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**F. No. 14/14/2015-DGAD**

**Government of India**

**MINISTRY OF COMMERCE & INDUSTRY**

**DEPARTMENT OF COMMERCE**

**(DIRECTORATE GENERAL OF ANTI-DUMPING & ALLIED DUTIES)**

**4<sup>th</sup> Floor Jeevan Tara Building, 5, Parliament Street, New Delhi-110001**

**Dated 1<sup>st</sup> August, 2017**

**NOTIFICATION**

**FINAL FINDINGS**

**Subject: Anti-dumping investigation concerning imports of “New/unused pneumatic radial tyres with or without tubes and/or flap of rubber (including tubeless tyres) having nominal rim dia code above 16” used in buses and lorries/trucks”, originating in or exported from China PR.**

**No. 14/14/2015-DGAD:** Automotive Tyre Manufacturer’s Association (ATMA) (hereinafter also referred to as “the petitioner”) filed an application on behalf of Apollo Tyres Ltd., J. K. Tyre Industries Ltd., and Ceat Ltd., who are members of ATMA (hereinafter referred to as “the petitioner companies”), before the Designated Authority (hereinafter also referred to as “the Authority”) under the Customs Tariff Act, 1975, as amended from time to time (hereinafter also referred to as the Act) and Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped articles and for Determination of injury) Rules, 1995, as amended from time to time (hereinafter also referred to as the Rules) for initiation of anti-dumping investigation and imposition of anti-dumping duty concerning imports of “new/unused pneumatic radial tyres with or without tubes and/or flap of rubber (including tubeless tyres) having nominal rim dia code above 16” used in buses and lorries/trucks” (also referred to as “the subject goods”), originating in or exported from China PR (also referred to as “the subject country”).

2. Whereas, the Authority, on the basis of prima facie evidence submitted by the applicant, issued a public notice vide Notification No. 14/14/2015 -DGAD dated May 03, 2016 published in the Gazette of India, Extraordinary, initiating the subject investigation in accordance with the Rule 5 of the Rules to determine the existence, degree and effect of the alleged dumping of the subject goods, originating in or exported from the said country, and to recommend the amount of anti-dumping duty, which, if levied, would be adequate to remove the alleged injury to the domestic industry.

## **A. PROCEDURE**

3. The procedure described herein below has been followed by the Authority with regard to this subject investigation:
- i. The Designated Authority, under the above Rules, received a written application from the Applicant on behalf of the domestic industry, alleging dumping of “new/unused pneumatic radial tyres with or without tubes and/or flap of rubber (including tubeless tyres) having nominal rim dia code above 16” used in buses and lorries/trucks” (hereinafter also referred to as “the subject goods”) originating in or exported from China PR.
  - ii. Preliminary scrutiny of the application revealed certain deficiencies, which were subsequently rectified by the Applicant. The application was, therefore, considered as properly documented.
  - iii. The Authority notified the embassy of the subject country in India about the receipt of the present anti-dumping application before proceeding to initiate the investigations in accordance with sub-rule (5) of Rule 5 supra.
  - iv. The Authority issued a Notification dated 3<sup>rd</sup> May, 2016, published in the Gazette of India Extraordinary, initiating anti-dumping investigation concerning imports of the subject goods.
  - v. The Authority sent a copy of the initiation notification to the embassy of the subject country in India, known producers/exporters from the subject country, known importers/users and the domestic industry as well as other domestic producers as per the addresses made available by the applicants and requested them to make their views known in writing within 40 days of the initiation notification.
  - vi. The Authority provided a copy of the non-confidential version of the application to the known producers/exporters and to the embassy of the subject country in India in accordance with Rule 6(3) of the Rules supra.
  - vii. The Authority sent exporter’s questionnaire to the following known producers/exporters in China PR (whose details were made available by the applicant) to elicit relevant information and gave them opportunity to make their views known in writing in accordance with Rule 6(4) of the Rules:
    - a. Shandong Yinbao Tyre Group Company Limited, China PR.
    - b. Shandong Hengfeng Rubber & Plastic Company Limited, China PR.
    - c. Aeolus Tyre Company Limited, China PR.
    - d. Zhaoyuan Li'ao Rubber Products Company Limited, China PR.
    - e. Qingdao Doublestar Tire Industrial Company Limited, China PR.
    - f. HangZhou ZhongCe Rubber Company Limited, China PR.
    - g. Haoyou Tyre Company Limited, China PR.
    - h. Triangle Tyre Company Limited, China PR.
    - i. Shandong Wanda Boto Tyre Company Limited, China PR.
    - j. Shanghai Type & Rubber Company Limited, China PR.
    - k. Jiangsu General science Technology Company Limited, China PR.

- l. Doublestar-Dongfeng Tyre Company Limited, China PR.
  - m. Giti Radial Tire (Anhui) Company Limited, China PR.
  - n. Shenzhen Yuanyunxiang Trading Company Limited, China PR.
  - o. Qingdao Yellow Sea Rubber Company Limited, China PR.
  - p. Kenda Rubber (China) Company Limited, China PR.
  - q. Shengtai Group Company Limited, China PR.
  - r. Pirelli Tyre Company Limited, China PR.
  - s. Shan Dong Jin Yu Industrial Company Limited, China PR.
  - t. Dingying ZhongYi Rubber Company Limited, China PR.
  - u. Kupo Chengshan (shandong) Tyre Company Limited, China PR.
  - v. Shen Zhen City Hong Yun Cai Trade Company Limited, China PR.
  - w. Shenzhen Diruolan Trade Company Limited, China PR.
  - x. Guangzhou Pearl River Rubber Tyre Limited, China PR.
  - y. Michelin (Shenyang) Tyre Company Limited, China PR.
  - z. Pirelli Tyre Company Limited, China PR.
  - aa. Qingdao Doublestar Tire Industrial Company Limited, China PR.
  - bb. Qingdao Yellow Sea Rubber Company Limited, China PR.
  - cc. Shandong Xingyuan International Trading Company, China PR.
- viii. The Embassy of the subject country in India was also requested to advise the exporters/producers from the subject country to respond to the questionnaire within the prescribed time limit. A copy of the letter and questionnaire sent to the producers/exporters was also sent to them along with the names and addresses of the known producers/exporters from the subject country.
- ix. The following producers/exporters from the subject country filed exporter's questionnaire response in the prescribed format:
- a. Shandong Yinbao Tyre Group Co., Ltd
  - b. Aeolus Tyre Co., Ltd
  - c. Shandong Hengfeng Rubber & Plastic Co., Ltd.
  - d. Qingdao Yellow Sea Rubber Co., Ltd
  - e. Shandong Wanshine Tyre Co., Ltd.
  - f. Zhongce Rubber Group Co. Ltd
  - g. Shandong Cocrea Tyre Co., Ltd
  - h. Qingdao Doublestar Tire Industrial Co., Ltd
  - i. Jiangsu General Science Technology Co., Ltd
  - j. Shandong Yongtai Group Co., Ltd.
  - k. Shandong Hengyu Science & Technology Co., Ltd.
  - l. Shengtai Group Co., Ltd.
  - m. Shandong Xingyuan Tire Group Co., Ltd.
  - n. Good Friend Tyre Co. Ltd
  - o. Triangle Tyre Co. Ltd
  - p. Shandong Wanda Boto Tyre Co. Ltd.
- x. The following traders from the subject country filed exporter's questionnaire

response in the prescribed format:

- a. Cantop International (Qingdao) Co., Ltd.
  - b. Tiremart (Qingdao) Inc
  - c. Koryo International Industrial Limited
  - d. Qingdao Nama Industrial Co. Ltd
  - e. Winshine Industrial Co. Ltd
  - f. Qingdao Champion International Trading Co. Ltd
  - g. Best Choice International Trade Co., Limited
  - h. Shandong Xingyuan Int Co. Ltd
  - i. Qingdao Jinhaoyang Int Co. Ltd.
- xi. The following producers/exporters from the subject country filed exporter's questionnaire rebutting the non-market treatment in the present investigation:
- a. M/s Good Friend Tyre Co. Ltd.
  - b. Qingdao Jinhaoyang International Ltd.
- xii. Keeping in view the response from large number of producers and exporters in the subject country, the Authority resorted to sampling in terms of Rule 17(3) of the Rules and selected the following producers/exporters as the sampled parties, for detailed examination of degree and extent of dumping:

<b>Sl. No.</b>	<b>Producer</b>	<b>Exporter</b>
1.	M/s Shandong Yinbao Tyre Group Co., Ltd	Shandong Yinbao Tyre Group Co., Ltd
	---do---	M/s Cantop International (Qingdao) Co., Ltd.
	---do---	M/s Tiremart (Qingdao) Inc
2.	M/s Shandong Hengfeng Rubber & Plastic Co., Ltd.	Shandong Hengfeng Rubber & Plastic Co., Ltd.
3.	M/s Aeolus Tyre Co., Ltd	Aeolus Tyre Co., Ltd
4.	M/s Qingdao Yellow Sea Rubber Co., Ltd	Qingdao Yellow Sea Rubber Co., Ltd
	---do---	M/s Tiremart (Qingdao).
5.	M/sQingdao Doublestar Tire Industrial Co., Ltd.	M/sQingdao Doublestar Tire Industrial Co., Ltd.

- xiii. The Authority forwarded a copy of the Initiation Notification to the following

known importers/users/user associations (whose names and addresses were made available to the authority) of subject goods in India and advised them to make their views known in writing within the time limit prescribed by the Authority in accordance with the Rule 6(4):

- i. A.G. Industries, Haryana.
- ii. A.S. & Company, Delhi.
- iii. Aditya Sales Corporation, Delhi.
- iv. Agk Digital Private Limited, Delhi.
- v. Akhil Impex Building, Punjab.
- vi. Alliance Traders, Delhi.
- vii. Amitt Enterprises, Punjab.
- viii. Arora Enterprises, Uttar Pradesh.
- ix. Asis Enterprises, Maharashtra.
- x. Bhagwatee Impex, Delhi.
- xi. Captown Overseas, Delhi.
- xii. Celite Tyre Corporation, Gujarat.
- xiii. Chadha Tyre Traders, Delhi.
- xiv. Chhabra Sales Corporation, Delhi.
- xv. Dashmesh Trading Co, Maharashtra.
- xvi. Deep Enterprises, Uttar Pradesh.
- xvii. Delhi Tyre Shoppe, Delhi.
- xviii. Eknor Tyres Private Limited, Maharashtra.
- xix. Electro Link, Kerala.
- xx. Ess Infraproject Private Limited, Maharashtra.
- xxi. Fine Traders, Delhi.
- xxii. Fish Aquarium Home, Delhi.
- xxiii. Ganpati Overseas, Delhi.
- xxiv. Genetic Sales Corporation, Delhi.
- xxv. Globus Corporation, Maharashtra.
- xxvi. Gupta Tyre House, Haryana.
- xxvii. H.D.International, Punjab.
- xxviii. H.S.Arora & Co., Delhi.
- xxix. H.S.International, Delhi.
- xxx. Harpreet International, Delhi.
- xxxi. Hayer Trading Co, Maharashtra.
- xxxii. Hind Traders, Maharashtra.
- xxxiii. Hind Traders, Delhi.
- xxxiv. Indian Rubber Manufacturers Research Association, Maharashtra.
- xxxv. Indo China Impex, Delhi.
- xxxvi. Indo Silicon Electronics P.Ltd, Delhi.
- xxxvii. International Business Group, Maharashtra.
- xxxviii. J.M.Shama Designs, Maharashtra.
- xxxix. Jaipex, Maharashtra.

- xl. Jitender Overseas, Delhi.
- xli. Juneja Agencies, Punjab.
- xlii. K.C. Impex, Delhi.
- xliii. Kabeer Components Pvt Ltd, Delhi.
- xliv. Kaks And Bills Pvt Ltd, Delhi.
- xlv. Kingston Enterprises, Delhi.
- xlvi. Lokesh Impex, Rajasthan.
- xlvii. M S International, Delhi.
- xlviii. Maankesh Trading Company, Delhi.
- xlix. Meenakshi Importers, Maharashtra.
- l. Mohan Enterprises, Delhi.
- li. Nand Rubber Pvt.Ltd, Haryana.
- lii. National Trading Company, Delhi.
- liii. New Vikas Tyres, Delhi.
- liv. Pahwa Distributors, Uttar Pradesh.
- lv. Paras Auto Parts, Gujarat.
- lvi. Pardeep Import Export, Maharashtra.
- lvii. Pioneer Trading Corporation, Maharashtra.
- lviii. Pricon Engineering Services, Maharashtra.
- lix. Prem Trading Company, Madhya Pradesh.
- lx. Pricon Engineering Services, Delhi.
- lxi. R C International, Maharashtra.
- lxii. R S Enterprises, Maharashtra.
- lxiii. Radhey Kishan Enterprises, Delhi.
- lxiv. Rajpal Roadlines Pvt Ltd., Maharashtra.
- lxv. Rameshwar Dass & Co., Haryana.
- lxvi. Rangi Road Carrier, Maharashtra.
- lxvii. Renu Raj Trading, Maharashtra.
- lxviii. Roadlion International, Delhi.
- lxix. Royal Traders, Delhi.
- lxx. Rynaa Overseas (India), Maharashtra.
- lxxi. S R Enterprises, Delhi.
- lxxii. S. S. And Sons, Delhi.
- lxxiii. S.K. International, Delhi.
- lxxiv. Saarwan Enterprises, Delhi.
- lxxv. Sabharwal Trading Company, Delhi.
- lxxvi. Sachin Prasad Yadav, West Bengal.
- lxxvii. Samar Traders, Delhi.
- lxxviii. Sanjog Impex, Madhya Pradesh.
- lxxix. Sanmati Portex Pvt Ltd., Delhi.
- lxxx. Sat Guru Traders, Uttar Pradesh.
- lxxxii. Saveer International, Delhi.
- lxxxiii. Shiv Shakti Enterprises, Delhi.
- lxxxiii. Shivalik Exim, Punjab.
- lxxxiv. Simran India Inc., Delhi.

