. The Custom classification is indicative only and not binding on the scope of investigation.

7. There is no known difference in subject goods produced by the Indian industry and imported from China PR. Subject goods produced by the Indian industry and imported from China PR are comparable in terms of characteristics such as product specifications, manufacturing process & technology, functions & uses, pricing, distribution & marketing and tariff classification of the goods. The two are technically and commercially substitutable. The consumers are using the two interchangeably. Subject tapes produced by the petitioners and imported from China PR should be treated as like articles in accordance with the anti dumping Rules.

8. There is no known difference in the technology adopted by the domestic industry and the manufacturers in China. The technology adopted by the domestic industry is

comparable to the technology adopted by the manufacturers in China. However, every manufacturer fine-tunes its production process on the basis of necessities and available facilities.

9. The Authority notes that the investigation covers all types of steel measuring and fibre glass tapes and their parts, components and constitute the subject matter under investigation. The Authority for the purpose of dumping margin has made appropriate comparisons on kg basis only. The Authority also holds that the goods produced by the Domestic Industry and those exported from the subject country are like article within the meaning of the Rules 2(d).

D. DOMESTIC INDUSTRY

VIEWS OF M/S Sudesh Enterprises

10. All the petitioners and supporters of the request for duty are liable to be excluded whereas M/s. Skanan have themselves imported tapes during the period of investigation, the others have imported components from China. Since both the tapes and components are the product under consideration, there is no domestic industry and the petition is liable to be dismissed.

11. We also submit that a simple letter is not sufficient for showing support, the manufacturers such as M/s. Skanan and M/s. Klas must co-operate with the Hon'ble Designated Authority by providing the relevant information regarding its production, sales, cost of manufacture and imports. In the absence of such co-operation, companies such as M/s. Skanan and M/s. Klas should not be permitted to participate in the proceedings.

12. M/s. Klas are to be excluded, as they are not a manufacturer of measuring tape. They are selling only uncalibrated measuring tapes that are tapes on which there are no makings. Tapes without marking are not measuring tapes, since they can not be used for measurement purposes.

13. In the preliminary findings, in paragraph B (b) it has been stated that the total domestic production is 608343 Kgs and the petitioner companies constitute 90% of the subject goods production. Therefore, the petitioner companies claim that their production during the period of investigation was 547508 Kgs. Since this production, we presume, has been indicated for the period of investigation (15 months), the production for 12 months period on a pro-rata basis would be 438006 Kgs. Normally, measuring tapes are of various types and sizes. The weight of the measuring tapes varies from size to size. In the petition, it has been stated that the large majority of the production is of pocket measuring tapes of a length of 3 Mtrs. The weight of one piece

of a pocket type measuring tape of 3 meters is about 100g. Therefore, on the basis of the weight indicated the production of the petitioner companies should have been of 43,80,060 pieces. We believe that this quantity of tapes has not been manufactured by the petitioners, since in the balance sheet for the period 2001-2002 the figures indicated towards payment of weights and measurement charges are for a much smaller quantity.

14. Under the Standards of Weights and Measures Act, 1976 read with the Standards of Weights and Measures (Enforcement) Act, 1985 every weight or measure is to be verified and stamped by Jurisdictional Inspector. In the schedule to the Act the charges for such verification and stamping have been indicated. These charges vary based on the length and type of measuring tape. The applicable charge in the case of pocket tapes of 3 Mtrs. Length for sales outside the State of Punjab, is Rs. 6.25 per piece. As regards sales made within the State of Punjab, the applicable charges is Rs. 5 or above in the case of plastic and steel pocket type of 3 Mtrs as per Notification dated 13th March 2002. In the balance sheet profit and loss for the year 2001-2002 the weight and measure charges are shown as Rs. 14,34,300/- in the case of M/s. Freemans Measure Ltd., Jugiana Road, Ludhiana. This would mean sales of about 2,86,860 pieces only. Similarly in the case of FMI Limited, Ferozpur Road, Ludhiana the stamp duty paid is of Rs. 12,68,375/-, therefore the maximum number of pieces that could have been manufactured and sold would be 2,53,675. The claim that the petitioner companies have manufactured 43,80,060 number of pieces is. therefore factually incorrect.

VIEWS OF PETITIONERS

15. The present petition was filed by FMI Limited, Ludhiana and Freemans Measures Limited, Ludhiana. Apart from the petitioners, there are two other producers of the subject goods in India. Petitioners account for a major proportion of Indian production.

16. The support to the petition expressed by Skanan and Klas is to meet the requirement of the Rules under Rule 5(3). However, to construe further that these companies would then be obliged to provide all relevant information also is tantamount to saying that these companies should de factor become petitioners. Should the argument be accepted, it would imply that the Rules should provide for two situation – petitioner and opposing producers. The legal provisions relating to support or otherwise in such an event would become infructitious.

