

REPORT NO. 329

**INVESTIGATION INTO THE ALLEGED DUMPING OF PICKS ORIGINATING IN
OR IMPORTED FROM INDIA: PRELIMINARY DETERMINATION**

The International Trade Administration Commission of South Africa herewith presents its Report No 329: INVESTIGATION INTO THE ALLEGED DUMPING OF PICKS ORIGINATING IN OR IMPORTED FROM INDIA: PRELIMINARY DETERMINATION



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CHIEF COMMISSIONER

PRETORIA

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1. APPLICATION AND PROCEDURE

- 1.1 This investigation is conducted in accordance with the International Trade Administration Commission Act, 2002, (the ITA Act), the World Trade Organisation Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade, 1994 (the Anti-Dumping Agreement) and the International Trade Administration Commission of South Africa Anti-Dumping Regulations (ADR).
- 1.2 The application was lodged by International Trade Services (ITS), on behalf of Ussher Inventions t/a Lasher Tools (the Applicant), being the only manufacturer of the subject product in the SACU.
- 1.3 The application was accepted on 15 September 2009 by the Commission as being properly documented in accordance with Article 5.2 of the Anti-Dumping Agreement. The trade representative of the country concerned was advised accordingly.
- 1.4 The Commission formally initiated an investigation into the alleged dumping of picks originating in or imported from India pursuant to Notice No. 1403 which was published in *Government Gazette* No. 32645 on 23 October 2009.
- 1.5 The investigation period for dumping is from 1 July 2008 to 30 June 2009. The threat of injury investigation involved evaluation of data for the period 1 July 2006 to 30 April 2009, with an estimate of the situation for the period 1 July 2009 to 30 April 2010.
- 1.6 The SACU industry consists of only one producer of the subject product, namely Ussher Inventions t/a Lasher Tools, who submitted the information contained in this report.

- 1.7 Various known foreign manufacturers in India and importers in SACU were sent questionnaires, but no completed response was received.
- 1.8 One foreign producer submitted that it did not support the application as in his words, it would only be to the advantage of the Applicant and the one exporter exempted from the duty and that this would create a monopoly situation. The producer also stated that this would be to the disadvantage of the poor farmers in SACU and that the country would be deprived of healthy competition.
- 1.9 The Commission made a preliminary determination that the imports of picks originating in or imported from India are being dumped in the SACU market. However, the Commission made a preliminary determination that there currently is no threat of material injury to the SACU industry due to the dumping. Based on the above, the Commission made a preliminary determination to recommend to the Minister of Trade and Industry that the investigation be terminated.

2. PRODUCTS, TARIFF CLASSIFICATION AND DUTIES

2.1 IMPORTED PRODUCTS

2.1.1 Description

The subject product is described as a pick, forged from carbon steel with hardened and tempered points, or technically described as a chisel or a diamond pick.

2.1.2 Country of origin/export

The subject product is exported from India.

2.1.3 Possible tariff loopholes

The Applicant indicated that it is not aware of any loopholes in the tariff subheading.

2.1.4 Tariff Classification

The subject product is classifiable as follows:

Table 2.1.4: Tariff classification

Heading	Tariff subheading	Description	Statistica I Unit	Rate of Duty			
				General	EU	EFTA	SADC
8201		Hand tools of the following: Spades, shovels, mattocks, picks, hoes, forks and rakes; axes, bill hooks and similar hewing tools; secateurs and pruners of any kind; scythes, sickles, hay knives, hedge shears, timber wedges and other tools of a kind used in agriculture, horticulture or forestry					
	8201.30.03	Mattocks; picks	Kg	20%	7.6%	20%	free

2.1.5 Negligibility test

The following table shows the alleged dumped imports as a percentage of the total imports:

Table 2.1.5: Import volumes

	Import volumes 1 July 2008 to 30 June 2009 (POI) – Kg	Volume as a percentage of total import volume
Alleged dumped imports:		
India	33 484	9.7%
Total imports	344 464	100%

The Commission made a preliminary determination that the imports from the subject country are above the negligibility level.

2.2 SACU PRODUCT

2.2.1 Description

The SACU product is described as a pick, forged from carbon steel with hardened and tempered points. The technical name is a chisel or diamond pick.