- lxxxv. Simran Traders, Delhi.
- lxxxvi. Som Projects & Associates, Delhi.
- lxxxvii. Sri & Co, Karnataka.
- lxxxviii. Sri Kumaran Traders, Karnataka.
- lxxxix. Sri Tyres, Karnataka.
  - xc. Sumant Bachhawat, West Bengal.
  - xc. Sun Traders, Delhi.
  - xcii. Supreme Trading Corporation, Delhi.
  - xciii. Surodhya Sales, Delhi.
  - xciv. Trans Tyres (India) Pvt. Ltd., Maharashtra.
  - xcv. Uniglory International, Delhi.
  - xcvi. Vaan Sales India Private Ltd, Delhi.
  - xcvii. Vikas Retail Private Limited, Delhi.
  - xcviii. Vortex Rubber Industries Pvt. Ltd., Delhi.
  - xcix. Vrinda Overseas, Delhi.
  - c. Zafco India Pvt. Ltd., Delhi.
- xiv. None of the importers or consumers of the product have filed the importer's questionnaire response.
- xv. All India Tyre Dealers' Federation claiming itself as a federation of Tyre dealers has filed its submission.
- xvi. Initiation notification was sent to the following other domestic producers in India of the subject goods.
  - a. MRF Ltd
  - b. Michelin India Private Ltd
  - c. Bridgestone India Private Ltd
  - d. Continental India Ltd
  - e. Kesoram Industries Ltd (Birla Tyres)
- xvii. However, none of the other domestic producers has responded
- xviii. The Authority made available non-confidential version of the evidence presented by various interested parties in the form of a public file, kept open for inspection by the interested parties as per Rule 6 (7).
- xix. The Authority has examined the information furnished by the domestic producers to the extent possible on the basis of guidelines laid down in Annexure III to work out the cost of production and the non-injurious price of the subject goods in India so as to ascertain if anti-dumping duty lower than the dumping margin would be sufficient to remove injury to the domestic industry.
- xx. The petition was filed considering July, 2014- June, 2015 as the Period of Investigation. The Period of Investigation for the purpose of the present investigation has however been considered from July 2014- December 2015 (18 Months). The injury investigation period has however, been considered as the period from April' 2012-March' 2013, April' 2013-March' 2014, April' 2014-March' 2015 and the POI. Further, since the investigation period is a period of 18 months, all figures/data for the POI have been considered by

- annualising the same (i.e. by dividing the actual figure by 18 and multiplying by 12).
- xxi. Additional/supplementary information was sought from the applicant and other interested parties to the extent deemed necessary. Verification of the data provided by the domestic industry and exporters/producers was conducted to the extent considered necessary for the purpose of the investigation.
- xxii. The Non-injurious Price (NIP) based on the cost of production and cost to make & sell the subject goods in India based on the information furnished by the domestic industry on the basis of Generally Accepted Accounting Principles (GAAP) and Annexure III to the Anti-dumping Rules has been worked out so as to ascertain whether Anti-Dumping duty lower than the dumping margin would be sufficient to remove injury to the Domestic Industry.
- xxiii. Information published by the Directorate General of Commercial Intelligence and Statistics (DGCI&S) has been adopted for determination of volume and value of imports of product concerned in India. The petitioner has procured transaction-wise information on imports of the product under consideration from China Customs and DGCI&S. The Authority has however adopted DGCI&S transaction wise data for the purpose of the present investigation.
- xxiv. The Authority held an oral hearing on 24th March, 2017 to provide an opportunity to the interested parties to present relevant information orally in accordance to Rule 6 (6), which was attended by the representatives of domestic industry, exporters, importers and other interested parties. All the interested parties who presented their views orally at the time of hearing were advised to file written submissions of the views expressed orally. The interested parties were also provided opportunity to offer rejoinder submissions to the submissions made by opposing interested parties.
- xxv. The submissions made by the interested parties during the course of this investigation, wherever found relevant, have been addressed by the Authority, in this final findings.
- xxvi. Information provided by the interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has accepted the confidentiality claims wherever warranted and such information has been considered as confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non-confidential version of the information filed on confidential basis.
- xxvii. Wherever an interested party has refused access to, or has otherwise not provided necessary information during the course of the present investigation, or has significantly impeded the investigation, the Authority has considered such parties as non-cooperative and recorded this final findings on the basis of the facts available.
- xxviii. A Disclosure Statement containing the essential facts in this investigation which would form the basis of the Final Findings was issued to the interested

parties on 18.07.2017. The post Disclosure Statement submissions received from the domestic industry and other interested parties have been considered, to the extent found relevant, in this Final Findings Notification.

- xxix. \*\*\* in this final findings represents information furnished by an interested party on confidential basis, and so considered by the Authority under the Rules.
- xxx. The exchange rate adopted by the Authority during the POI for the subject investigation is 1 US \$= Rs 63.65.
- xxxi. Following abbreviations have been used in this final findings

SN	Abbreviation	Description
1	Authority	Designated Authority
2	Act	The Customs Tariff Act, 1975
3	Rules	Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped articles and for Determination of injury) Rules, 1995
4	TBB Tyre	Truck & Bus Bias Tyres
5	TBR Tyre	Truck & Bus Radial Tyres
6	PUC	Product under consideration
7	DI	Domestic industry
8	AD	Antidumping
9	ADD	Antidumping duty
10	LCV	Light Commercial Vehicle
11	PCR	Passenger Car Radial
12	GOC	Government of China

## **B. PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE**

4. The product under consideration for the purpose of present investigation is “New/unused pneumatic radial tyres with or without tubes and/or flap of rubber (including tubeless tyres) having nominal rim dia code above 16” used in buses and lorries/trucks”

### **B.1. Submissions made by the producers/exporters/other interested parties:**

5. Submissions made by the producers/exporters/other interested parties in this regard are as follows;
- i. TBB and TBR are different products in terms of manufacturing, technology, physical and technical characteristics, specifications, functions, uses and pricing. The only common features shared by TBB and TBR are the raw materials used in the manufacturing process.
  - ii. No evidence have been provided by the petitioners that TBB and TBR are like products and that imports of TBR are causing injury to the domestic industry

- producing and selling TBR and TBB and that both TBR and TBB are "perfectly substitutable".
- iii. TBR and TBB have different customs classification which proves that they are two different products. The difference between TBR and TBB is further underlined by the so-called radialization. The benefits offered by radial tyres are significantly higher than those of bias tyres. Consequently, customers have moved from bias tyres to radial tyres. The radialization for passenger vehicles took place between 1995 and 2004 and reached a penetration level of 85%. However, the radialization for truck and bus vehicles has only begun recently in India and the market for TBR is currently booming.
  - iv. The exclusion of certain TBR is required as the Domestic Industry does not produce Radial tyres for mining trucks used in the mining industry and TBR with a diameter exceeding 20" or 22.5", which are not produced by the domestic industry;
  - v. All India Tyre Dealers' Federation has submitted that the domestic old tyre makers do not have real confidence in the quality and performance in comparison to foreign tyre makers and imports from overseas particularly from China.
  - vi. AITDF submitted that while the foreign players like Michelin, Bridgestone, Continental, Yokohama and Maxxis are meeting the rolling resistance threshold limits of fuel saving qualities of radial tyres and the labeling laws in Europe and in some of Asian countries, the other domestic tyre makers seeking Anti-dumping duty are not showing enough interest to expedite similar Road Resistance and labeling norms in India, which is relevant to protect the end consumer.
  - vii. AITDF submitted that 10.00 R 20 tyres size is 98% of the total radial tyres imported from China PR, and 22.5" rim dia radial tyre is less than 2% imports under investigation, on the other hand the truck / bus radial tyres of 17.5" i.e. 7.50 R 17.5 size, 7.50 R 20, 8.25 R 20, 9.00 R 20, 11.00 R 20, 12.00 R 20 and 12.00 R 24 and above truck radial tyres were not being produced during POI. Hence, stating nominal rim dia code above 16" is vague and unduly covers various tyre sizes which are either not imported or manufactured in India.
  - viii. The Domestic Industry talks of huge capacity build up for radial tyres but it has done little to catch the domestic replacement market to use tyres for light, medium and heavy trucks and buses other than 10.00 R 20 tyres size and partially 11.00 R 20 tyre size. This shows that domestic tyre industry's initiative towards radialisation is very selective and tardy.
  - ix. The petitioners are confusing the Authority by referring both TBR and TBB as PUC and claiming that imports of TBR from China PR are causing injury to the domestic industry producing TBB in order to determine the existence of injury only for TBR.
  - x. Designated Authority should not accept the argument of the Domestic Industry for using different yard sticks and segments for injury analysis from the one used for defining product under consideration.
  - xi. Use of term "having dia code above 16" in a very loose form to include tyres of all types and nature irrespective of whether the same are being produced by them or not and are used for different purpose than the one for conventional use in

truck and bus

## **B.2. Submissions by the Domestic Industry**

6. Submissions made domestic industry in this regard are as follows :
- i. The Product under Consideration (PUC) in the present investigation is “New/Unused pneumatic radial tyres with or without tubes and/or flap of rubber (including tubeless tyres), having nominal rim dia code above 16" used in buses and lorries/trucks”.
  - ii. In tube type product, tyre is used along with one tube and one flap in a vehicle. One tyre, one tube and one flap are together sold as a "tyre set". The term “TTF” is prevalent in the industry, to denote a "tyre set". Tyre, tube and flap jointly render the function of “tyre” in a vehicle. Air is filled in the tube inside the tyres and a flap is used in between wheel and tube to avoid tube burst due to its cohesion with the wheels. Tyre, tube and flap are produced separately by the producers. Sale of tyre, tube and flap are primarily on "TTF" or "tyre set" basis. Radial tyre, tube and flap used in bus and lorries / trucks constitutes the product under consideration, irrespective of whether they are in TTF form or individually as tyre, tube and flap. Tubeless radial tyres, where tube and flap are not required, are also within the scope of this investigation.
  - iii. The scope of the imported product includes only Radial tyres used in buses and lorries / trucks. Tyres are produced for use in vehicles like trucks, buses, lorries, light commercial vehicles, passenger car, jeep, tractor, two-wheeler, three-wheeler, animal pulled vehicles, earthmover, industrial tyres, aircrafts etc. However, the product under consideration is the type that is used only in buses & lorries / trucks. All other types of tyres are beyond the scope of the product under consideration in this investigation.
  - iv. Tyres, Tubes and Flaps are produced separately. However, they are invariably used together in automotive applications. Tyres are classified in Chapter 40 under customs subheading no. 40112010 and tubes and flaps are under 40131020 and 40129049 respectively. However, the customs classifications are indicative only and in no way binding on the scope of investigation.
  - v. Chinese TBR is in fact replacing market of domestic TBB. Chinese TBR is in fact causing injury to the domestic TBB as its imports are already subject to ADD.
  - vi. In regard to like articles, the petitioner submitted that there is no known difference in the subject goods produced by the Indian industry and exported from subject countries. Subject goods produced by the Petitioners and imported from China are comparable in terms of physical & technical characteristics, manufacturing process & technology, functions & uses, product specifications, pricing, distribution & marketing and tariff classification of the goods. The two are technically and commercially substitutable. The consumers are using the two interchangeably.
  - vii. TBR and TBB were never different products. With (a) increasing radialization in

- India, (b) reducing gap between the prices of TBR and TBB, (c) increasing capacities for TBR in China, (d) Chinese TBR becoming cheaper than domestic TBB; Chinese TBR is now replacing Indian TBB.
- viii. TBR and TBB are perfectly substitutable as far as technical considerations are concerned. Any producer can interchangeably switch over between TBR and TBB. Comparison show that (a) domestic TBB is cheaper than Chinese TBR, (b) domestic TBB is cheaper than domestic TBR.
- ix. Demand for TBR is increasing and that for TBB is declining. This itself establishes that the two are one article.
- x. As regards contention of the opposing parties that domestic industry does not meet rolling resistance standard in Europe and some of the Asian countries, it may be noted that standard being followed by domestic industry is equivalent to those standards. Further, the argument that domestic industry is not showing enough interest to expedite globally accepted Road Resistance norms is factually incorrect and has no basis. The annual reports of domestic industry show that industry is continuously making efforts to incorporate all norms applicable as per global standards.
- xi. The petitioners dispute all request for exclusions from the scope of product under consideration and submit that so long as the description of imported product falls into the definition of the product under consideration in the petition and notice of initiation, the same is required to be included. Customs classification for New Pneumatic Tyres, of rubber of a kind used in buses or Lorries, Radials is 40112010 and the scope of PUC is limited/ restricted to tyres used in bus or lorries. Scope of PUC includes all truck & bus tyres having nominal rim diameter code above 16 inch. The definition of Product Under Consideration states as *“New/ Unused pneumatic radial tyres with or without tube and or Flap, of rubber having nominal rim diameter code above 16 inch in Buses and Lorries/ truck”*. Light, Medium, Heavy, Mining, Industrial, Construction, etc. are classifications based on end use of the vehicle, i. e. truck & bus in the instant matter. Based on the end application a user is free to choose between various tyre sizes of truck and bus which is typically above 16”.
- xii. All truck and bus tyres of nominal diameter above 16” are within the scope of PUC, irrespective of vehicle application whether for heavy commercial purposes; light commercial purposes; mining purposes; other industrial purposes; etc.
- xiii. The argument that nominal rim dia code above 16" is vague and unduly covers various tyre sizes which are either not imported or not manufactured in India is factually and lawfully incorrect. All technically possible and commercially viable sizes of truck & bus tyres above 16” are produced by domestic industry. There are even imports of sizes other than 10.00 R 20 and rim dia 22.5”. The specification catalogues of domestic industry and import listing show that industry is producing complete range and there are imports in tyre size ranges other than 10.00 R 20 and rim dia 22.5”.
- xiv. Radialisation has been all across T&B segment in the country. The specification catalogues of domestic industry provide details of radial tyres in light, medium and heavy T&B tyres vehicle category. Further, capacity build up is based on

demand; there has been (a) significant growth in demand of medium & heavy truck and bus tyres and de-growth in light T&B tyres (b) significant demand of bias light T&B tyres. Even imports into India during POI shows (a) out of total T&B tyres imports from all countries about 95% are bias tyres (b) there are no imports of T&B bias tyres from China (c) only about 0.006% of T&B tyres from China are for light truck and bus.