E. EXAMINATION BY THE AUTHORITY:

17. As per Rule 2(b) of the Anti Dumping Rules, "domestic industry means the domestic producers as a whole engaged in the manufacture of the like article and any activity connected therewith or those whose collective output of the said article constitutes a major proportion of the total domestic production of that article except when such producers are related to the exporters or importers of the alleged dumped article or are themselves importers thereof in which case such producers may be deemed not to form part of domestic industry."

18. The definition of Domestic Industry given above is further clarified by Rule 5 of Rules which reads as follows:-

"----- the application shall be deemed to have been made by or on behalf of the domestic industry, if it is supported by those domestic producers whose collective output constitute more than fifty percent of the total production of the like article produced by that portion of the domestic industry expressing either support for or opposition as the case may be to the application.

19. The present petition has been jointly filed by FMI Limited, Ludhiana and Freemans Measures Limited, Ludhiana., representing the domestic industry and the Authority has considered the information supplied by these two above mentioned companies for the purpose of Anti Dumping investigations. The petitioner companies constitute 90% of the subject goods under consideration.

20. The Authority notes that the petitioners constitute more than 50% of the total domestic production of the subject goods and, therefore, have the standing to file the petition on behalf of the domestic industry as per Rule 5 (3) (a) and (b) of the Anti-Dumping Rules and also represent Domestic Industry in terms of Rule 2(b)

F. OTHER ISSUES

VIEWS OF PETITIONERS

21. Petitioners reiterate that no questionnaire response has been filed by Sudesh Enterprises. As far as the understanding of the petitioners goes, Sudesh Enterprises is neither an exporter nor an importer of the subject goods. Sudesh Enterprises was a dealer of one of the petitioner companies. Such being the case, Sudesh Enterprises is not an interested party.

22. Since Sudesh Enterprises is not dealing in the imported product, in any case, it is not an aggrieved party. Kind attention is invited to the CEGAT decision in the matter of Theophylline and Caffeine, wherein it has been held that a party must establish how it is aggrieved with the decision of the Designated Authority, before it can

oppose the proposed measures. In the instant case, no efforts have been made by Sudesh Enterprises to establish how the party is aggrieved with the proposed measures and how it can oppose the proposed measures.

23. With regard to consideration of only verified tapes, it is submitted that the argument holds good for the imported product also. Not even a single imported tape is verified by Weights & Measures Deptt. however, petitioners consider that this argument is extraneous to the intent and objective of the present investigations. There is a duly constituted authority who is handling the issue raised by the party. Such being the case, it would be improper to expect the Designated Authority to step into their shoes and start discharging that function.

24. It would be relevant to point that in the matter of anti dumping investigations relating to imports of Ammonium Nitrate, petitioners repeatedly brought in the issue of illegality of imports. As you are well aware, ammonium nitrate as a fertilizer is banned for production and sale in the Country. However, the product has been imported as fertilizer grade ammonium nitrate. While the issue involved in the present case is that of alleged duping of the customers by short measurement, the issue involved in that case is of far higher consequences. It would be recalled that a newspaper news item was earlier filed by the petitioners, which stated that the Bomb Blast at Ghatkopar was set off using ammonium nitrate. However, in spite of repeated submissions of the petitioners about illegality of imports, the Designated Authority has chosen to ignore this issue, presumably for the reason that there is a competent authority to consider that issue.

25. M/s. Sudesh Enterprises has attempted to mix the non-standards tapes with inaccurate tapes. Petitioners submit that all the products produced by the petitioners conform to the same accuracy and quality parameters, be it verified tapes or tapes meant for exports. Petitioners submit that even though the data furnished by the petitioners has already been verified by the Officers, this fact can again be verified by visiting the petitioner companies. It would be found that there is no difference in the accuracy of the various tapes produced by the petitioner companies. In fact, petitioner companies export the material to a large number of countries. This has been possible only due to the quality and accuracy of its product.

26. With regard to wild allegation of duping customers, petitioners submit that there has not been even a single such case since the history of the petitioner companies when any consumer was cheated with short supply due to inaccurate petitioner's tapes being used. Thus, the allegation of the party is a mere allegation, unsubstantiated with any evidence. It is submitted that duping consumers by malpractice resulting in supply short of lengths and inaccurate tapes are two different issues. Even with verified tapes, consumers have been and can be cheated/duped.

27. If the contention of the party that unverified tapes are not in the consumers interest is to be accepted, it is submitted that this calls for complete ban on imports as not even a single imported tape is verified before sale. Petitioners, in the alternate, requests the Designated Authority to recommend banning the imports itself, as these are being made by various parties without any verification.

28. It has been argued that the reasons for use of imported tapes is that they are fairly precise as compared to domestically produced tapes. The statement is bald and wild with no basis and truth in it.

VIEWS OF M/S Sudesh Enterprises

29. Measuring Tapes, which have not been verified, and no fees paid under the Standards of Weights and Measures Act should be excluded from consideration.