2.3 LIKE PRODUCTS ANALYSIS

In determining the likeness of products, the Commission uses the following criteria:

Table 2.3: Like product determination

	Imported product	SACU product
Raw materials	Forged carbon steel eye and shanks.	Forged carbon steel eye and shanks.
Physical appearance	Both the imported product and the SACU product have the same physical appearance and characteristics.	Both the imported product and the SACU product have the same physical appearance and characteristics.
Tariff classification	8201.30.03	8201.30.03
Production process	Bar is cropped to billet. Billet is heated, eye is forged and shanks are rolled or hammer forged. Product is heat-treated. Protective coating is applied.	Bar is cropped to billet. Billet is heated, eye is forged and shanks are rolled or hammer forged. Product is heat-treated. Protective coating is applied.
Application or end use	Digging holes and trenches.	Digging holes and trenches.
Substitutability	The imported product and the SACU product are direct substitutes.	The imported product and the SACU product are direct substitutes.

Taking the above into consideration, the Commission made a preliminary determination that the SACU product and the imported products are “like products”, for purposes of comparison in this investigation.

3. INDUSTRY STANDING

The Applicant is the only manufacturer of the subject product.

The Commission made a preliminary determination that the application can be regarded as being made "by or on behalf of the domestic industry".

4. DUMPING

4.1 METHODOLOGY IN THIS INVESTIGATION FOR INDIA

4.1.1 Normal Value

Type of economy

India is considered to be a country with a free market economy and therefore the definition of section 32(2)(b) of the ITA Act applies.

Calculation of normal value

As no foreign manufacturer responded to the Commission's questionnaire, the Commission decided that the best information available is that submitted by the Applicant in its application.

The Applicant submitted a quote, at an ex-factory price, from a company in India to calculate the normal value. An average of the ex-factory prices and weights of the picks were calculated to determine the normal value. The normal value was calculated to be R23.89/kg.

4.1.2 Export price

Calculation of export price

The import statistics, as obtained from SARS, for the period 1 July 2008 to 30 June 2009, were used to calculate the export price from India. The average FOB export price was calculated to be R11.87/kg. An adjustment of 5% was made to the FOB value to allow for transportation to the port.

The ex-factory export price was calculated to be R11.27/kg.

4.1.3 Margin of dumping

The dumping margin expressed as a percentage of the ex-factory export price was calculated to be 111.9%.

4.2 SUMMARY - DUMPING

The Commission made a preliminary determination that dumping of the subject product originating in India is taking place.

5. THREAT OF MATERIAL INJURY

5.1 Period of investigation

The period of investigation for threat of material injury involved the evaluation of data for the period 1 July 2006 to 30 April 2009, with an estimate of the situation for the period 1 July 2009 to 30 April 2010.

Therefore, 2007(10) refers to the period 1 July 2006 to 30 April 2007, 2008(10) refers to the period 1 July 2007 to 30 April 2008 and 2009(10) refers to the period 1 July 2008 to 30 April 2009. The “estimate for 2010(10)” refers to the estimate for the period 1 July 2009 to 30 April 2010, the period where no anti-dumping duties are in place.

5.2 Domestic industry – Major proportion of production

The Commission decided that the Applicant did not submit *prima facie* information to indicate that the SACU industry is suffering material injury and therefore did not initiate the investigation based on material injury, but initiated the investigation based on *prima facie* information on a threat of material injury.

The following threat of material injury analysis relates to Ussher Inventions (Pty) Ltd t/a Lasher Tools, the Applicant, which constitutes 100 per cent of the total domestic production of the subject product.

The Commission made a preliminary determination that this constitutes “a major proportion” of the total domestic production, in accordance with Article 4.1 of the Anti-Dumping Agreement.

5.3 Freely disposable capacity of the exporters

The Applicant stated that the SACU industry does not have this information. However, as indicated, imports in 2001 reached a level of 237,075 kg. Thus, the

Applicant stated that imports in 2010(10) could still increase from 29,284 kg in 2009(10) by 710%. It is thus evident according to the Applicant that a threat of material injury exists.