### **B.3. Examination by the Authority**

7. The product under consideration was defined in the initiation notification as follows:

*“The product under consideration (PUC) in the present investigations is ‘New/Unused pneumatic radial tyres with or without tubes and/or flap, of rubber, having nominal rim dia code above 16” used in buses and lorries/trucks’.*

*The PUC is classified in Chapter 40 under customs sub-heading No. 40112010 and tubes and flaps are classified under 40131020 and 40129049 respectively of Schedule I of the Customs Tariff Act, 1975. Tubes and or flaps imported without New/Unused pneumatic radial tyres are outside the scope of the PUC. The Custom classification, however, is indicative only and not binding on the scope of investigation.”*

8. On the submissions made by the interested parties with regard to the scope of product under consideration the Authority notes as under:

- i. The product under consideration (PUC) in the present investigation is “New/Unused pneumatic radial tyres with or without tubes and/or flap of rubber (including tubeless tyres), having nominal rim dia code above 16” used in buses and lorries/trucks”. The scope of the product under consideration includes both tube type and tubeless. In tube type tyre, tyre is used along with one tube and one flap in a vehicle. One tyre, one tube and one flap are together sold as a "tyre set" and described as “TTF”. The term “TTF” is prevalent in the industry, to denote a "tyre set". Tyre, tube and flap jointly render the function of “tyre” in a vehicle. Sale of tyre, tube and flap are primarily on "TTF" or "tyre set" basis. Tubeless radial tyres, where tube and flap are not required, are also within the scope of this investigation.
- ii. The scope of the imported product includes only Radial tyres used in buses and lorries / trucks. Tyres are generally used in various kinds of vehicles such as trucks, buses, lorries, light commercial vehicles, passenger car, jeep, tractor, two-wheeler, three-wheeler, animal pulled vehicles, earthmover, industrial tyres, aircrafts etc. However, the product under consideration is the type that is used in buses & lorries / trucks. All other types of tyres are beyond the scope of the product under consideration in the present investigation.
- iii. Subject goods are classified in Chapter 40. Tyres are classified under customs

subheading no. 40112010 and tubes and flaps are under 40131020 and 40129049 respectively. However, customs classifications are indicative only and in no way binding on the scope of investigation.

- iv. The Authority further notes that import of TBB is already attracting ADD on imports from China and is beyond the scope of the product under consideration. The domestic industry has however contended that imports of Chinese TBR are causing injury to the TBB and TBR produced by the domestic industry. The interested parties have also contended that there has been increasing radialisation in the tyre industry across the country. Radialisation means that the bias tyres are being increasingly substituted by radial tyres. While it may be true that TBR and TBB are technically different products, there is no dispute that TBR is increasingly substituting TBB. In fact, the interested parties have themselves contended the same. The contention of the domestic industry that TBR and TBB are being used even in the same lorries has not been refuted by the interested parties, which implies that such substitution has not happened at the level of OEM (i.e., while selling a new truck/bus), but has happened when the tyres are being replaced by the consumers. As regards request for exclusions of radial tyres for mining trucks used in the mining industry having a diameter exceeding 20”, the Authority notes that the domestic industry produces and supplies tyres having a diameter exceeding 20’. The scope of the product under consideration is tyres used in buses and lorries. So long as the tyres meet the definition of the product under consideration and falls under the customs classification, the same is within the scope of the product under consideration. The Authority however notes that there are a large number of other kinds of tyres classified under Chapter 40. All tyres falling under the scope of PUC classifiable under customs subheading no. 40112010 and tubes and flaps classifiable under 40131020 and 40129049 respectively of Schedule I of the Customs Tariff Act, 1975 are within the scope of the product under consideration and all other kinds of tyres, tubes and flaps not classifiable under these customs classification are beyond the scope of the product under consideration.
9. After considering the information on record, the Authority holds that there is no known difference in the subject goods produced by the Indian industry and exported from China. Subject goods produced by the Petitioners and imported from China are comparable, collectively and cumulatively, in terms of product characteristics, manufacturing process & technology, functions & uses, product specifications, pricing, distribution & marketing and tariff classification of the goods. The TBR Tyres produced by the domestic industry are technically and commercially substitutable to the imported TBR Tyres. TBR produced by the domestic industry are like article to the TBR imported from China. The Authority holds that product under consideration produced by the applicant domestic industry is like article to the subject product under consideration imported from subject countries in accordance with the AD Rules.

## **C. SCOPE OF DOMESTIC INDUSTRY & STANDING**

10. Rule 2(b) of the AD rules defines domestic industry as under:

*“(b) “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 such case the term, ‘domestic industry’ may be construed as referring to the rest of the producers.”*

### **C.1. Submissions made by the producers/exporters/other interested parties:**

11. Submissions made by the producers/exporters/other interested parties in this regard are as follows:
- i. All India Tyre Dealers’ Federation (hereinafter referred as AITDF) submitted that among ATMA and its members, only Apollo Tyres Ltd., J. K. Tyre Industries Ltd., and Ceat Ltd, who manufacture both radial as well as non-radial tyres for various categories of tyres including truck and bus, Light Commercial Vehicles and Passenger Cars etc. out of total eleven producer/manufacturers of the subject goods have chosen to seek anti-dumping investigation, while other domestic tyre makers with new investment in India like Michelin, Bridgestone have kept away . No other interested party has submitted any specific comments in this regard

### **C.2. Submissions made by the Domestic industry:**

12. Submissions made by domestic industry in this regard are as follows:
- i. The present petition has been filed by ATMA on behalf of Apollo Tyres Ltd., J. K. Tyre Industries Ltd., and Ceat Ltd for imposition of anti-dumping duty on imports of subject goods from the subject country.
  - ii. There are other domestic producers of the subject goods in India such as Birla Tyres, Bridgestone India Private Limited, Continental India Ltd, Michelin India private Limited and MRF Ltd.
  - iii. However, the production by the petitioner companies constitutes more than 50% of Indian production.
  - iv. Production of the petitioner companies accordingly constitutes a major proportion in Indian production. Further, the petitioner companies have not imported the product under consideration. Nor are they related to any importer or exporter of the product under consideration.
  - v. The petitioner companies, therefore, constitutes domestic industry and satisfies the requirement of standing under the Rules 2(b) and 5(3) of the AD Rules.

### **C.3. Examination by the Authority**

13. The present application has been filed by ATMA on behalf of Apollo Tyres Ltd., J. K. Tyre Industries Ltd., and Ceat Ltd., domestic producers of the product under consideration and who have provided detailed information for the present investigation in the matter of imposition of anti-dumping duty on imports of subject goods from China PR.
14. As per the Anti-dumping Rules, the Authority is required to examine whether:
  - a. domestic producers expressly supporting the application account for more than twenty five percent of the total production of the like article by the domestic industry; and
  - b. the application 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 to the application.
15. The Authority notes that:
  - a. The production by the petitioner companies constitutes more than 50% of Indian production;
  - b. The petition was specifically supported by MRF Ltd. Post initiation, the Authority sought information from MRF as well. However, the company has not provided its injury information.
  - c. The petition has not been opposed by any producer of the product under consideration in India.
  - d. Petitioner identified following companies as the producers of the product under consideration in India and gave information with regard to their production

SN	Name
1	MRF Ltd
2	Kesoram Industries Ltd
3	Bridgestone India Private Limited
4	Michelin India Private Limited
5	Continental India Ltd

- e. Information on record does not show any domestic producer being ineligible domestic producer of the product under consideration within the meaning of the AD Rules. The DGCI&S data shows that there are imports made by Ceat and Apollo Tyres. The imports made by CEAT are of TBB and not the PUC. The imports made by Apollo tyres is for research and development purposes and not for re-sale. The quantum of import too is fairly insignificant. The Authority has treated all domestic producers of the product under consideration as eligible

domestic industry within the meaning of Rule 2(b).

- f. The petitioner companies declared that they have neither imported the product under consideration from China during the POI, nor they are related to any of the importers of the subject goods in India or exporters of the subject goods from China.
  - g. Production of the petitioner companies constitutes 65.05% of Indian production. Further, the petition is supported by those domestic producers whose collective output constitutes 21.40% of Indian production. Thus petitioner along with supporter commands 86.45% of Indian Production.
16. Having regard to the rules, the Authority holds that the petitioner companies command a major proportion in the production of the subject goods in India and for the purpose of this investigation they satisfy the standing requirement in terms of Rule 5(3) and constitute domestic industry in terms of Rule 2(b) of the AD Rules.

#### **D. CONFIDENTIALITY**

17. The Authority considered confidentiality claims of various interested parties having regard to Rule 7 of Anti-dumping Rules and Article 6.5 of the WTO Agreement on Anti-Dumping

##### **D.1. Submissions made by the producers/exporters/other interested parties:**

18. Submissions made by the producers/exporters/other interested parties in this regard are as follows:
- i. Domestic industry has failed to provide essential information and has claimed excessive confidentiality with regard to total TBR ( Truck and Bus Radial Tyres) sales of the domestic industry ; total TBR sales of the Indian producers; total production of TBR of the Indian producers; Production of tyres for replacement segment ; OEM( Original Equipment Manufacturer) segment production; export production; domestic OEM sales; domestic replacement sales; export sales; total sales; domestic sales value; export sales value; stock volume; cost of sales; selling price; profit per unit; profit total; cash profit; profit before interest and tax; number of employees; wages; wages per unit; and return on capital employed.
  - ii. The Petitioner has failed to provide good cause for the purpose of claiming confidentiality on certain essential facts. It has failed to provide non-confidential summaries of information treated as confidential in the Petition.
  - iii. Absence of evidence supporting the Export price.
  - iv. Total demand for TBR or the production capacity of the domestic industry post POI is concealed by the Petitioner.

##### **D.2. Submissions by the Domestic Industry:**

19. Submissions made domestic industry in this regard are as follows:

- i. Petitioners have complied with all requirements laid down by the authority. The petitioners have disclosed all information that is required to be disclosed under the law. There are no specific instances of non-disclosure of such information by the petitioners which the petitioner was obliged to disclose.
- ii. Export price calculation has been disclosed in the non-confidential version. Evidence showing adjustments in export price are business sensitive information and not susceptible to summarization.
- iii. Petitioners have claimed only such information as confidential, confidentiality of which is protected under the law. Sufficient non-confidential summaries of the information have been provided on confidential basis except for those which are not susceptible to summarization. In fact the responding interested parties have resorted to excessive confidential information.

### **D.3. Examination by the Authority**

20. The Authority has examined the confidentiality claims of the interested parties. Information provided by the interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has accepted the confidentiality claims, wherever warranted, and such information has been considered confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non confidential version of the information filed on confidential basis. The Authority made available the non-confidential version of the evidences submitted by various interested parties in the form of public file.
21. The Authority notes the information required to be made public by the interested parties and public notices issued by the authorities are directly subjected to confidentiality provisions. Rules have been created to protect confidentiality of information provided by an interested party on confidential basis in order to protect such party from disclosure of their business sensitive information or where the supplier of the information requires confidentiality treatment on such information.
22. The Authority holds that while any information which is available in the public domain cannot be treated as confidential, any information not disclosed publicly by an interested party cannot be disclosed to other interested parties participating in the investigations.
23. In view of the legal obligation and considering the confidentiality claims of the interested parties, the Authority has accepted confidentiality claims of the interested parties and holds that only all such information which is otherwise not publicly disclosed has been treated as confidential information.

## **E. Miscellaneous Submissions**

### **E.1. Submissions made by the producers/exporters/other interested parties:**

24. Submissions made by the producers/exporters/other interested parties in this regard are as follows:

- i. The assessable value used by the Indian customs authorities- Customs duty should only be levied on the customs value of the TBR as reported in the commercial invoice.
- ii. China Customs data is irrelevant as it only indicates the volume and value of TBR exported but not the volume and value of TBR that were imported into India. The use of China Customs for import statistics is disputed and requests the Designated Authority to only resort to the import data provided by the DGCI&S.
- iii. Apollo Tyres Ltd., MRF Ltd., CEAT Ltd., JK Tyre Industries Ltd., Birla Tyres Ltd. together control about \*\*\* % of tyre and under the aegis of its Association have indulged in cartelization of the domestic tyre market and increased the tyre prices on the pretext of increase in the raw material prices but did not reduce the prices when the prices of raw material fell. ATMA have revealed that the opposite parties were concerned about the increased volatility in prices of natural rubber and other key raw materials in 2010-11 and its adverse impact on their operating margins. Evidence revealed that opposite parties under the aegis of its Association (ATMA), discussed the commercially sensitive subject of 'Raw Material Cost' Increase Vis-a-Vis 'Tyre Price Increase' and the 'Gap' in February 2011. Email communications of May 2011 between the market leaders i.e., MRF and Apollo through DG, ATMA with regard to the pricing strategy, has clearly revealed active collusion in form of an 'agreement' to determine the tyre price in the domestic tyre market.
- iv. Analysis of price movement exhibited strong price parallelism during the five year period from 2009-14 and indicated that tyre prices of opposite parties moved in tandem in the three years period. Further, despite significant decline in the input costs particularly in 2012-13 and 2013-14, the tyre prices were kept at higher level.
- v. Anti-dumping Bench of CESTAT in its Order dated 2.08.2011 has set aside imposition of Anti-Dumping Duty (ADD) on import of TBR Tyres.
- vi. There is no case of imposition of ADD on import of TBR tyres, which otherwise will further strengthen the domestic tyre cartel which has been indiscriminately increasing the tyre prices on the back of rise in raw material prices but has not rolled back the tyre prices during POI despite steep fall in prices of raw materials.
- vii. World over the tyre manufacturers and particularly in China PR have reduced the tyre prices in tandem with the fall in raw material prices during POI and hence

domestic tyre prices have been highly inflated as against fair prices of imported truck and bus radial tyres to India from China PR.

### **E.2. Submissions made by the Domestic Industry**

25. Submissions made by the domestic industry in this regard are as follows:

- i. The exporters themselves have declared some exports to China customs and now wish to stay away from those claims made to China customs. If they have not fabricated the claims before the Designated Authority why the exporters are trying to shy away from their own customs authorities data? The exports reported in China Customs are nothing but the volume and value of exports declared by the exporters themselves to their own customs authorities. How can there be a question of export volume and value reported in China Customs being different from the data with the responding exporters? Further, as far as possibility of goods exported from China not being imported into India is concerned, it is open for the sampled companies to bring on record instances where goods were initially invoiced for India, reported as exports to India under China Customs, but eventually did not reach Indian customs.
- ii. AITDF should not be allowed to participate in the present investigations as it is not an interested party, neither an association of consumers nor an association of importers or exporters or domestic producers and therefore they do not satisfy any of the requirements.
- iii. AITDF platform is being used/abused/misused by some other parties for their commercial gains. This suspicion of the domestic industry further gets strengthened by the statement made by Mr. S P Singh at the time of hearing that their members are importers of the product under consideration.