30. It is mandatory that the measuring tapes should be verified by the Inspector with regard to accuracy of measurement and quality of tape. Tapes, which are not verified, are sold to customers, who want to purchase non-standard tapes so as to dupe their customers. For e.g., retailers of fabrics purchase non-standard measuring tapes which are marked as 3 meters but are actually of a lower length, that is 2.5 meters. With such tapes, the retailer is able to dupe the ultimate consumer by selling a lower quantity of fabric. Persons in various trades purchase this type of tape. Providing protection to manufacturers of non-standard tapes will amount to encouragement of such malpractices in the economy.

31. The measuring tapes should be verified so as to prevent sales of non-standard tapes. The promotion of sale of such tapes will seriously hamper consumer interests. If a purchaser of measuring tape, obtains a product, which is inaccurate, that is the level of error exceeds the permissible levels, any measurement taken with such tapes will be incorrect. The policy of the petitioner to sell non-standard products is one of the main reasons why many customers prefer to use imported tapes, as they are fairly precise. The non-standard tapes sold by petitioner are not of adequate quality.

32. The motive of the petitioners to avoid verification under the standards of Weights and Measures Act is two fold – that is to cater to customers who wish to buy inaccurate tapes and also to avoid payment of verification fees under the Act. Providing protection to such companies should be against the government policy, as it would only encourage their malpractices. The imposition of duty effectively bars the availability of accurate measuring tapes to the common man.

G. EXAMINATION AND FINDINGS BY THE AUTHORITY:

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

34. The cases of new exporters of those stated to be willing to give price undertaking should be considered, on request to the Authority in accordance with the Rules Supra.

35. M/s. Sudesh Enterprises Ltd., is not a importer of measuring tapes and did not file the submission in the importers questionnaire. The Authority notes that they are the whole sellers and retailers of measuring tapes in India. The arguments raised on various issues have been examined by the Authority but most of the issues raised are either extraneous or not relevant for the purpose of considering their argument in this instant case. The issue raised regarding non-payment of fees paid under the Standards of Weights and Measures Act should be taken up at the appropriate Authority for necessary action. The anti dumping measures are provided to look into the price distortion-taking place due to the dumped imports which is further causing injury to the domestic industry. Therefore the Authority notes that anti dumping investigation examines the injury caused due to the dumped imports.

H. VIEWS OF INTERESTED PARTIES ON DISCLOSURE STATEMENT ISSUED BY THE DESIGNATED AUTHORITY:

36. VIEWS OF PETITIONERS

The domestic industry filed their comment on the disclosure statement No. 14/31/2002-DGAD dated 11th August 2003, with regard to various issues on behalf of the domestic industry.

37. Like Article:

There is no issue raise by any interested parties against the issue of like article. We, therefore, request the Designated Authority to confirm the preliminary finding in this regard.

38. Domestic industry

The petitioners account for major proportion of total Indian production and constitute domestic industry in accordance to the Rules.

39. Dumping:

None of the interested parties has filed questionnaire response and information in the form and manner prescribed. Moreover, the present investigations are against China and China has to be treated as a non-market economy in accordance to the Rules unless responding producer in China establishes that it is operating in the market economy environment. The Authority is, therefore, fully justified in proceeding with the best available information. The petitioners submit that the determination of normal value done in the preliminary findings may kindly be confirmed.

40. DUTY IN US \$

Though the Designated Authority has already recommended anti-dumping duty in terms of US \$, it is submitted that the final duties may also be recommended in terms of US \$ only, so that erosion in the quantum of protection does not take place on account of changes in the exchange rate. However, the duties may please be kept in terms of reference price only.

EXAMINATION BY THE AUTHORITY:

41. The submission made by the domestic industry and other interested parties have been examined and considered while arriving at these findings and wherever appropriate have been dealt hereinafter. However, certain crucial issues raised by interested parties have been examined at appropriate places.

I. NORMAL VALUE, EXPORT PRICE AND DUMPING MARGIN:

VIEWS OF SUDESH ENTERPRISES

42. The sale price of M/s. Skanan both before and during the period of investigation has been around Rs. 11 to Rs. 12. During 2000-01, the petitioner alleges no dumping, and therefore, the NIP cannot exceed the normal sale price of the most efficient manufacturer. Prior to the dumping, there is no reason for this manufacturer to sell below cost, therefore, the determination of NIP at level higher than Rs. 11 is unjustified.

43. It is admitted by the petitioner that FMI Ltd., has made exports at a CIF price of US\$ 0.21 to Spain for 3 meter tapes during the POI. This would mean that the ex-

factory price is about Rs. 8 (US\$ 0.16)per piece. The landed value would come to around 2.08 per Kg as against the NIP determined in the preliminary findings at over US\$ 4.08 per Kg. The NIP is required to be brought to a rational and reasonable level consistent with the facts.

VIEWS OF PETITIONERS

44. The present investigation are against China and China has to be treated as a non-market economy unless a producer in China establishes that it is operating in the market economy conditions. The Authority is, therefore, fully justified in proceeding with the best available information. The Authority has determined normal value on the basis of constructed cost of production in a market economy third country in the preliminary findings.