5.4 Significant increase of alleged dumped imports

Table 5.4: Volume of alleged dumped imports

Kg	2007(10)	2008(10)	2009(10)	Estimate for 2010(10)
Alleged dumped imports – India	24 057	109 629	29 484	165 840

The Applicant stated that as indicated in the table above, imports from India increased over the period 2006 to 2008 by 222%. However, these imports were still below the level of 237,075 kg in 2001. It stated that it is further known that the exporter, Five Star Agrico Pvt Ltd, approached ITAC in 2007 requesting to have the duty amended to enable them to export directly to SACU. It stated that it is thus clear that the exporters in India are still targeting the SACU market and therefore it is estimated that the imports will, now that there is no anti-dumping duty, again reach the volumes as realized over the period 2001 to 2005.

However, the following table shows the import statistics per month from when the anti-dumping duty was terminated until the most recent available import statistics (May 2009 – November 2009):

Table 5.4.1

Kg	May	June	July	August	September	October	November
Alleged dumped imports – India	0	4 000	3 000	0	0	0	0

The information in the table shows that there were almost no imports of the subject product since the termination of the anti-dumping duties. For half of the estimate period (July 2009 to April 2010) indicated in table 5.4 above, only 3 000 kilograms were imported.

5.5 Prices of imports which will have a significant depressing or suppressing effect on domestic prices

Table 5.5.1: Prices of alleged dumped imports

Landed cost	2007(10)	2008(10)	2009(10)	Estimate for 2010(10)
Price of alleged dumped imports (R/kg)	7.74	9.12	16.05	16.60

Table 5.5.2: Price depression and price suppression

	2007(10)	2008(10)	2009(10)	Estimate for 2010(10)
Applicant's ex-factory selling price (R/Kg)	100	109	158	136
Cost as a % of selling price	100	98	97	113

The information in this table was indexed due to confidentiality using 2007(10) as the base year

The Applicant stated that in 2010(10) the SACU industry's prices will be depressed and suppressed to compete with the alleged dumped imports from India.

The Applicant stated that it should be noted that a threat of material injury exists to the SACU industry as it cannot sell continuously at such low prices and therefore there will be a significant fall in sales volumes for the SACU industry's product. The Applicant stated that a threat of further reduction of its sales volume as a result of the alleged dumped imports is very real.

5.6 Exporter's Inventories of subject product

The Applicant indicated that this information is not available. As no foreign producer responded to the Commission's questionnaire, this information could not be obtained.

5.7 State of the economy of the country of origin

The Applicant stated that the Indian economy is one of the fastest growing economies in the world. It stated that the Indian economy had, since independence in 1947, followed a highly regulated industrial policy. The Applicant stated that since 1951, India has implemented a series of 5 year plans with fixed priorities for economic development. Infrastructure and large capital-intensive projects were established in the public sector. It stated that India has abundant resources. The Applicant further stated that India is today amongst the top 10 industrial nations. It stated that India has a strong presence in steel, cement, textiles, engineering goods, chemicals and allied products. India is a member of the WTO. The Applicant stated that the objective of the new industrial policy is to build a modern, democratic, socialist, prosperous and forward looking India, maintain a sustained growth in productivity and gainful employment, and attain international competitiveness by promoting exports.

5.8 Estimates provided by Applicant to support threat of material injury

The Applicant submitted the following estimates, for the period July 2009 – April 2010, of the threat of material injury that exists:

Variable	Unit of measurement	Year			
		2007(10)	2008(10)	2009(10)	Estimate for 2010(10)
Average alleged dumped import price (fob)	R/kg	5.97	7.04	12.39	16.60
Average price of domestic product (ex-factory) (price depression)	R/kg	100	109	158	136
Price undercutting	Percentage	100	92	64	68
Cost as % of selling price (Suppression)	Percentage	100	98	97	113
Sales value	R'000	100	109	113	97
Sales volume	Kg	100	101	71	58

Inventories (quantities)	Kg	100	104	94	157
Inventories (value)	Rand	100	113	147	386
Output	Kg	100	98	70	60
Market share of Applicant	Percentage	100	98	86	70
Market share of alleged dumped imports	Percentage	100	400	150	800
Market share of other imports	Percentage	100	73	173	173
Capacity utilization	Percentage	100	102	74	73
Employment	No of employees	100	97	85	73
Wages	R/employee	100	116	120	125
Productivity	Kg/employee	100	105	88	84
Profit	Gross profit/kg	100	113	166	103
Cash flow	R'000	100	109	87	51
Return on investment	R'000	100	108	82	16
Total capital investment in subject product	R'000	100	100	106	106
Growth in SACU market	Kg	100	104	83	81
Growth of Applicant	Kg	100	101	71	58