### **E.3. Examination by the Authority**

26. As regards allegations and issues concerning possible unfair competition amongst domestic producers, the Authority considers that the issue is beyond the scope of the present Authority and investigation and is to be handled by a separate body namely, the Competition Commission of India.

27. With regard to the participation of AITDF in the present investigations, Authority notes that Rule 2(c) provides as follows -

*(c) "interested party" includes -*

*(i) an exporter or a foreign producer or the importer of an article subject to investigation for being dumped in India, or a trader or business association a majority of the members of which are producers, exporters or importers of such an article;*

*(ii) the government of the exporting country; and*

*(iii) a producer of the like article in India or a trade and business association a majority of the members of which produce the like article in India;*

28. The rule provides that an exporter, foreign producer, or importer can be treated as interested party. Further, a trader or business association can be treated as interested party, if a majority of its members are producers, exporters or importers of such article. The government of the exporting country, a producer of the like article in India or a trade and business association, a majority of the members of which produce the like article in India are also required to be treated as interested party in an anti-dumping investigation.

29. All India Tyre Dealers Federation (AITDF) explained its status as follows:

- a. it is a federation of trade associations.
- b. its constituents are divided into four parts in the country. The North Zone is coordinated by Delhi Tyre Dealers Association & its routine expenses are met by Delhi Tyre Dealers Association.
- c. AITDF has no salary based Secretary to represent issues before the various Governmental agencies and forums.
- d. At present, AITDF and its constituents are more focused on adopting GST and Digital India Campaign of the Government of India.
- e. The AITDF is assisting Department of Industrial Policy and Promotion on finalising 'Waste Tyres Management Rules 2017' and TED-7 (BIS) in different capacity in framing standards for tyres, tubes, flaps, wheels for automobiles.

## **F. MARKET ECONOMY TREATMENT (MET), NORMAL VALUE, EXPORT PRICE AND DUMPING MARGIN**

### **Normal Value**

30. 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 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 said article in the country of origin along with reasonable addition for administrative, selling and general costs, and for profits, as determined in accordance with the rules made under sub-section (6):*

*Provided that in the case of import of the article from a country other than the country of origin and where the article has been merely transhipped through the country of export or such article is not produced in the country of export or there is no comparable price in the country of export, the normal value shall be determined with reference to its price in the country of origin.*

**F.1. Submissions by the foreign producers/exporters/other interested parties**

31. The following producers/exporters from the subject country filed exporter's questionnaire rebutting the non-market treatment in the present investigation

- a. M/s Good Friend Tyre Co. Ltd.
- b. Qingdao Jinhaoyang International Ltd.

32. M/s Good Friend Tyre Co. Ltd is a manufacturer and Qingdao Jinhaoyang International Ltd. is a trader / exporter.

33. Submissions made by the foreign producers/exporters/other interested parties with regard to normal value is as under :

- i. The determination of the normal value by the petitioner violates the provisions of paragraph 7 of Annexure I and is not supported by any evidence. The Petitioner claims at the "normal value of TBR in China PR could not be determined at this stage on the basis of price or constructed value in a market economy third country for the reason that the relevant information is not available to the petitioner".
- ii. Normal value for China PR has been determined on the basis of constructed cost of production on the basis of following principle:

*International prices have been adopted for raw materials, wherever available. For this purpose with the following elements: Raw materials as per import prices in India. China PR and Taiwan; Power rates as per rates prevailing in the Domestic industry; Consumption norm, Conversion costs, selling, general and administrative expenses of the most efficient producer participating in the investigation factors as per standard input output norms fixed by the Government of India; as per domestic industry; and percent reasonable profit margin.*

- iii. The methodology used by the Petitioner and by the Designated Authority to determine the normal value is incorrect for two reasons:
  - a. An appropriate market economy third country should be selected by the designated authority in a reasonable manner, keeping in view the

level of development of the country concerned and the product in question. and due account should be taken of any reliable information made available at the time of selection. Accounts should be taken within time limits, where appropriate, of the investigation made in any similar matter in respect of any other market economy third country. Hon'ble Supreme Court in *Shenyang Matsushita S. Battery Co. Ltd. v. Exide Industries Ltd. and others* [(2005) 3 SCC 39] observed with affirmation that the Designated Authority can resort to the last alternative only when the first two methods have been exhausted. Petitioner and the Designated Authority must use the first and the second methodology to compute the normal value and may only resort to the third methodology in case the first two methodologies have been exhausted.

- b. Second, the Petitioner's claim according to which the relevant information to determine the normal value on the basis of price or constructed value in a market economy third country is not available is wrong and fallacious. Indeed, amongst the three companies supporting the Petition, two (namely Apollo Tyres and JK Tyre) have manufacturing facilities in third countries and have therefore access to all the relevant information. Apollo Tyres has production facilities in the Netherlands, South Africa and Zimbabwe and JK Tyre has three production sites in Mexico.

## **F.2. Submissions made by Domestic Industry**

34. Submissions made by the domestic industry in this regard are as follows:

- i. China should be considered a non-market economy, in line with the position taken by the Authority in previous cases, and by investigating authorities in other countries. Chinese producers' cost and price cannot be relied upon for determination of normal value. Market economy status cannot be granted unless following conditions are fulfilled:
  - a. State interference should be completely ruled out.
  - b. The prices of major inputs should substantially reflect market values
  - c. The account books should have been audited in line with International Accounting Standards
  - d. All the required parameters should be met with to grant the market economy status.
  - e. The onus/obligations to establish market economy status is onto responding Chinese exporters and not onto the Designated Authority.
  - f. The responding company and its group, as a whole, should make the claim.
- ii. Based on various pronouncements relating to examination of market economy status by India and other investigating authorities, following jurisprudence has

clearly emerged. While granting market economy status, following parameters should be considered:

- a. State interference should be completely ruled out.
- b. The prices of major inputs should substantially reflect market values
- c. The account books should have been audited in line with International Accounting Standards.
- d. All the required parameters should be met with to grant the market economy status.
- e. The responding exporters themselves have to establish that they are operating under market economy conditions.
- f. Market economy status cannot be granted unless the responding company and its group as a whole make the claim. If one or more companies forming part of the group and involved either in production or in sale has not filed the response, market economy status cannot be granted.
- g. In a situation where the current shareholders have not set up their production facilities themselves but have acquired the same from some other party, market economy status cannot be granted unless process of transformation has been completely established through documentary evidence.

iii. Accordingly , as per Rules, the normal value in China can be determined on any of the following basis:

- a. *the price in a market economy third country,*
- b. *constructed value in a market economy third country,*
- c. *the price from such a third country to other country, including India.*
- d. *Any other reasonable basis, including the price actually paid or payable in India, duly adjusted to include a reasonable profit margin.*

iv. Petitioner has not been able to determine the normal value of TBR in China on the basis of price or constructed value in a market economy third country for the reason that the relevant information is not available to the petitioner. It is noted that such normal value must be “comparable price in the ordinary course of trade for the like article when meant for consumption in such market economy third country”. In order to arrive at normal value on this basis, the Designated Authority shall require complete & exhaustive verifiable information on all domestic sales made by a cooperating producer in such third country, along with its cost of production and all other associated information and evidences (including all information in the ordinary course of trade). Principles of fair comparison as laid down under Article 2.4 of the Agreement are also relevant in this respect. In view of the same, the normal value for China has been determined on the basis of constructed cost of production. The methodology adopted is given below.

- a. Raw material prices as per details given below:

SN	Raw material	Source
1	Natural rubber	Import price in China

2	Styrene Butadiene rubber	Import price into India
3	Polybutadiene rubber	Import price into India
4	Nylon tyre cord fabric	Import price from Taiwan
5	Rubber chemicals	Import price in India from China after adding anti-dumping duty
6	Steel cord fabric	Import price into India
7	Carbon Black	Import Price into India from China after adding anti-dumping duty
8	Bead Wire	Apollo less Custom Duty

- b. Power rates as per rates prevailing in Domestic Industry.
- c. Consumption factors as per Standard Input Output Norms fixed by Govt. of India.
- d. Conversion costs, selling, general & administrative expenses as per domestic industry
- e. 5% reasonable profit margin.

### **F.3. Examination by the Authority**

35. Article 15 of China's Accession Protocol provides as follows:

*“Article VI of the GATT 1994, the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ("Anti-Dumping Agreement") and the SCM Agreement shall apply in proceedings involving imports of Chinese origin into a WTO Member consistent with the following:*

*(a) In determining price comparability under Article VI of the GATT 1994 and the Anti-Dumping Agreement, the importing WTO Member shall use either Chinese prices or costs for the industry under investigation or a methodology that is not based on a strict comparison with domestic prices or costs in China based on the following rules:*

*(i) If the producers under investigation can clearly show that market economy conditions prevail in the industry producing the like product with regard to the manufacture, production and sale of that product, the importing WTO Member shall use Chinese prices or costs for the industry under investigation in determining price comparability;*

*(ii) The importing WTO Member may use a methodology that is not based on a strict comparison with domestic prices or costs in China if the producers under investigation cannot clearly show that market economy conditions prevail in the industry producing the like product with regard to manufacture, production and sale of that product.*

*(b) In proceedings under Parts II, III and V of the SCM Agreement, when addressing subsidies described in Articles 14(a), 14(b), 14(c) and 14(d), relevant provisions of the SCM Agreement shall apply; however, if there are special difficulties in that application, the importing WTO Member may then use methodologies for identifying and measuring the subsidy benefit which take into account the possibility that prevailing terms and conditions in China may not always be available as appropriate benchmarks. In applying such methodologies, where practicable, the importing WTO Member should adjust such prevailing terms and conditions before considering the use of terms and conditions prevailing outside China.*

*(c) The importing WTO Member shall notify methodologies used in accordance with subparagraph (a) to the Committee on Anti-Dumping Practices and shall notify methodologies used in accordance with subparagraph (b) to the Committee on Subsidies and Countervailing Measures.*

*(d) Once China has established, under the national law of the importing WTO Member, that it is a market economy, the provisions of subparagraph (a) shall be terminated provided that the importing Member's national law contains market economy criteria as of the date of accession. In any event, the provisions of subparagraph (a)(ii) shall expire 15 years after the date of accession. In addition, should China establish, pursuant to the national law of the importing WTO Member, that market economy conditions prevail in a particular industry or sector, the non-market economy provisions of subparagraph (a) shall no longer apply to that industry or sector."*

36. Article 15 implies that provisions of one of the subparagraph shall expire 15 years from date of China's Accession. The provisions of this paragraph expired on 11<sup>th</sup> Dec., 2016. Since the factum of dumping causing injury to the domestic industry is established based on investigation period, the conditions prevalent during the investigation period alone is relevant, appropriate and necessary for the purpose of present investigation. The Period of Investigation (POI) for the purpose of the present investigation is July 2014 to Dec 2015. Since the subparagraph of Article 15 was in existence during the period of investigation, the Authority may use a methodology that is not based on a strict comparison with domestic prices or costs in China, if the producers under investigation cannot clearly show that market economy conditions prevail in the industry producing the like product with regard to manufacture, production and sale of that product.
37. The Authority notes that in the past three years China PR has been treated as non-market economy country in anti-dumping investigations by India and other WTO Members. China PR has been treated as a non-market economy country subject to rebuttal of the presumption by the exporting country or individual exporters in terms of the Rules.

38. Authority notes that following exporter/producers have responded and filed questionnaire response.

- a. Shandong Hengyu Science and Technology Co. Limited
- b. Best Choice International Trade Co. Ltd.
- c. Shengtai Group Co. Ltd.
- d. Shandong Xingyuan International Trading Co. Ltd.
- e. Jiangsu General Science Technology Co. Ltd.
- f. Shandong Yongtai Group Co. Ltd.
- g. Shandong Xingyuan Tire Group Co. Ltd.
- h. Qingdao Doublestar Tire Industrial Co. Ltd.
- i. Shandong Cocrea Tyre Co. Ltd., China
- j. Shandong Hengfeng Rubber and Plastic Co. Ltd.
- k. Qingdao Champion International Trading Co. Ltd.
- l. Triangle Tyre Co. Ltd.
- m. Shandong Wanda Bototyre Co. Ltd.
- n. Qingdao Yellow Sea Rubber Co. Ltd., China PR
- o. Tiremart (Qingdao) Inc.
- p. Koryo International Industrial Limited
- q. Shandong Wanshine Tire Co. Ltd., China PR
- r. Winshine Industrial Co. Ltd.
- s. Qingdao Nama Industrial Co. Ltd.
- t. Aeolus Tyre Co. Ltd., China PR
- u. Shandong Yinbao Tyre Group Co. Ltd, China PR
- v. Cantop International (Qingdao) Co. Ltd.
- w. Zhongce Rubber Group Co. Ltd, China PR
- x. Qingdao Jinhaoyang International Ltd.
- y. M/s Good Friend Tyre Co. Ltd.

39. The following producers with their relevant trader(s)/exporters from the subject country have been sampled by the Authority

<b>Sl. No.</b>	<b>Producer</b>	<b>Exporter</b>
1.	M/s Shandong Yinbao Tyre Group Co., Ltd	Shandong Yinbao Tyre Group Co., Ltd
	--do--	M/s Cantop International (Qingdao) Co., Ltd.
	--do--	M/s Tiremart (Qingdao) Inc
2.	M/s Shandong Hengfeng Rubber & Plastic Co., Ltd.	Shandong Hengfeng Rubber & Plastic Co., Ltd.

3.	M/s Aeolus Tyre Co., Ltd	Aeolus Tyre Co., Ltd
4.	M/s Qingdao Yellow Sea Rubber Co., Ltd	Qingdao Yellow Sea Rubber Co., Ltd
	--do--	M/s Tiremart (Qingdao).
5.	M/s Qingdao Doublestar Tire Industrial Co., Ltd.	M/s Qingdao Doublestar Tire Industrial Co., Ltd.