45. Though the Designated Authority has already recommended anti dumping duty in terms of US\$, it is submitted that the final duties may also be recommended in terms of US\$ only, so that erosion in the quantum of protection does not take place on account of changes in the exchange rate. However, the duties may please be kept in terms of reference price only.

46. All tapes produced by the petitioners conform to International Organization of Legal Metrology specifications. Further, tapes produced by the petitioners conform to class II EEC specifications for steel tapes and class III specifications for fiberglass tapes. In fact, Freeman was amongst the first non-European brands to obtain EEC approval, which is a testimony of the fact that the tape measures conform to the best international quality standards. "Freemans" is name to be reckoned upon in this industry not only in India but also internationally. Petitioners maintain most modern facilities for producing quality product. In fact, they export to more than 60 countries in the world – including developed countries such as Europe and US. There is no basis for the allegation made.

47. The arguments that a tape consists of 3 or 4 parts only lacks complete appreciation about the product. The Officers have already visited the petitioner companies and have seen the entire production process. While there are a very large number of parts involved in production and sale of measuring tapes, petitioners submit that at least critical parts are required to specified in the scope of product under consideration and proposed measures.

48. With regard to separate assessment of dumping margin, petitioners wish to submit that the same is not required. Petitioners are relying upon the investigations into dumping of ball bearings and parts thereof by the USA. It would be seen that while

scope of the product under consideration and proposed measures include parts/components, separate margins have not been determined for such parts.

49. Imposition of anti dumping duty on parts/components is necessitated due to the fact that assemble of tapes involves miniscule time, effort and resources. Such being the case, the entire exercise may become futile in case the anti dumping duty is not extended to parts or components.

50. With regard to cost stamping, petitioners wish to refer to the views of the Designated Authority when the Hon'ble Authority asked the petitioners to explain why they could not lower the price and face the competition. Petitioners had pointed out that the landed price of imported tapes is as low as Rs. 3-4 per piece (3 mtr tape). As against this, the stamping fee payable on each tape comes to Rs. 6.25 for 2 mtr.-5mtr. to as high as Rs. 62.50 per piece for 50 mtr tape, leave aside the cost of producing and selling the tapes.

51. The issue at hand being investigated by the Designated Authority is whether the subject goods are being exported to India at dumping prices and whether such imports are causing material injury to the domestic industry.

EXAMINATION BY THE AUTHORITY:

52. The Authority examined the issues raised by both the petitioner and M/s. Sudesh Enterprises. The Authority notes that M/s. Sudesh Enterprises did not respond to the questionnaire but made arguments to the preliminary findings, which have been dealt at appropriate places wherever it had a bearing on the findings. As regards the issue raised by M/s Sudesh Enterprises regarding the Non-Injurious price, the Authority notes that the non injurious price is determined after taking into account best consumption norm of raw materials, utilities, SGA and expected profit that an industry is expected to achieve. The anti dumping investigation is basically is to examine the impact of injury caused due to dumped imports by the exporters.

53. 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 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 to an appropriate third country as determined in accordance with the rules made under sub-section (6); or
- b. The cost of production of the same 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);

54. 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.

55. The Authority also notes the various custom notification no. 44/99 (NT), dated 15th July 1999, No. 28/2001(NT), dated 31st May 2001 and No. 1/2001(NT), dated 4th January 2002 on the anti dumping in respect of the issue of non market economy under the anti dumping Rules.

56. The Authority provided opportunity to the exporters from subject country to furnish information relevant to the investigations and offer comments, if any, in accordance with the Section cited above. The Authority also wrote to the Embassy/Representative of subject country in India. The Authority sent questionnaires to all the known exporters for the purpose of determination of export price and normal value in accordance with Section 9A(1) (c) of the Custom Tariff Act. The normal value and ex-factory export price determination is examined below.

A. NORMAL VALUE

57. Designated Authority sent questionnaires to the known exporters/producers in China and Embassy of the subject country in India.

58. The Authority notes that none of the exporters from, China PR have responded to the questionnaire sent by the Authority for the purpose of investigation. In view of this non-cooperation, the Authority upholds the claim of the petitioners for treating such producers/exporters on the non-market principle as none of the exporters have rebutted the claim of non- market economy claim by the petitioner. The Authority notes that the petitioner has claimed China PR as a non- market economy on the basis of various findings. The Authority therefore in view of no rebuttal by the exporter on the issue of non market economy and the fact that the cost of production of the subject goods has not been made available by the exporter thus not permitting the authority to apply the ordinary course of trade test, has referenced the normal value separately for both steel tapes and fibre glass tapes on the basis of constructed cost of production

with appropriate adjustments on best available information on records as per rule 6(8) the anti dumping Rules supra.

59. The Authority has referenced the Normal Value for steel tapes for such producers/exporters as ****\$/Kg and the normal value for fibre glass tapes for such producers/ exporters as ****\$/Kg for the purpose final determination.