The information in this table was indexed due to confidentiality using 2007(10) as the base year

The Applicant stated that a threat of material injury exists as its sales will decline by at least 13 index points in 2010(10) to 58 index points. The Applicant stated that this estimate is based on the fact that imports of the subject product from India for the 5 years (2001 to 2005) were on average 163,332 kg per year (see table below). It stated that in 2006 the imports from India declined to 19,160kg as the exporter that was exempted from the high anti-dumping duty, Indo Euro, stopped exporting. The Applicant stated that the decline in imports was 144,172 kg or 88%. Therefore, over a 10 month period, the Applicant's decline in sales is estimated to be 18 index points as the threat exists that the revoking of the anti-

dumping duty could result in the Indian imports again flooding the SACU market and undercutting its selling price, impacting negatively on its sales.

Imports of Picks from India in kilogram

1999	2000	2001	2002	2003	2004	2005	2006
522	124,441	237,075	221,827	154,469	104,703	98,587	19,160

The Applicant stated that it is clear that if it reduces its selling price to retain its sales volume as a result of the dumped imports from India, there exists a threat of serious material injury as its gross and net profit margins will decline substantially in 2010(10) making it uneconomical to produce the subject product.

The Applicant stated that it estimates that the selling price in 2010 will be depressed to 136 index points as a result of the anti-dumping duties having being revoked.

The Applicant further stated that the estimate is based on the fact that its current (2009) best selling price for a pick is 158 index points (SACU sales monthly average selling price for July 2008- April 2009). The Applicant stated that importers of Indian picks are able to import and sell their product at a price that undercuts its price. The Applicant stated that as the anti-dumping duty against India was revoked on 8 May 2009, it would have to decrease its prices in the near future. It stated that as this would not be viable it is conservatively estimated that in the SACU it would lose some of its total unit sales to India.

However, the Applicant stated that it is estimated that in 2010 (10) it would need to suppress its selling price to match the imported product from India. The effect will be that cost of production (even if it is kept at the same level as 2009) will increase, reducing the profitability of the subject product in 2010(10).

With regard to output, the Applicant stated that there exists a threat of material injury as its production volumes in 2010(10) will decline even further as a result of the dumped imports from India and its sales will decline if it does not reduce its selling price to compete with the dumped imports from India. The Applicant stated that therefore it would have to reduce the production volume of the

subject product to manage the inventory levels.

The Applicant stated that it is estimated that as a result of the revoking of the anti-dumping duties against India, and the estimated inflow of the alleged dumped products from India, that there exist a threat of material injury in that its market share will decline even further. It is estimated that the market share of the Indian product will increase from 150 index points in 2009(10) to 800 index points in 2010(10).

The Applicant stated that its market share, based on sales value, will decline if it does not depress its selling price in 2010(10), while the market share of the Indian exporters will increase significantly. It stated that it is thus clear that there exists a threat of material injury as a result of the revoking of the anti-dumping duties.

The Applicant stated that it is estimated that productivity will decline further if prices are not depressed to the low import values of India. It stated that as a result of the revoking of the anti-dumping duties against India the SACU industry will be forced, if they do not reduce the selling prices, to reduce production to curb the increasing levels of inventories as the customers will increase import volumes from India. It stated that as a result, the productivity of the SACU industry will decrease. The Applicant stated that in order to retain the current level of productivity it would be forced to retrench employees. The Applicant stated that it is clear that there exists a threat of material injury with regard to productivity.

The Applicant stated that as the anti-dumping duties were revoked in May 2009, it is estimated that return on investment will decline substantially in 2010(10) threatening to cause it serious injury.

The Applicant stated that the threat of increased import volumes at dumped prices as a result of the revoking of the anti-dumping duties against India will force it to reduce its selling price to compete with the low priced Indian product. However, it stated that it would not be a viable option to produce at such low

profit margins. It stated that it is therefore clear that a threat of material injury exists as its sales volume is estimated to decline even further in 2010(10) as the alleged dumped products from India will increase as a result of the revoking of the anti-dumping duties and it is thus estimated that capacity utilisation will decline in 2010(10).

The Applicant stated that it is therefore estimated that its net cash flow in 2010(10) will be even lower if it reduces its selling price to retain sales volume and market share as a result of the revoking of the anti-dumping duties.