40. The Authority further notes that the following non-sampled parties have also submitted exporter's questionnaire response seeking individual treatment in terms of Rule 17 of the Rules:

- a. Shandong Hengyu Science and Technology Co. Limited
- b. Best Choice International Trade Co. Ltd.
- c. Shengtai Group Co. Ltd.
- d. Shandong Xingyuan International Trading Co. Ltd.
- e. Jiangsu General Science Technology Co. Ltd.
- f. Shandong Yongtai Group Co. Ltd.
- g. Shandong Xingyuan Tire Group Co. Ltd.
- h. Shandong Cocrea Tyre Co. Ltd., China
- i. Qingdao Champion International Trading Co. Ltd.
- j. Triangle Tyre Co. Ltd.
- k. Shandong Wanda Bototyre Co. Ltd.
- l. Tiremart (Qingdao) Inc.
- m. Koryo International Industrial Limited
- n. Shandong Wanshine Tire Co. Ltd., China PR
- o. Winshine Industrial Co. Ltd.
- p. Qingdao Nama Industrial Co. Ltd.
- q. Cantop International (Qingdao) Co. Ltd.
- r. Zhongce Rubber Group Co. Ltd, China PR
- s. Qingdao Jinhaoyang International Ltd.
- t. M/s Good Friend Tyre Co. Ltd.

#### **Examination of Market economy claims**

41. The following producers/exporters from the subject country filed exporter's questionnaire rebutting the non-market treatment in the present investigation:

- a. M/s Good Friend Tyre Co. Ltd.
- b. Qingdao Jinhaoyang International Ltd.

M/s Good Friend Tyre Co. Ltd., producer/exporter from China PR has responded to the Market economy (MET) questionnaire.

42. The Authority notes that in the past three years, China PR has been treated as a non-market economy country in the anti-dumping investigations by other WTO Members. Therefore, in terms of Para 8 (2) of the annexure 1 of AD Rules, China PR has been treated as a non-market economy country subject to rebuttal of the above presumption by the exporting country or individual exporters in terms of the above Rules.
43. As per Paragraph 8 of the Annexure I to the Anti-Dumping Rules as amended, the presumption of a non-market economy can be rebutted if the exporter(s) from China PR provide information and sufficient evidence on the basis of the criteria specified in sub paragraph (3) in Paragraph 8 and establish to the contrary. The cooperating exporters/producers of the subject goods from China are required to furnish necessary information/sufficient evidence as mentioned in sub-paragraph (3) of paragraph 8 in response to the Market Economy Treatment questionnaire to enable the Designated Authority to consider the following criteria as to whether: -
- a) The decisions of concerned firms in China PR regarding prices, costs and inputs, including raw materials, cost of technology and labor, output, sales and investment are made in response to market signals reflecting supply and demand and without significant State interference in this regard, and whether costs of major inputs substantially reflect market values;
  - b) The production costs and financial situation of such firms are subject to significant distortions carried over from the former non-market economy system, in particular in relation to depreciation of assets, other write-offs, barter trade and payment via compensation of debts;
  - c) Such firms are subject to bankruptcy and property laws which guarantee legal certainty and stability for the operation of the firms; and
  - d) The exchange rate conversions are carried out at the market rate.
44. The Authority notes that Good Friend Tyre Company and Qingdao Jinhaoyang International Ltd. from China PR have responded to the questionnaire pertaining to market economy status and to the exporters' questionnaire, consequent upon the initiation notice issued by the Authority and rebutted the non-market economy presumption. The questionnaire responses and the market economy responses of the responding producers and exporters were examined for determination of normal value of the responding producers/ exporter of the subject goods.
45. The Authority has taken cognizance of the information provided by the respondent namely M/s Good Friend Tyre Co. Ltd. and M/s Qingdao Jinhaoyang International Ltd. who have filed MET response with which they sought to rebut the presumptions as mentioned in para 8 of Annexure 1 of the Anti-dumping Rules regarding grant of market economy status to their company. M/s Good Friend Tyre Co. Ltd. is producer and exporter whereas M/s Qingdao Jinhaoyang International Ltd. is an exporter, procuring the subject goods from the M/s Good Friend Tyre Co. Ltd. However, the Authority could not examine the MET claim further as the companies have not provided sufficient evidences with regard to non-interference

of state in pricing of the raw materials. The majority suppliers of the raw material are Chinese companies barring one company from USA. Thus market economy treatment claimed by the respondent companies in the present investigation has not been accepted. In view of the above position, the Authority does not grant market economy treatment to the aforementioned Chinese companies in the present investigation.

46. The normal value for China PR has been constructed on the basis of following :
- a) International price of raw materials, namely, natural rubber, synthetic rubber, carbon black, nylon cord fabric, steel cord fabric and bead wire (Export/Import price from/into China PR as per World Trade Atlas has been adopted)
  - b) Prices of chemicals and reclaimed rubber have been considered based on domestic industry's data
  - c) Consumption Norms of the most efficient constituent of domestic industry
  - d) Conversion costs based on the most efficient constituent of domestic industry
  - e) Selling, general and administrative expenses based on the most efficient constituent of domestic industry
  - f) Notional Profit @ 5% has been considered

#### **Estimates of Export Price**

47. Section 9A(1)(b) of the Act and Rule 10 of the Rules, inter-alia, governs determination export price in relation to an article.

*“export price”, in relation to an article, means the price of the article exported from the exporting country or territory and in `cases where there is not export price or where the export price is unreliable because of association or a compensatory arrangement between the exporter and the importer or a third party, the export price may be constructed on the basis of the price at which the imported articles are first resold to an independent buyer or if the article is not resold to an independent buyer, or not resold in the condition as imported, on such reasonable basis as may be determined in accordance with the rules made under sub-section (6);*

**a. Submissions made by the foreign producers/exporters/other interested parties**

48. Submissions made by the producers/exporters/other interested parties in this regard are as follows
- i. The petitioner has determined the export price by adopting DGCI&S data. Price adjustments have been made on account of commission, port expenses, bank charges, handling charges, inland freight, ocean freight, marine insurance and VAT'.
  - ii. Annex 3.3 to the Petition mentions that the following adjustments have been made in order to compare the normal value and the export price at a same level

- of trade such as Ocean freight, Marine insurance, commission, port expenses, inland freight expenses, bank charges and VAT loss.
- iii. Petition does not contain necessary evidence supporting the determination of export price

b. **Submissions made by the Domestic Industry**

49. Submissions made by the domestic industry in this regard are as follows:

- i. According to the WTO Agreement on Anti-Dumping and Indian Anti-Dumping Rules, the comparison of normal value and export price must be at the same level of trade. Thus, for fair comparison between the normal value and export price, it is necessary to compare the two at the same level of trade. The export prices being CIF value while the normal values being at ex-factory level, the export prices have been adjusted for, ocean freight, marine insurance, commission, inland freight expenses, port expenses, bank charges and VAT.
- ii. Petitioners have provided all relevant information for establishment of export price. Further, the authority has resorted to sampling and may consider the information/evidence provided by these responding exporters.

**Examination by the Authority**

50. The comparison of normal value with export price must be a fair comparison. Both normal value and export price have been determined at ex-factory level and pertain to the same period. There are no known differences in the conditions and terms of sale. Both the prices are free of taxes. There appears no other difference in the two prices. Thus, the comparisons made by the petitioner constitute a fair comparison.

51. The dumping margin is not only above *de minimis* levels, but also substantial.

**Export Price of sampled producers/exporters**

**Shandong Yinbao Tyre Group Co., Ltd. (Producer/Exporter) along with traders M/s. Cantop International (Qingdao) Co., Ltd & Tiremart (Qingdao) Inc.**

52. From the response filed by M/s Shandong Yinbao Tyre Group Co., Ltd. (Yinbao), authority notes that Yinbao is a producer as well as exporter of the subject goods. During the POI, Yinbao exported 204,09,071Kgs of the subject goods directly and also through two unrelated trading companies i.e. M/s. Cantop International (Qingdao) Co., Ltd & Tiremart (Qingdao) Inc. Both trading companies have filed responses separately. Yinbao has claimed adjustment towards inland freight, ocean freight, commission, handling and customs charges, insurance, credit cost, VAT adjustment and bank charges and the same have been allowed by the authority. Further, the authority notes that one of trader has exported the subject goods to India

at a price which does not cover traders' expenses. The authority has, therefore, made appropriate adjustments on account of traders' expenses also. Accordingly, the export price so determined for Yinbao (direct exports) and through unrelated traders at ex-factory level is shown in the Dumping Margin Table below.

**Aeolus Tyre Co., Ltd (Producer/Exporter)**

53. From the response filed by M/s Aeolus Tyre Co., Ltd (Aeolus), authority notes that Aeolus is a producer as well as exporter of the subject goods and is related to Qingdao Yellow Sea Rubber Co., Ltd. (Producer/Exporter). Aeolus has claimed adjustment towards inland freight, ocean freight, handling and customs charges, insurance, credit cost, VAT adjustment and bank charges and the same have been allowed by the authority. Accordingly, the export price so determined for Aeolus at ex-factory level is shown in the Dumping Margin Table along with Qingdao Yellow Sea Rubber Co., Ltd. (Producer/Exporter) below.

**Shandong Hengfeng Rubber & Plastic Co., Ltd. (Producer/Exporter)**

54. From the response filed by M/s Shandong Hengfeng Rubber & Plastic Co., Ltd. (Hengfeng), authority notes that Hengfeng is a producer as well as exporter of the subject goods. Hengfeng has claimed adjustment towards inland freight, ocean freight, handling and customs charges, insurance, credit cost, VAT adjustment and bank charges and the same have been allowed by the authority. Accordingly, the export price so determined for Hengfeng at ex-factory level is shown in the Dumping Margin Table below.

**Qingdao Yellow Sea Rubber Co., Ltd. (Producer/Exporter) along with trader M/s. Tiremart (Qingdao) Inc.**

55. From the response filed by M/s Qingdao Yellow Sea Rubber Co., Ltd. (Yellow Sea), authority notes that Yellow Sea is a producer as well as exporter of the subject goods is related to Aeolus Tyre Co., Ltd (Producer/Exporter). During the POI, Yellow Sea exported the subject goods directly and also through unrelated trader M/s. Tiremart (Qingdao) Inc. Yellow Sea has claimed adjustment towards inland freight, handling and customs charges, credit cost, VAT adjustment and bank charges and the same have been allowed by the authority. Accordingly, the export price so determined for Yellow Sea (direct exports) and through M/s. Tiremart (Qingdao) Inc at ex-factory level is shown in the Dumping Margin Table along with Aeolus Tyre Co., Ltd (Producer/Exporter) below:

**Qingdao Doublestar Tire Industrial Co., Ltd. (Producer/Exporter)**

56. From the response filed by M/s Qingdao Doublestar Tire Industrial Co., Ltd. (Doublestar), Authority notes that Doublestar is a producer as well as exporter of

the subject goods. Doublestar has exported both Tyres and flap collectively to India but have not reported flap in its response. Further, Doublestar has not reported the correct invoice value in some of the transactions. In view of the above, the authority is unable to accept the export price as reported by Doublestar and reject the response filed by Doublestar. Accordingly, the export price for Doublestar at ex-factory level is determined on the basis of facts available.

### **Dumping margin for Non-Sampled Co-operative Producers and Exporters**

57. The dumping margin for the producers and exporters , who had filed response to the questionnaire but were not sampled by the Authority, has been determined as the weighted average of the dumping margins of the sampled producers and exporters as above in terms of Rule 18(2) of the Rules which read as follows:

*(2) In cases where the designated authority has selected percentage of the volume of the exports from a particular country, as referred to sub-rule (3) of rule 17, any anti-dumping duty applied to imports from exporters or producers not included in the examination shall not exceed -*

*(i) the weighted average margin of dumping established with respect to the selected exporters or producers or,*

*(ii) where the liability for payment of anti-dumping duties is calculated on the basis of a prospective normal value/ the difference between the weighted average normal value of the selected exporters or producers and the export prices of exporters or producers not individually examined*

### **Export Price and dumping margin for all other producers/exporters from China**

58. The Authority notes that no other producer/exporter from China has responded to the Authority in the present investigation. For all the non-cooperative producers/exporters in China, the Authority has determined the export price on the basis of best available information and the same is shown in the Dumping Margin Table below. For this purpose, the Authority has considered data from the questionnaire response of the sampled companies.
59. The net ex-work normal value determined have been compared with the export prices of the sampled producers and exporters as determined above to arrive at the weighted average dumping margins of non-sampled producers and exporters. The dumping margin of non-cooperative producer/ exporter have been arrived based on facts available as per the details below:

SN	Company	Normal Value	Net export price	Dumping margin	Dumping margin	Dumping margin
		US\$/MT	US\$/MT	US\$/MT	INR/MT	%
1.	Non-Sampled Co-operative Producers and Exporters	***	***	***	***	10-30%
2.	Non-cooperative producers/exporters	***	***	***	***	20-40%

60. The dumping margins so determined are above de minimis limits.

### **G. Determination of Injury and Causal Link**

61. The petitioners have alleged that the dumped imports from the subject country are causing material injury to the like product domestic industry in India. Having determined that the goods are entering from the subject country at dumped prices the Authority proceeds to examine the degree and extent of injury, if any, suffered by the domestic industry.

62. Rule 11 of the Rules read with Annexure –II provides that an injury determination shall involve examination of factors that may indicate injury to the domestic industry, “... taking into account all relevant facts, including the volume of dumped imports, their effect on prices in the domestic market for like articles and the consequent effect of such imports on domestic producers of such articles...”. In considering the effect 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 article in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree.