B. EXPORT PRICE

60. The Authority notes that the export price has been determined separately for both steel tapes and fibreglass tapes on the basis of the data compiled by DGCI&S Kolkata. Since there is no response from exporters, adjustments on ocean freight, ocean insurance, commission, inland freight, and port expenses to an extent of ****\$/Kg, ****\$/Kg, ****\$/Kg, ****\$/Kg, and ****\$/Kg. have respectively considered as provided by the petitioners.

61. The ex-factory export price for steel tapes is referenced as ****\$/Kg and the ex-factory export price for fibreglass tapes is referenced as ****/Kg for the purpose of final determination.

J. DUMPING–COMPARISON OF NORMAL VALUE AND EXPORT PRICE:

62. The rules relating to comparison provides as follows:

63. "While arriving at the margin of dumping, the DA shall make a fair comparison between the Export Price and the Normal Value. The comparison shall be made at the same level of trade, normally at ex-works level, and in respect of sales made at as nearly possible the same time.

64. Due allowance shall be made in each case, on merits, for differences which affect price comparability, including differences in conditions and terms of sales, taxation, levels of trade, quantities, physical characteristics and any other differences which are demonstrated to affect price comparability"

65. The Authority has followed the consistent policy of adopting the principles governing the determination of Normal Value, Export Price and Margin of Dumping as laid down in Annexure I of the Anti Dumping Rules. The authority has carried out weighted average normal value comparison with the weighted average ex-factory export price during Period of Investigation, for evaluation of the dumping margin for all the exporters/producers of the subject country.

The dumping margin for exporter/producers comes as under:

Country	All Exporter/Producer	Normal Value (\$/Kg.)	Ex-Factory export price (\$/Kg.)	Dumping Margin as % of EP
China PR	(Steel Tape)	****	****	1069%
	(Fibre Glass Tape)	****	****	148%

The above Dumping Margins are above the de-minimus limits.

K. INJURY AND CAUSAL LINK:

VIEWS OF DOMESTIC INDUSTRY:

66. The price at which the domestic industry has exported the material is again irrelevant to determine non-injurious price. Non-injurious price is to be based on cost of production. Selling price cannot become a parameter for non-injurious price. Selling price could be a loss-making price. It is not even the case of the petitioner that its export price is a profitable price. However, should the petitioners reduce their exports, the domestic cost of production would further increase. Petitioners have taken average cost of production, considering the total production, which has been used for determination of non-injurious price.

VIEWS OF SUDESH ENTERPRISES

67. There is a total absence of injury to any of the manufacturers since the quantity and price of the sales has increased substantially during the POI as compared to the previous period. There is absolutely no evidence on record in this regard. For the above reasons, we submit that no duty is liable to be imposed on the imports of measuring tapes from China.

68. In the preliminary findings the duty recommended is the difference between the landed value and US\$ 4.106/Kg. Since the average weight of pocket tapes is around 100 g the unit price would be 0.41 US\$ per piece. After excluding the basic duty and the landing charges, the non-dumped/non injurious import price would about US\$ 0.30. It is submitted that duties are to be levied with regard to lower of the two margins, that is dumping margin or the injury margin. In the present case, FMI Limited has made export at in the months of June and July 2002, to Spain at a unit price of about US\$ 0.21 for 3 Mtrs tapes. The non-injurious price, therefore, cannot be greater than 0.21 US\$, especially since this figure includes overseas freight and insurance. The duty recommended is, therefore excessive and liable to be quashed.

69. In Paragraph 6 of the preliminary findings the Hon'ble Authority has given a finding that the domestic industry has suffered material injury during the period of investigation. In this regard, we submit that there has been no significant decline in the capacity production or domestic sales during the period of investigation as compared to the earlier period. In fact the preliminary findings themselves reveal that the decline, if at all, is less than 2% to 3%. It is admitted that the domestic sales have increased. The claim that the selling price has declined is not factually correct since the petitioner companies have revised their prices upwards on two occasions since 1997 including during the POI by 10% each time. We also find that the petitioner companies are earning over increasing profits, therefore, belying claims that the losses have increased during the period of investigation. In fact, in the case of FMI Ltd., Ferozpur Road, Ludhiana the profit before tax in the year ended 31st March 2000 was 56.32 lacs which increased to 132.82 lacs in the year ended 31st March 2001. This profit remained at its high level during the year ended 31.3.2002 at Rs. 130.10 lacs. Similarly in the case of M/s. Freemans Measure Ltd., Jugiana Road, Ludhiana the profit before tax for the year ended 31st March 2001 was 41.64 lacs, which increased during the period of investigation to 51.23 lacs. Therefore, the claims that the prices have declined causing the petitioner injury is factually incorrect. The petitioner companies have increased their sales, at profitable level during the POI. The question of inquiry, therefore does not arise.

EXAMINATION BY THE AUTHORITY:

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

71. A determination of injury shall involve an objective examination of both (a) the volume of dumped imports and the effect of the dumped imports on prices in the domestic market for like article and (b) the consequent impact of these imports on domestic producers of such products.