The Applicant stated that a threat of material injury exist in 2010(10) in the form of further increased inventory levels if it does not reduce production to address declining sales volume as it cannot compete with the alleged dumped imports from India – especially after the anti-dumping duties were revoked.

The Applicant stated that as indicated, inventories values increased by 47 index points over the period 2007(10) to 2009(10) as a result of declined sales and the continued import of dumped products from India. It stated that a threat of material injury exists based on the estimate that inventory values would increase with 239 index points in 2010(10) compared with 2009(10) if it does not reduce its selling price to compete with the alleged dumped imports from India.

The Applicant stated that a threat of material injury exists in 2010(10) and it is estimated that employees will be retrenched as a result of the revoking of the anti-dumping duties and the expected influx of dumped imports from India at alleged dumped prices. It stated that this estimate is based on keeping productivity at the same level as in 2009(10).

The Applicant stated that it is estimated that its “growth” in 2010(10) will decline as a result of the alleged dumped imports originating in India. It stated that it is thus clear that a threat of material injury exists as a result of the revoking of the anti-dumping duties if it does not reduce its selling price to uneconomical levels.

The Applicant stated that it is evident that it continued to invest over the period 2006 to 2009. However, it stated that if the alleged dumped products continue to flood the SACU market causing the SACU industry further material injury it would not be able, at the estimated levels of profit, to invest further in 2010 and beyond.

5.9 PREVIOUS INJURY

The Applicant stated that it submitted a properly documented sunset review application on 14 September 2007 substantiating that if the anti-dumping duties are revoked, the SACU industry will continue to suffer material injury as a result of the continuation of dumping from India. The Applicant stated that as indicated in this application, although anti-dumping duties were in place against India, the product was still imported at dumped prices continuing to cause it material injury. The Applicant stated that the fact that the anti-dumping duties have now been revoked will worsen the situation and therefore a threat of material injury exists. The Applicant referred to Report No 4184 of the Board on Tariffs and Trade ("Board"), dated 25 October 2002, recommending an extension of the anti-dumping duties on India for a further 5 years. In this Report the finding of the Board was that "The expiry of the duties would likely lead to the continuation or recurrence of dumping of the subject product originating in or imported from India" and that the "expiry of the duty would likely lead to the continuation or recurrence of injury".

5.10 SUMMARY ON THREAT OF MATERIAL INJURY

The Commission found that it is evident from the import statistics that the level of dumped imports has been very low and has not increased since the termination of the anti-dumping duties. There is further no evidence that there will be an increase in the rate of dumped imports from India in the near future.

The Commission questioned the Applicant's estimates as these are based on the assumption that the dumped imports would increase significantly once the anti-dumping duties were revoked. The Commission noted that this has not happened and there is no clear evidence that there is a change in

circumstances which would lead to a situation where dumping would cause material injury which is clearly foreseen and imminent.

Based on the above, the Commission made a preliminary determination that there is currently no threat of material injury.

6. SUMMARY OF FINDINGS

6.1 DUMPING

The margin of dumping was calculated to be 111.9 per cent based on the best information available. The Commission made a preliminary determination that the subject product originating in or imported from India is being dumped on the SACU market.

6.2 THREAT OF MATERIAL INJURY

The Commission found that it is evident from the import statistics that the level of dumped imports has been very low and has not increased since the termination of the anti-dumping duties. There is further no evidence that there will be an increase in the rate of dumped imports from India in the near future.

The Commission questioned the Applicant's estimates as these are based on the assumption that the dumped imports would increase significantly once the anti-dumping duties were revoked. The Commission noted that this has not happened and there is no clear evidence that there is a change in circumstances which would lead to a situation where dumping would cause material injury which is clearly foreseen and imminent.

Based on the above, the Commission made a preliminary determination that there is currently no threat of material injury.

7. PRELIMINARY DETERMINATION

The Commission made a preliminary determination that:

- the subject product is imported from India at dumped prices.
- there is currently no threat of material injury to the SACU industry.

Based on this, the Commission made a preliminary determination to recommend to the Minister of Trade and Industry that the investigation be terminated.

Interested parties will be invited to submit comments on the preliminary determination within the specified time periods, which the Commission will consider prior to making its final determination and recommendation to the Minister of Trade and Industry.