#### **G.1. Submissions made by the producers/exporters/other interested parties**

63. Submissions made by the producers/exporters/other interested parties in this regard are as follows:

- i. The sales of TBR have increased by 60% during the injury period with the high demand and radialization.
- ii. The economic factors demonstrate that it is experiencing positive developments and is in a situation of strength.
- iii. The DI imports raw materials at a high price due to hefty customs duties which increases the constructed normal value

- iv. The price of natural rubber has significantly decreased.
- v. The reduction in the domestic industry's market share, if any, is not caused by imports of TBR originating in China PR but by other factors. Increase in market share of Chinese origin goods is inconsequential as far as performance of the Indian Industry is concerned and therefore not a relevant fact for the determination of injury.
- vi. The total imports of TBR account for less than 7.4 percent of the total TBR consumption in India.
- vii. The injury suffered is self-inflicted by unfair practices
- viii. The high price charged by the domestic industry for TBR in the replacement market is not caused by the imports but is rather the consequence of the pricing policy followed by them
- ix. The injury suffered, if any, is caused by the competition from other domestic producers- The decrease in market share of the DI, is caused by the aggressive pricing behaviour of other domestic competitors.
- x. The imports of TBR do not cause injury to TBB as firstly TBR and TBB are not interchangeable and the market is shifting towards TBR because they offer "higher life/mileage, lower fuel consumption, and improved safety and ride quality". Secondly, ADD on imports of TBB is still in force. Thirdly, the market for TBB is shrinking because of radialization.
- xi. Imposition of ADD on imports of TBR will go against the public interest.
- xii. The Petitioners have submitted new data on the production capacity, the production and the capacity utilization of the domestic industry for TBR in written submissions without any explanation on the reason for the modification of this information at a very late stage of the investigation. The modifications have been made for all the years. Designated Authority should scrutinize the data submitted by Petitioner with special attention.
- xiii. It is not disputed that the import of TBR from China PR has been increasing. However, those imports do not have a negative impact on the domestic industry in so far as its performance is concerned. The domestic industry is performing very well and that no economic parameter of the domestic industry is negative.
- xiv. There is no evidence to show that the levels of price undercutting are significant
- xv. The domestic demand for TBR exceeds the production capacity of the domestic industry and that imports are therefore necessary to cope with the growing demand of TBR in India.
- xvi. The production capacity of the domestic industry is not enough to satisfy the entire demand for TBR in India as there is a difference of 37,137 MT between its production capacity and the total demand for TBR in India
- xvii. The warranty expenses and the interest paid to dealers by the domestic industry should be deduced from the domestic selling price for the determination of the price undercutting because Chinese producers do not follow those practices.

- xviii. Domestic industry has increased its production capacity during the POI. Accordingly, they would have capitalized their additional capacity in their books of account during the POI and the same needed to be checked whether the capital employed during the POI covers revenue expenses like trial run expenses, forex losses and interest incurred during the trial run period which would have been capitalized during the POI. If such revenue expenses were capitalized during the POI, no return should be granted on such capitalized expenses as per the consistent practice of the Designated Authority.
- xix. The injury suffered is self-inflicted on account of unfair practices. The injury suffered, if any, is caused by the competition from other domestic producers
- xx. Despite increase in import the petitioners as well as other Indian manufactures have achieved higher and increased production volume by 61%, increase in production capacity by 26%, higher plant/capacity by 27% and increase in sales volume by 60%, increase in sales value by 54% as compared to the base year. The prices of the imported goods has neither affected the volumes of the Domestic Industry nor has it affected the pricing of the petitioners or Indian manufacturers.
- xxi. The performance of Indian producers including petitioners is showing a trend independent of prices of subject imports into India from subject country.
- xxii. Despite alleged dumping and Price undercutting & price suppression/depression on account of import of subject goods from China PR the petitioners as well as India manufactures have achieved, much higher rate of profit, cash profit, profit before interest and tax and return on capital employed.
- xxiii. The Production and sales of TBR both in OE & Replacement segment have increased tremendously during injury period and Period of Investigation.

## **G.2. Submissions made by the Domestic Industry**

64. Submissions made by the domestic industry in this regard are as follows:
- i. The imports of TBR are causing injury to the domestic industry producing and selling TBR and TBB. Imports of TBR are in fact replacing requirement of TBB. The domestic industry has suffered so significant injury in TBB that the overall performance of the domestic industry in respect of TBR and TBB also shows deterioration in respect of sales volumes and market share. This is despite the fact that there is no known import of TBB (which further establishes that the decline in combined performance is due to dumping of TBR in the Country).
  - ii. Imports of subject goods from other countries are at much higher prices. There is no viable substitute to this product. The demand for the subject goods was showing significant increase and this could not have been a factor affecting domestic prices.
  - iii. There is continuous increase in domestic demand of the subject goods in India. There has been a significant increase in dumped imports, both in absolute terms and relative to total imports of the product, production and consumption/demand in India.

- iv. Demand for TBR is rising and the same has led to increased imports. The low level of capacity utilization in POI despite rising demand for TBR shows the dumping of the product has prevented utilization of the capacities for the product.
- v. The weighted average import prices have been significantly below the selling prices of the domestic industry, resulting in significant price undercutting.
- vi. The levels of price undercutting are significant per se to justify imposition of anti-dumping duty. The imports have depressing effect on the prices of the domestic industry to a significant degree. However, landed price of imports have been below the level of cost of sales during the POI. It is submitted in this regard that the peculiar nature of the present industry is required to be considered.
- vii. Performance of the domestic industry improved in terms of production and domestic sales. However, the domestic industry is holding unutilized capacities. Capacities with the domestic industry cannot be compared with the demand for TBR in India.
- viii. The market share of subject country has increased throughout the injury period. The market share of domestic industry has decreased despite increase in demand and capacity.
- ix. Inventories with the domestic industry have increased during the injury period and further in POI. This is clearly due to the effect of dumping since demand in the country for the product concerned has grown over the period.
- x. Employment and wages are dependent on a number of other parameters and not reflective of impact of dumping on the domestic industry
- xi. Ability to raise fresh investment is not impacted by dumping of the product as investment decisions are long term decisions and are taken considering present and potential demand for the product under consideration.
- xii. So significant is the injury to the domestic industry because of dumping of product under consideration that the same is causing significant injury in respect of overall truck & bus tyres operations of the domestic industry. The combined information filed by the domestic industry in respect of TBR and TBB demonstrates the same
- xiii. So significant is the adverse effect of dumping on the domestic industry that the performance of the domestic industry in respect of total truck & bus tyres operations (TBR+TBB) shows deterioration in respect of production for replacement market, domestic sales volumes in replacement market and market share of the domestic industry in India.
- xiv. Dumping of truck and bus tyres in India has caused significant material injury to the domestic industry in respect of both TBR and TBB.
- xv. The phenomenon of 'Marginal Rate of Substitution' establishes that the TBR and TBB are clearly substitutable for the consumers.
- xvi. The correlation coefficient of TBR and TBB demand is inversely moving, i.e., if TBR demand increases, TBB demand decreases and vice-versa.
- xvii. The use of China Customs import statistics is disputed and requests the DA to only resort to the import data provided by the DGCI&S.
- xviii. The interested parties concede that (a) volume of imports increased very significantly and (b) the price undercutting is positive.

- xix. The CESTAT annulled the imposition of ADD in the previous investigation on TBR but the Supreme Court has not disposed of the appeal filed against the CESTAT order, and thus it has not attained finality.
- xx. The sales volume of TBR has increased by 60% during the injury period with the high demand and radialisation. TBB and TBR is one article, leading to substitution, the injury suffered by TBB cannot be ignored.
- xxi. The effect of dumped imports first felt on volume parameters. And, when faced with adverse volume effect, the industry gets constrained to take steps on the pricing to adjust to the import competition and also considers the input prices.
- xxii. The reduction in the DI market share in demand is caused due to imports whereas volume import increased by about 48,000 MT from subject country over the injury period, volume of imports from third countries declined only by 10,000 MT. This further establishes that the Chinese producers took over the demand which would have been taken by Indian industry had the Chinese not resorted to dumping.
- xxiii. Market share of dumped imports is quite high if OEM consumption is excluded. Above all, Chinese product has already taken over significant market share.

### **G.3. Examination by the Authority**

- 65. In order to consider various submissions made by the domestic industry and other interested parties, the Authority has examined injury to the domestic industry, if any on account of dumped imports from the subject country.
- 66. Annexure-II of the Anti-dumping Rules provides for 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 the like articles; and (b) the consequent impact of these imports on domestic producers of such articles. With regard to the volume effect of the dumped imports, the Authority is required to examine whether there has been a significant increase in dumped imports, either in absolute term or relative to production or consumption in India. With regard to the price effect of the dumped imports, the Authority is required to examine whether there has been significant price undercutting by the dumped imports as compared to the price of the like product in India, or whether the effect of such imports is otherwise to depress the prices to a significant degree, or prevent price increases, which would have otherwise occurred to a significant degree.
- 67. As regards the impact of the dumped imports on the domestic industry. Para (iv) of Annexure-II of the Anti-Dumping Rules states as follows:

*“The examination of the impact of the dumped imports on the domestic industry concerned, shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the Industry, including natural and potential decline in sales, profits, output, market share, productivity, return on investments or utilization of capacity; factors affecting domestic prices, the magnitude of margin of dumping actual and potential negative effects on cash flow, inventories, employment wages growth, ability to raise capital investments.”*

68. For the examination of the impact of the dumped imports on the domestic industry in India, indices having a bearing on the state of the industry such as production, capacity utilization, sales volume, stock, profitability, net sales realization, the magnitude and margin of dumping, etc. have been considered.

**Volume and Price Effect of the dumped imports on the Domestic industry**

**(a) Volume Effect**

69. With regard to volume of the dumped imports, the Designated Authority examined whether there has been a significant increase in dumped imports either in absolute terms or relative to production or consumption in India. Annexure II (ii) of the anti-dumping rules provides as under:

*“While examining the volume of dumped imports, the said Authority shall consider whether there has been significant increase in the dumped imports either in absolute terms or relative in production or consumption in India”*

**i. Assessment of Demand /Apparent Consumption-**

70. Authority has defined, for the purpose of the present investigation, demand or apparent consumption of the product in India as the sum of domestic sales of the Indian Producers and imports from all sources. The demand so assessed is given in the table below. The Authority notes that the demand of the product under consideration has increased over the period. The Authority also notes that demand for the product shows rising trends.

SN	Particulars	UOM	2012-13	2013-14	2014-15	POI(A)
(i)	Subject Country-China	MT	4,146	12,500	30,665	52,092
	Indexed		100	301	740	1,256
(ii)	Other Countries	MT	21,724	21,124	13,875	11,809
	Indexed		100	97	64	54
(iii)	DI domestic Sales	MT	1,37,402	1,56,918	1,99,358	2,18,442
	Indexed		100	115	146	160
(iv)	Other Indian Producers	MT	57,505	76,117	1,20,971	1,20,659
	Indexed		100	132	210	210
V	Domestic Producers as a whole	MT	1,94,907	2,33,035	3,20,329	3,39,101
	Indexed		100	120	164	174
	Total demand	MT	2,20,777	2,66,659	3,64,869	4,03,002
			100	122	166	183

**ii. Increase in absolute terms**

71. The Authority notes that imports of the product under consideration increased

significantly in absolute terms throughout the injury period. Further, whereas the Chinese imports increased significantly over the injury period, non-Chinese imports declined sharply over the injury period. Share of China in total imports of the product under consideration in India increased sharply over the injury period.

SN	Particulars	UOM	2012-13	2013-14	2014-15	POI(A)
1	Import Volume					
(i)	Subject Country-China	MT	4,146	12,500	30,665	52,092
(ii)	Other Countries	MT	21,724	21,124	13,875	11,809
	Total	MT	25,870	33,624	44,540	63,901
2	Share in Imports					
(i)	Subject Country-China	%	16.03%	37.18%	68.85%	81.52%
(ii)	Other Countries	%	83.97%	81.65%	53.63%	45.65%
	Total	%	100	232	430	509

### iii. Market Share

72. Considering imports from various sources and sales of the domestic industry, market share of subject imports in demand in India was examined. Share of dumped imports from China increased substantially as compared to the base year. Consequently, the share of the Domestic Industry has declined.

SN	Particulars	UOM	2012-13	2013-14	2014-15	POI(A)
(i)	Market share of imports from the Subject Country-China	%	1.88	4.69	8.40	12.93
	Indexed		100	250	448	688
(ii)	Other Countries	%	9.84	7.92	3.80	2.93
	Indexed		100	81	39	30
(iii)	Market share of DI domestic Sales	%	62.24	58.85	54.64	54.20
	Indexed		100	95	88	87
(iv)	Other Indian Producers	%	26.05	28.54	33.15	29.94
	Indexed		100	110	127	115
V	Domestic Producers as a whole	%	88.28	87.39	87.79	84.14
	Indexed		100	99	99	95
	Total	%	100	100	100	100

### (b) Price Effect

73. With regard to the effect of the dumped imports on prices, Annexure II (ii) of the Rules lays down as follows-

*“With regard to the effect of the dumped imports on prices as referred to in sub-rule (2) of rule 18 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.”*

74. Accordingly, the impact on the prices of the domestic industry on account of dumped imports of the subject goods from the subject country have been examined with reference to price undercutting, price suppression/depression and price underselling.

**i. Price Undercutting**

75. Price undercutting has been determined by comparing the export price from China with the selling price of the domestic industry in India. The weighted average import prices have been significantly below the selling prices of the domestic industry resulting in significant price undercutting during 2013-14, 2014-15 and POI. However, during 2012-13, the price undercutting was negative. Further, there is declining trend of price undercutting during 2014-15 and POI.

76. The domestic industry has contended that the price undercutting be determined considering excise duty. The Authority has however determined price undercutting by not adding countervailing duty / excise duty on the assessable value of imported product as well as domestic goods as per the consistent methodology followed by the Authority.

77. The Authority notes that the levels of price undercutting are significant per se to examine and conclude about the adverse price effect of dumped imports on the domestic industry.

Particulars	Unit	2012-13	2013-14	2014-15	POI (A)
Import Volume	MT	4,146	12,500	30,665	52,092
Landed price of imports	Rs/MT	241289	172269	168577	166306
Net Sales Realisation	Rs/MT	***	***	***	***
Price Undercutting	Rs/MT	***	***	***	***
Price Undercutting	%	***	***	***	***
Price Undercutting	Range	(10)-(15)	20-25	20-25	20-25

**ii. Price Suppression / Depression**

78. Comparison of the cost of sales and selling price of the domestic industry and landed price of imports shows that the imports were not depressing the prices of the

domestic industry to a significant degree. However, landed price of imports have been below the level of cost of sales and selling price of the domestic industry during 2013-14, 2014-15 and POI. However, during 2012-13 the landed price has been above the cost of sales as well as selling price of DI. It is also noted that while the cost of sales and selling price of DI has declined during the injury period and POI, the rate of decrease of cost of sales is higher than the selling price. Significant price gap between the domestic and imported product has led to consumers increasingly switching over to the imported Chinese product.