72. While examination the volume of dumped imports, the said Authority shall consider whether there has been a significant increase in the dumped imports, either in absolute terms or relative to production or consumption in India. With regard to the effect of the dumped imports on prices as referred to in sub-rule (2) of Rule 19 the Designated Authority shall consider whether there has been a significant price undercutting by the dumped imports as compared with the price of like product in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increase which otherwise would have occurred to a significant degree.

73. 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.``

74. The Authority has taken into account all indices regarding injury while doing the final determination. This would involve all relevant facts viz., volume of dumped imports, their effect on price in the domestic market and its subsequent effect on domestic producers, production, capacity utilisation, profitability, net sales realisation etc. While determining the non-injurious price for the like article for the domestic industry, the Authority considered the optimum cost of production for the domestic industry which would take into account the normated best consumption norms and would also take into account the actual price of the raw materials during the period of investigation which go into the production of the product under consideration.

L. MATERIAL INJURY:

75. Following parameters establish that material injury has been caused to the domestic industry from dumped imports from the subject country

Particulars	Unit	1999-00		2000-2001		POI Annualized	
		Volume	Value	Volume	Value	Volume	Value
Imports							
China	Kg	100283		81228		273906	
Trend		100		81		273	
Other countries	Kg	1021		4790		426	
Trend		100		469		42	
Total imports	Kg	101304		86018		274332	
Trend		100		85		271	
Economic Parameters							
Capacity	KG	989550		989550		989550	
Production		100		95		91	
Capacity Utilization	%	67.89		64.21		61.48	
Domestic sales		100		106		106	
Export Sales		100		72		47	
Total Sales		100	100	96	103	89.86	96.48
Opening Stock	KG	17658.77		24390.95		19500.27	
Trend_(Indexed)		100		138		110.43	
Closing Stock	KG	24390.95		19500.27		30159.67	
Trend (Indexed)		100		80		123.65	
Average Stock	Kg	21024.86		21945.61		24829.97	

Trend (Indexed)		100		104		118.10	
Unit Profit/Loss			100		54		-38
Unit cost of production			100		109		110.84
Unit Selling price			100		106		104.79
Return on capital employed	Rs./Lacs		1.72		0.92		0.62
Employment (Indexed)		100		88		81.54	
Salary & Wages (Indexed)		100		109		112.30	
Growth	%			5.36		0.51	
Demand	KG	736076		750190		972951	
Trend (Indexed)		100		102		132	
Imports from China	KG	100283		81228		273906	
Imports from other countries	KG	1021		4790		426	
Total Imports	KG	101304		86018		274332	
Share in Demand							
Domestic Industry	%	65.33		67.73		52.49	
Trend (Indexed)		100		104		80.35	
Other producers	%	20.91		20.80		19.31	
Imports from China	%	13.62		10.83		28.15	
Trend (Indexed)		100		79		206.64	
Imports from other countries	%	0.14		0.64		0.04	
Share in Imports							
China	%	99		94		99.84	
Trend (Indexed)		100		95		100.86	
Other countries	%	1		6		0.16	
Imports in relation to production of domestic industry	%	15		14		45.09	
Trend (Indexed)		100		90		299.06	

Volume and Market share of dumped imports

76. Imports of Measuring Tapes from subject country have increased significantly in (i) absolute terms; (ii) in relation to production; and (iii) in relation to the consumption in India. While the imports are primarily from subject country only, share of imports from China has increased significantly in period of investigation in relation to the demand in India. It is evident from the above that the imports have increased in relation to production of the domestic industry. The Authority also notes that the value of imports have been considered at CIF import price, if the value of imports is compared after including basic import duty, the share would still be higher.

77. The production and capacity utilization of the domestic industry has declined in the period of investigation. This decline in the production and capacity utilization is in spite of the fact that one of the petitioner companies is not very old in terms of commercial production of the subject goods. The rate of growth of imports of subject

goods is much more than the rate of growth of domestic production even after demand is showing an increasing trend.

78. Both the petitioner companies determine their prices based on prevailing market conditions. The market prices were driven by the lower prices of the dumped imports as the share of dumped imports has increased from 94% in 2000-01 to 99.94% in 2001-02.

79. Though domestic sales volumes of the domestic industry have marginally increased, the selling price has declined. Further, domestic industry could not reduce its selling price to match dumped imports due to following reasons:-

- a. Measuring Tapes is a consumer product, which is basically sold at retail level. There are hardly any large-scale sales to direct consumers.
- b. The consumers include mainly those people who are not much educated.
- c. The landed price of imports is so low compared to the cost of production and selling price of the domestic industry that the domestic industry is not in a position to think of reducing its price to match the price of imported tapes.
- d. Considering the situation, the domestic industry had two options, either to match the price or to lose the market. The Authority notes that in this prevailing situation the domestic industry lost both the profit and the market to compete with the dumped imports.