Parameters	Unit	2012-13	2013-14	2014-15	POI
Cost of sales	Rs./MT	***	***	***	***
Indexed		100	99	87	85
Selling price	Rs./MT	***	***	***	***
Indexed		100	101	97	95
Landed price of imports	Rs./MT	241289	172269	168577	166306
Indexed		100	71	70	69

### iii Price Underselling

79. The Authority notes that there has been price underselling on account of dumped imports:

Particulars	Unit	POI
Landed price of imports	Rs/MT	166306
Non-Injurious Price (TTF)	Rs/MT	***
Price Underselling	Rs/MT	***
Price Underselling	%	***
Price Underselling	Range	10-20

### Conclusion on volume effect & price effect

80. The Authority notes that there has been a significant increase in dumped imports, both in absolute terms and in relation to production and consumption in India. Imports are undercutting the domestic prices to a significant degree. While the imports were marginally depressing the prices of the domestic industry in the market, the landed price of imports have been significantly below the level of cost of sales of the domestic industry during the period of investigation.

### H. Economic parameters affecting the domestic industry:

81. Annexure II to the Rules requires that a determination of injury shall involve an

objective examination of the consequent impact of these imports on domestic producers of such products. With regard to consequent impact of these imports on domestic producers of such products, the Rules further provide that the examination of the impact of the dumped imports on the domestic industry should include an objective and unbiased evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including actual and potential decline in sales, profits, output, market share, productivity, return on investments or utilization of capacity; factors affecting domestic prices, the magnitude of the margin of dumping; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital investments.

82. The Authority has examined performance of the domestic industry to determine consequent impact of the dumped imports on the domestic industry.

**a) Capacity, Production and Capacity Utilization & Sales volume**

83. The Authority has considered capacity, production, capacity utilization and sales volume of the domestic industry over the injury period and notes as follows:

- i. The domestic industry has enhanced their capacity over the injury period. Considering the current and potential demand for the product, the Authority notes that the Indian market has significant opportunity for capacity additions.
- ii. Production and domestic sales of the domestic industry increased substantially over the injury period. The capacity utilisation of the domestic industry for the product under consideration has also improved. However, the increase in imports and demand was more than the increase in sales of the domestic industry.

Parameters	Unit	2012-13	2013-14	2014-15	POI
Capacity	MT	205,259	239,859	249,387	263,741
Production	MT	146,986	183,014	215,528	236,290
Indexed		100	125	147	161
Capacity Utilization	%	71.61	76.30	86.42	89.59
Domestic Sales	MT	1,37,402	1,56,918	1,99,358	2,18,442
Indexed		100	115	146	160

**b) Profits, Cash Profits and Return on Capital Employed**

84. Performance of the domestic industry was examined in respect of profits, cash profits and return on capital employed. The Authority notes that the performance of the domestic industry improved substantially during injury period and POI. The dumped imports did not have adverse effect on profits, cash profits. Return on Capital employed of the domestic industry have also increased substantially during

injury period and POI, although there is marginal decline in POI as compared to preceding year. The domestic industry has however contended that the domestic industry would have earned higher profits, cash profits and return on capital employed in the absence of dumping of the product in the Country.

Particulars	Unit	2012-13	2013-14	2014-15	POI-A
Profit per unit	Rs./MT	***	***	***	***
Indexed		100	690	2047	2224
Cash Profit	Rs Crores	***	***	***	***
Indexed		100	203	426	501
Cash Profit	Rs./MT	***	***	***	***
Indexed		100	163	291	312
Profit before Interest	Rs Crores	***	***	***	***
Indexed		100	180	350	394
Return on investment	%	***	***	***	***
Indexed		100	181	322	312

**c) Stock/inventories**

85. Inventories with the domestic industry have increased to some extent during the injury period as well as POI.

Stock ( Volume)	Unit	2012-13	2013-14	2014-15	POI-A
Opening stock	MT	***	***	***	***
Indexed		100	101	133	104
Closing stock	MT	***	***	***	***
Indexed		100	131	101	162
Average stocks	MT	***	***	***	***
Indexed		100	116	117	133

**d) Employment, Wages & Productivity**

86. Employment and wages paid by the domestic industry and productivity has increased over the injury period. Hence, the dumped imports do not appear to have affected employment, wages and productivity trends. However, the domestic industry contended that these parameters are dependent on a number of other parameters and not reflective of impact of dumping on the domestic industry.

Particulars	Unit	2012-13	2013-14	2014-15	POI-A
No of Employees	Nos	***	***	***	***
Indexed		100	125	136	143
Wages	Rs. Crs	***	***	***	***
Indexed		100	145	177	204
Wages per Unit	Rs./MT	***	***	***	***
Indexed		100	117	121	127
<b>Productivity</b>					
Per Employee	MT/No	***	***	***	***
Indexed		100	100	107	113
Per Day	MT/Day	***	***	***	***
Indexed		100	125	147	161

**e) Growth**

87. Examination of growth parameters of the domestic industry during the injury period shows that while the dumped imports are having negative effect on the domestic industry in respect of market share, the domestic industry has registered positive growth in respect of various parameters like production, sales, cost of sales, profits, rate of return etc.

Particulars	UOM	2012-13	2013-14	2014-15	POI
Production	%		24.5	17.76	9.63
Sales	%		14.20	27.05	9.57
ROI	%		80.84%	77.83%	-2.93%
Market share- DI	%		-1.47	-1.3	-0.09
Market share-Total Indian Industry	%		-0.91	-0.86	-1.96

**f) Magnitude of Dumping Margin**

88. The dumping margin in respect of each of the sampled responding producer/exporter is not only more than de-minimis but also significant as shown in the table below:

Producer	Exporter	Exports to India (MT)	Normal Value US\$ per MT	Export Price US\$ per MT	Dumping Margin US\$ per MT	Dumping Margin INR per MT	Dumping Margin %	Dumping Margin Range
Shandong Yinbao Tyre Group Co., Ltd	1. Shandong Yinbao Tyre Group Co., Ltd 2. M/s. Cantop International (Qingdao) Co., Ltd 3. Tiremart (Qingdao) Inc.	***	***	***	***	***	***	10-30%
Aeolus Tyre Co., Ltd	Aeolus Tyre Co., Ltd	***	***	***	***	***	***	0-20%
Qingdao Yellow Sea Rubber Co., Ltd	1. Qingdao Yellow Sea Rubber Co., Ltd. 2. Tiremart (Qingdao) Inc.							
Shandong Hengfeng Rubber & Plastic Co., Ltd.	Shandong Hengfeng Rubber & Plastic Co., Ltd.	***	***	***	***	***	***	0-20%

**g) Factors affecting prices**

89. The Authority notes that price of imported material from subject country is significantly below the selling price of the domestic industry, causing loss of market share in the replacement market, as the consumers have increasingly switched over to the Chinese tyres in place of domestic ones. Further, imports of the subject goods from other countries are at much higher prices.

**h) Ability to raise fresh Investment**

90. The Authority notes that the ability to raise fresh investment is not impacted by dumping of the product as investment decisions are long term decisions and are taken considering present and potential demand for the product under consideration. However, long term viability of the product under consideration is dependent upon strong profitable business.

**Conclusions on injury:**

91. Considering various parameters relating to material injury, the Authority concludes that:
- a. The dumped imports of the subject goods have increased in absolute terms.
  - b. Whereas share of subject imports has steeply increased, that of imports from third countries has declined.
  - c. The dumped imports of the subject goods have increased in relation to production and consumption of the subject goods in India.
  - d. The subject goods are undercutting the prices of the domestic industry in the market.
  - e. Production and sales of the domestic industry have increased over the injury period. The market share of the domestic industry has declined.
  - f. Inventories with the domestic industry has increased to some extent.
  - g. Profits, cash profits and return on capital employed have improved substantially over the period.
  - h. The landed price of imports from China is below the selling price and cost of sales of the domestic industry.

**I. MAGNITUDE OF INJURY AND INJURY MARGIN**

92. The NIP of domestic industry determined have been compared with the landed value of the sampled producers and exporters as determined to arrive at the injury margins for non-sampled producers and exporters as follows. The below table shows the positive injury margin during POI. The injury margin of non-cooperative producer/ exporter have been arrived based on facts available as per the details below:

<b>Producer</b>	<b>Exporter</b>	<b>Exports to India (MT)</b>	<b>NIP US\$ per MT</b>	<b>Landed Value US\$ per MT</b>	<b>Injury Margin US\$ per MT</b>	<b>Injury Margin INR per MT</b>	<b>Injury Margin %</b>	<b>Injury Margin Range</b>
Shandong Yinbao Tyre Group Co., Ltd	1. Shandong Yinbao Tyre Group Co., Ltd 2. M/s. Cantop International (Qingdao) Co., Ltd 3. Tiremart (Qingdao) Inc.	***	***	***	***	***	***	15-30%
Aeolus Tyre Co., Ltd	Aeolus Tyre Co., Ltd	***	***	***	***	***	***	10-25%
Qingdao Yellow Sea Rubber Co., Ltd	1. Qingdao Yellow Sea Rubber Co., Ltd. 2. Tiremart (Qingdao) Inc.							
Shandong Hengfeng Rubber & Plastic Co., Ltd.	Shandong Hengfeng Rubber & Plastic Co., Ltd.	***	***	***	***	***	***	10-25%

93. The injury margin for the non-sampled cooperative producers/exporters has been determined based on the weighted average injury margin for the non-sampled producers/exporters and for non-cooperative producer/exporters the injury margin has been determined based on facts available. The below table shows the positive injury margin during POI.

SN	Producer/exporters	NIP	Landed Value	Injury margin	Injury Margin	Injury margin
		US\$/MT	US\$/MT	US\$/MT	INR/MT	%
1.	Non-Sampled Co-operative Producers and Exporters	***	***	***	***	20-30
2.	Non-cooperative producers/exporters	***	***	***	***	30-40

94. Having regard to the rules, the Authority concludes that various parameters relating to injury collectively and cumulatively establish that the imports are causing material injury to the domestic industry. In view of the same, the threat of injury analysis does not appear to be essential.

## **J. CAUSAL LINK AND OTHER FACTORS**

### **J.1. Submissions made by the producers/exporters/other interested parties**

95. Submissions made by the producers/exporters/other interested parties in this regard are as follows:

- i. There is no causal link between the injury and the alleged import. The domestic industry is suffering injury due to other factors. None of the economic indicators shows sign of any injury leave aside any material injury both on the price front and volume front. The economic indicators suggest no correlation between imports of subject goods and performance of domestic industry in respect subject article as the prices have moved independently without any drop in sales volume.
- ii. Mere increase in the volume of imports and existence of price undercutting is therefore not sufficient. It is necessary to demonstrate that the imports have a negative impact on the domestic industry.
- iii. The domestic industry is a thriving industry, not in a situation of fragility or vulnerability and does not suffer any injury.
- iv. The economic factors demonstrate that it is experiencing positive developments and is in a situation of strength.
- v. The cost of production of the domestic industry are high because of the prices of raw materials paid by the domestic industry in relation to the TBR production.
- vi. The domestic industry imports raw materials at a high price due to hefty customs duties.
- vii. India levies a 20 percent customs duty and additional excise duties on natural rubber. These duties are ultimately reflected into the price of TBR sold by the domestic industry.

- viii. The total imports of TBR account for less than 7.4 percent of the total TBR consumption in India.
- ix. The injury suffered is self-inflicted by unfair practices.
- x. The high price charged by the domestic industry for TBR in the replacement market is not caused by the imports but is rather the consequence of the pricing policy followed by the domestic industry.
- xi. Alleged injury is caused by factors other than the imports of TBR from China PR.
- xii. The injury suffered, if any, is caused by the competition from other domestic producers. The decrease in market share of the domestic industry is caused by the aggressive pricing behaviour of other domestic competitors.
- xiii. The imports of TBR does not cause injury to TBB as first, TBR and TBB are not interchangeable and the market is shifting towards TBR because they offer “higher life/mileage, lower fuel consumption, and improved safety and ride quality”. Second, ADD on imports of TBB imposed since 2007, is still in force.
- xiv. Imposition of ADD on imports of TBR will go against the public interest.
- xv. The domestic industry made poor strategic decisions by investing in TBB instead of TBR. Domestic industry has been focusing for a long time on TBB and has only recently made investments to increase its TBR capacity to cope with the growing demand for TBB
- xvi. The prices charged by the domestic industry do not reflect the drop in cost of production. The prices of natural rubber have declined during the POI as reported by the Indian Rubber Board. Natural rubber is the main element of the cost of production of TBR and account for around 30% of the total cost of production.
- xvii. Any price undercutting is therefore only self-inflicted by the domestic industry which refuse to reflect the lower cost of production in its selling prices.

## **J.2. Submissions made by Domestic Industry**

96. Submissions made domestic industry in this regard are as follows:
- i. Imports from countries other than the subject country are either negligible or the import prices are higher, and are hence not causing injury to the domestic industry.
  - ii. The performance of the domestic industry and injury thereto has been examined with respect to the domestic sales operations to the extent possible. Possible deterioration in the export performance of the domestic industry is, therefore, not a possible cause of injury to the domestic industry.
  - iii. The technology and production process for producing product under consideration has not undergone any significant development. Possible development in technology is not a cause of injury to the domestic industry.
  - iv. Performance of other products being produced and sold by the petitioner is not a possible cause of injury to the domestic industry. In any event, the petitioner considers that information relating to the product under consideration is the only

relevant information for the present purpose and the petitioner has provided this information as the domestic industry.

- v. There is no trade restrictive practice, which could have contributed to the injury to the domestic industry.
- vi. There has been no material change in the pattern of consumption of the product under consideration, except that the consumers of TBB have started switching over to imported TBR in view of availability of these tyres at a price below the selling price of TBB. Changes in the pattern of consumption have not caused claimed injury to the domestic industry. In fact, demand for the subject goods has increased over the relevant period.

#### **I. Examination by the Authority**

97. As per the AD Rules, the Authority, inter alia, is required to examine any known factors other than the dumped imports which at the same time are injuring the domestic industry, so that the injury caused by these other factors may not be attributed to the dumped imports. Factors which may be relevant in this respect include, inter alia, the volume and prices of imports not sold at dumped prices, contraction in demand or changes in the patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and the productivity of the domestic industry. It was examined whether these listed known other factors listed under the AD Rules could have contributed to injury to the domestic industry. It was found that:-

##### **a) Volume and price of imports from third countries:**

98. The Authority notes that there was low volume of imports of the product under consideration from third countries in the POI. Further, import price from third countries are higher than the import price from China during POI. Thus, imports from third countries could not have caused injury to the domestic industry.