Market share in demand

80. The share of domestic industry in demand has decreased to 52.49% in POI compared to 67.73% in the preceding year. The other producers have also lost their share in demand but by a marginal percentage whereas there is an upsurge in imports from China to the extent of 28.15% in POI of the total demand compared to 10.83% in the preceding year. The demand in general has increased from 100 in 1999-2000 to 132 in POI, however, this increase in demand has mostly been occupied by the dumped imports from China. Therefore, the Authority notes that the dumped imports have displaced the market share of domestic industry because of low priced imports of Measuring Tapes from China.

Inventory and evidence of loss of contract

81. The Authority notes that the inventory was decreased from 21024 Kg in 1999-2000 to 19500 Kg in 2000-2001 but it has significantly increased to 32159 Kg in the POI (annualised). The average stock is also showing an increasing trend from 21204 Kg in 1999-2000 to 24829 Kg in the POI (annualised). The Authority holds that the

increasing trend in stocks along with the decrease in production in the POI (annualised) is due to the dumped imports from the subject country.

82. It has been claimed that because of the decline in export price, the domestic industry is forced to match the selling price with landed value of exports and the domestic industry is not able to recover even its marginal cost. It is further notice that the domestic industry is unable to sell measuring tapes at such a low price resulting loss of contract. The Authority, therefore, holds that due to the dumped imports, the domestic industry is forced to sell the product at loss.

Price undercutting and Price underselling

83. The Authority notes that 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 realization etc. There are a number of parameters evidencing injury, should the imports be allowed at the present dumped prices. The rate of increase of imports during the period of investigation from subject country and the corresponding fall in profits of the domestic industry are the parameters clearly in the case the injury is being suffered by the domestic industry. On the basis of the evidence available before the Authority, it is determined that the domestic industry has suffered injury. It has been observed the dumping has had a significant impact on the net sales realisation of the domestic industry for the subject goods. To preserve its market share the petitioner had to compete with low priced and dumped imports of the subject goods from the subject country. The landed price of the dumped imports indicates the evidence of severe price undercutting.

84. The Authority notes that the price underselling is an important indicator to make an assessment of the injury. The Authority has worked out the fair selling price of the product under consideration and compared the same to the landed value to arrive at the extent of price underselling. The analysis shows a significant level incidence of price underselling causing injury to the domestic industry. The imports were having significantly suppressing/depressing effect on the price of the domestic market as the domestic industry is not able to raise its selling price in view of the dumped imports. Thus the examination of the available evidence shows that the domestic industry as a whole suffered injury on its sales of subject goods during POI. The Authority has determined the extent of price undercutting and price underselling during the POI and holds that domestic industry has suffered significant price undercutting and price underselling during the POI due to dumped imports from the subject country.

Employment

85. The employment level of domestic industry has declined during the POI from 100 in 1999-2000 to 88 in 2000-2001 and which is further declined to 81.54 in the POI (annualised). The Authority notes that this change in employment is due to the decrease in production of the subject goods and having a significant loss to the domestic industry.

86. The productivity of the domestic industry has increased due to decline in the number of employees. It is also observed that the production per employee has increased, whereas production per day declined significantly. The Authority, however, notes that this decline in level of employment cannot be ascertained due to the decline in production and capacity utilization.

Profitability

87. The unit cost of production has increased from 100 in 1999-2000 to 110.84 in the annualised POI whereas unit-selling price has also increased from 100 to 104.79 but the unit-selling price has not increased in proportion to the cost of production, which led to the increase in losses. The domestic industry is incurring the loss due to the fact that the domestic industry is forced to reduce the selling price below its cost of production to hold on markets due to dumped imports from subject country. The industry has suffered the material injury on account of depressed selling price resulting in non-recovery of cost of production thereby suffering financial losses.

88. While cost of sales, production value and sales value have also increased, the increase in the cost of sales is more than increase in the sales value. This has directly resulted in decline in the profits of the domestic industry.

Growth and return in investment

89. The demand for the product has increased however, the growth of the domestic industry has declined significantly. The imports are retarding the growth of the domestic industry in spite of significant demand in the country. It is claimed that due to dumped imports from subject country the domestic industry is doubtful to achieve the target or even to raise capital from the market unless remedial measures is taken to prevent dumped imports from subject country. The Authority notes that it would be difficult for the domestic industry to plan fresh investments.

- a. Cash profits of the domestic industry have marginally increased, but return on investment has been further declined in the POI.

- b. Wages per employee have increased. However, this increase is more due to the prevailing labour laws in the Country. Further, the increase in the wages has resulted in further increase in the cost of sales, whereas the domestic industry could not maintain its profits.
- c. Growth of the domestic industry has declined.

90. The Authority notes that all relevant factors cumulatively and collectively establish that the domestic industry has suffered the material injury during the period of investigation due to dumped imports.

M. CAUSAL LINK:

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

92. Substantial imports of subject goods from subject country at dumped prices forced the domestic industry to reduce its selling prices to un-remunerative level, which has resulted in a situation of price undercutting in the Indian market.

93. The imports from subject country 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.

94. The imports from subject country has forced the Domestic Industry to reduce the selling price, which has adversely affected its profitability.

95. The Authority, therefore, notes from the above that the imports from the subject country have been at a price below the selling price of the domestic industry. Further, the imports into India have been at a price lower than the non-injurious price for the Domestic Industry. As a consequence, there of, the Domestic Industry has not been able to earn a reasonable return on their investment. These parameters collectively and cumulatively indicate that the petitioner has suffered material injury due to the dumped imports.

96. The share of volume of dumped imports in total consumption has increased from 10.83% in 2000-01 to 28.15% during POI. The market share of the domestic industry fell from 67.73% in 2000-01 to 52.49% during POI. The dumped imports were coming into India at price that significantly undercut the prices of the like domestic product. The prices of dumped import have caused both price depression and price suppression on the prices of the like domestic products. Thus both volume and price effect is established.

97. There is no contraction in demand (demand has rather increased). Further, there is no other factor such as trade restrictive practice or development in technology which could have material injury to the domestic industry. Increase in imports in absolute terms as also relative to the production and consumption in India have directly resulted increase in the sales, which further resulting in decline in the share of the domestic industry in the demand of the product in the country. Further, the low prices of imports have prevented the domestic industry from optimizing their profitability.

N. INDIAN INDUSTRY'S INTEREST & OTHER ISSUES

98. The Authority holds that the purpose of anti-dumping duties, in general, is to eliminate injury caused to the Domestic Industry by the unfair trade practices of dumping so as to re-establish a situation of open and fair competition in the Indian market, which is in the general interest of the country.

99. The Authority also recognises that though the imposition of anti-dumping duties might affect the price levels of the products manufactured using the subject goods and consequently might have some influence on relative competitiveness of these products, however, fair competition in the Indian market will not be reduced by these anti-dumping measures. On the contrary, imposition of anti-dumping measures would remove the unfair advantages gained by the dumping practices and would prevent the decline of the domestic industry and help maintain availability of wider choice of the subject goods to the consumers.

100. The Authority notes that the imposition of anti-dumping measures would also not restrict imports from the subject country in any way, and, therefore, would not affect the availability of the products to the consumers.

101. The Authority has not merely relied upon the submissions of the petitioners regarding fair selling price, rather the Authority deputed a team for on-the-spot investigation and verification of costing and manufacturing process of various forms of measuring tapes, and worked out in detail the fair selling price of measuring tapes in India for the Domestic Industry separately.

O. CONCLUSIONS:

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

- i. Subject goods have been exported to India from subject country below its normal value;
- ii. The Indian industry has suffered material injury;

iii. The injury has been caused by the dumped imports from the subject country.

103. The Authority considers it necessary to impose an anti dumping duty on all imports of subject goods from subject country 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 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 has been compared with the weighted average non-injurious price of the Petitioner Companies determined for the period of investigation.

104. Accordingly, the Authority recommends that the anti dumping duties as set out below be imposed by the Central Government on all imports of subject goods under consideration falling under customs heading 9017, 9017.80, 9017.8001, 9017.90 originating in or exported from subject country. The Anti-Dumping duty shall be the difference between the amount mentioned in column no.9 of the following table and the landed value of imports US\$ per Kg. on all imports of subject goods, falling under chapter 48 of the Customs Tariff, originating or exported from the subject territory/country mentioned below:-

SI No	Sub-heading	Description of goods	Specification	Country of origin	Country of Export	Producer	Exporter	Amount	Unit of Measurement	Currency
	9017,9017.80,9017.8001, 9017.90	Measuring tape	Steel tapes and their parts and components	China/ PR	Any Exporter	Any Producer	Any exporter	4.106	Kg.	US\$
	9017,9017.80,9017.8001, 9017.90	Measuring Tape	Steel tapes and their parts and components	Any Country	China, PR	Any producer	Any exporter	4.106	Kg.	US\$
	9017,9017.80,9017.8001, 9017.90	Measuring Tape	Steel tapes and their parts and components	China, PR	China, PR	Any producer	Any exporter	4.106	Kg.	US\$
4.	9017,9017.80,9017.8001, 9017.90	Measuring Tape	Fiberglass tapes and their parts and components -	Any Country	China, PR	Any producer	Any exporter	4.691	Kg.	US\$
5.	9017,9017.80,9017.8001, 9017.90	Measuring Tape	Fiberglass tapes and their parts and components -	China, PR	Any Exporter	Any producer	Any exporter	4.691	Kg.	US\$

6.	9017.9017.80,9017.8001, 9017.90	Measuring Tape	Fiberglass tapes and their parts and components -	China, PR	China, PR	Any produce r	Any exporte r	4.691	Kg.	US\$
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105. 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.

106. Subject to the above, the Authority confirms the Preliminary Findings dated 8th January, 2003.

107. An appeal against this order shall lie before the Customs, Excise and Gold (Control) Appellate Tribunal in accordance with the Act, supra.

(L.V. SATHARISHI)
DESIGNATED AUTHORITY