##### **b) Export Performance:**

99. The Authority notes that the export volume of the domestic industry has increased during the injury period and has then declined during POI by 10.84 %. However, export profitability has been segregated and only profitability pertaining to domestic operations has been considered.

##### **c) Development of Technology:**

100. None of the interested party has raised any issue with regard to developments in technology as being the cause of injury to the domestic industry.

##### **d) Performance of other products of the company**

101. The Authority notes that the performance of other products being produced and sold by the petitioner does not appear to be a possible cause of injury to the domestic industry.

e) **Trade Restrictive Practices and Competition between the Foreign and Domestic producers:**

102. The import of the subject goods is not restricted in any manner and the same are freely importable in the country. The domestic producers compete with the landed prices of the subject goods. The price of the domestic industry is influenced substantially by the landed price of subject goods. Moreover, no evidence has been submitted by any interested party to suggest that the conditions of competition between the foreign and the domestic producers have undergone any change.

f) **Contraction in Demand and Changes in pattern of consumption:**

103. It is noted that the demand of the subject goods has increased significantly in the period of investigation as compared to the base year.

**II. Factors establishing causal link:**

104. Analysis of the performance of the domestic industry over the injury period shows that the performance of the domestic industry has deteriorated due to dumped imports from the subject country. Causal link between dumped imports and the injury to the domestic industry is established on the following grounds:

- a. Imports of the subject goods have increased in absolute terms over the entire period of investigation.
- b. Imports are undercutting the prices of the domestic industry.
- c. Price undercutting being caused by the dumped imports is resulting in increase in market share of imports and decline in market share of the domestic industry.

105. From the foregoing facts and analysis, the Authority concludes that the domestic industry appears to have suffered material injury by the dumped imports from China.

**K. INDIAN INDUSTRY'S INTEREST & OTHER ISSUES**

106. The Authority notes 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. Fair competition in the Indian market will not be reduced by the antidumping measures, particularly if the levy of the anti-dumping duty is restricted to an amount necessary to redress the injury to the domestic industry. On the contrary, imposition of antidumping measures would remove the unfair advantages gained by dumping practices, would prevent the decline of the domestic industry and help maintain availability of wider choice to the consumers of the subject goods.

107. Imposition of anti-dumping measures would not restrict imports from the subject countries in any way, and therefore, would not affect the availability of the product

to the consumers.

108. The essential facts of the investigation gathered by the Designated Authority during the course of the investigations and analysed by the Authority were disclosed in the disclosure statement to the interested parties in order to enable these interested parties to offer their comments on these facts

### **POST DISCLOSURE COMMENT SUBMISSIONS**

109. The post disclosure submissions have been received from the interested parties. Majority of the issues raised therein have already been raised earlier during the investigation and also addressed appropriately. Additional submissions have been analysed as under:

#### **Submissions made by the Domestic Industry**

110. The following comments on Disclosure statement are submitted by domestic industry:

- a. The Authority has been requested to disclose the NIP and non-confidential version of the verification report of the exporters/producers from subject country to enable the domestic industry to offer meaningful comments. Copy of all the communications sent via mail or letter to the opposing interested parties and replies filed by these interested parties should also be provided to the domestic industry. Normal value (since it is based on the domestic industry data and information publicly available/used) and actual dumping margin should also be disclosed to the domestic industry.
- b. Normal value determined is significantly low and petitioners request the Authority to disclose normal value calculations to the domestic industry, since the same is based on the domestic industry data and information publicly available/used. With respect to the export price of the sampled exporters, petitioners had provided certain evidence to the authority. Petitioners are unable to understand whether the claims made by the exporters have been corroborated with the information provided by the petitioners or such other information (DG Systems data) as is available to the Designated Authority.
- e. The disclosure statement contains three dumping margins for one producer. Authority is required to determine individual dumping margin for each known producer. Therefore, one known producer cannot have three dumping margin and three antidumping duty.
- f. Petitioners have provided significant information with regard to threat of injury and therefore requests the Designated Authority to kindly consider the same in the final findings.
- g. Authority has not considered that TBB tyre produced and supplied by the domestic industry is a like article to imported TBR tyre. Chinese TBR tyre is in fact replacing market of domestic TBB tyre and causing injury to the domestic TBB tyre market.

- h. Since the customs classification is indicative only, the Designated Authority may kindly specify in duty table that the product under consideration should attract duty regardless of the customs classification.
- i. The domestic industry has been suffering injury for quite some time. Imports of TBR are causing injury to the domestic industry producing and selling both variants of truck & bus tyres - TBR and TBB.
- j. The effect of significant increase in imports and price undercutting was ultimately felt on the prices, and profits. Decline in profits in post POI establishes the same.
- k. The Designated Authority may kindly consider examination of imports in relation to production and consumption.
- l. Authority may consider segmented analysis. Analysis with regard to the OEM segment and replacement segment has been ignored by the Authority.
- m. Authority has not done the quarterly analysis. Not only the past investigation conducted by the Authority and the decision of the CESTAT establishes that the quarterly examination of the performance of the domestic industry is appropriate, but also the requirement of potential effects of dumping further supports that quarterly analysis of the performance of the domestic industry within the POI is relevant and appropriate to establish potential effects of dumping on the domestic industry.
- n. Petitioners reiterate that various parameters of threat of injury are present in the instant case which are substantiated in the submissions made earlier as under-
  - i. The rate of increase of dumped imports is significant, indicating the likelihood of substantially increased importation of subject goods.
  - ii. Imports post December, 2015 have shown increasing trends.
  - iii. The capacity utilization of domestic industry and Indian Industry as a whole has declined.
  - iv. The industry is constantly expanding their capacity, as evidenced by the rising capacities with the industry. Given the decline in the sales volumes and production towards the end of the investigation period, the excess capacities being created are likely to suffer as a result of dumping in the Country.
  - v. Significant price undercutting establishes that imports are entering at prices that will have significant depressing and suppressing effect on domestic prices, and would likely increase demand for further imports. The rising imports in the period post POI clearly establishes the same.
  - vi. Increasing number of BIS licenses being given by GOI to the Chinese exporters clearly establishes that the volume of imports is likely to increase. More and more companies are taking BIS licenses with the intent to export their product to India.
  - vii. At present only 115 exporters have exported the product under consideration to India. However, there are another 1994 exporters who have exported the product under consideration to various parts in the world.
  - viii. Significant exports from China to various countries shows the threat that the dumping can cause to the Indian industry. Current exports of China to India amounts to only 1.8% of China' total exports globally. Hardly 1% increase in exports implies additional exports of 47,000 MT.

- ix. Surplus capacities in China and export potential to India shows sufficient freely disposable capacity in China establishing the likelihood of substantially increased dumped exports to Indian markets, taking into account the availability of other export markets to absorb any additional exports.
- x. Exports of product under consideration from subject country to third countries are also at dumped prices.
- xi. China has very high export orientation worldwide. The present difference in the prices of imported product and domestic product is very significant and is likely to increase demand for imports. Sufficient freely disposable capacities are available with the subject country posing imminent danger. China has built up significant capacities and has planned further significant expansion of capacities. These massive additions to capacity and production will only continue in the imminent future. This will, in all likelihood, make the exporters to expand their market globally and especially to India which has significant growing demand.
- xii. China accounts for more than a quarter of global production, and is now the world's largest producer and exporter of tyres.
- xiii. The import price of subject goods from China has declined significantly over the injury period. These declines are far higher in US\$.
- xiv. There is significant investment made by Chinese entities in international market to procure natural rubber, which has enabled the Chinese producers from producing and selling the product under consideration at low prices. Chinese companies have rubber plantations abroad mainly in Thailand, Malaysia, Myanmar, Laos, Cambodia and Cameroon.
- xv. The decline in import price from China is much more than the decline in raw material cost (natural rubber).
- xvi. Quarter by quarter trend in imports during POI and post POI clearly establishes the likelihood of substantial increase in imports from China.
- xvii. A number of other countries such as Brazil, Turkey, Colombia, Egypt, US have either imposed anti-dumping duty against the imports of subject goods from China or have initiated AD investigation.
- xviii. The level of inventories with the domestic industry have increased significantly in the POI with significant increase in imports during the same period. The domestic industry was restricted from selling its product to a significant extent because of dumped imports.
- xix. Huge subsidies being provided by GOC to tyre industries are enabling the Chinese companies to export at low prices.
- xx. Chinese companies are getting tax relief in the name of R&D enabling them to export at low prices
- xxi. Chinese companies are getting loans and export credits on discounted interest rates enabling them to increase their exports
- xxii. Restructuring of Tyre industries is resulting in increase in exports. GOC has provided equity infusions in the tyre industries as funds are transferred directly by the government even though the transaction might have been carried out by GOC through public bodies. The GOC is not collecting dividends that are

- normally paid to private investors on their shares. Entities directly holding the shares in the SOE are eligible for the said program.
- xxiii. Raw material & utilities are being provided by the Government on less than adequate remunerations leading to low priced exports and resultant price attractiveness of the Chinese product vis-à-vis domestic industry product.
- o. Chinese tyres are exported to over 200 countries. For the Chinese tyre exporters US is always the top most destination receiving 1.15 million tonnes of tyres followed by EU in the year 2013. In 2012, 2013 and 2014, India was not the target country for exports of tyres. However, India attained 7<sup>th</sup> rank in 2015 and 6<sup>th</sup> rank in 2016.
- p. The anti-dumping duty on the subject goods should be recommended in terms of fixed quantum, expressed as amount of duty per tyre in terms of US\$.

### **Submissions made by Other Interested Parties**

111. The following comments on Disclosure statement are submitted by other interested parties:

- a. The Designated Authority has not provided list of non-sampled exporters/producers in the disclosure statement. Lower anti-dumping duty rate is applicable for non-sampled co-operating exporters as compared to non-cooperating exporters/ producers.
- b. Product under consideration should exclude radial tyre of nominal rim dia code above 22.5” as the same is not manufactured by the domestic industry
- c. M/s Cantop International (Qingdao) Co., Ltd. has contended that due to its low volume of exports to India, its dumping margin and injury margin should not be very high i.e. 20-40% and its dumping margin and injury margin should be revised to a lower rate.
- d. The Designated Authority has not carried out objective examination of injury:
- i. Methodology adopted by the Designated Authority to assess material injury is not even handed.
- ii. The Designated has not given due weightage to mandatory economic parameters under para (iv) of Annexure II. Instead, the Designated Authority has exclusively relied on volume of imports, price undercutting, price suppression and price depression.
- iii. The Designated authority has failed to adequately analyse volume of imports, price undercutting, price suppression and price depression. Price undercutting in isolation cannot be relevant. Price undercutting is relevant only if it caused price suppression or price depression. There is no price suppression or depression due to price undercutting in the present case as domestic industry is able to maintain its prices.
- iv. Designated authority has wrongly determined that there is material injury to the domestic industry because almost all economic parameters

under para (iv) of Annexure II are showing positive developments. Positive movements (under both forms of evaluation i.e. from end point to end point analysis & year on year analysis) has been experienced in i) Capacity (ii) Production (iii) Sales (iv) Capacity utilisation (v) Cash profit (vi) Return on investment (vii) Employment (viii) Wages (ix) Productivity (x) Growth (xi) Decrease in cost of production & (xi) Ability to raise fresh investment. Also, the Designated authority has not provided any explanation as to how and why there is material injury despite positive improvements in 12 out of 15 economic parameters.

- v. The Designated authority has also failed to take into account the fact regarding decrease in cost of production due to decline in raw material prices i.e. decline in prices of natural rubber.
- e. The Designated Authority should provide same anti-dumping duty rate to related producer/exporter ( Aeolus Tyre Co., Ltd and Qingdao Yellow Sea Rubber Co., Ltd) as per the consistent practice of the Designated Authority.
- f. Domestic industry does not manufacture several of radial truck and bus tyres sizes other than 10.00 R 20 and couple of 22.5" rim dia tyres.
- g. Tyre sizes of 17.5", 19", 24" and other tyre sizes of 20" dia like 14.00 R 20, 12.00 R 20 and large number of similar sizes are claimed to be manufactured but they have not been imported from China PR except 10.00 R 20 and couple of 22.5" rim dia tyres.
- h. Domestic industry could have easily produced BIS certified TBR tyre sizes above 16" Rim dia and captured the entire domestic retail replacement market by radialization to replace the outdated technology of TBB tyres.
- i. Domestic industry has not provided any transparent data regarding the quantum of sale of each category of TBR tyres.
- j. DGAD in its disclosure report has tried to defend the PUC on flimsy input.
- k. Since the PUC is basically incorrect and wrongly defined, investigation stands on no legs and subsequent process too is shrouded under doubt and unreliability.
- l. The petition was filed considering July, 2014 - June, 2015 as POI but the DGAD, without assigning any cogent reason in the fairness to all concerned, has used his powers to expand the POI to 18 months (July 2014 - Dec 2015) as against 12 months.
- m. Similarly, for determining the injury, the DGAD has again used its powers in a similar manner by having a very long period i.e. fiscal 2013, 2014, 2015 and the expanded POI.
- n. Interested party are not privy to the genuine and transparent reasons for choosing such period and why not the DGAD has chosen to include, for the sake of argument, the fiscal 2009, 2010, 2011 and 2012 also.
- o. TBR tyre imports come from China PR mainly due to their fair pricing, superior quality, better trade practices in the domestic retail replacement market.
- p. There was quantitative restriction on TBR import during 2009-10. Anti-dumping duty was imposed on TBR in 2010 and was lifted from August 2011

by Hon'ble CESTAT on the ground that imposition of ADD cannot be levied as domestic industry was not suffering any injury and imposition of ADD would not be in the public interest. This remains the situation even now, when road transport industry consisting of lakhs of small operators and purchase their TBR tyres on credit in the replacement market.

- q. Chinese tyre makers have reduced the tyre prices in line with the global trend of lower raw material prices. However, Domestic Industry has not rolled back the tyre prices.
- r. In the Disclosure Statement, the Authority has taken into account doctored costing and pricing data of domestic Industry and ATMA.
- s. AITDF again refers to CCI Order dated 13.8.2014 in the reference case No. 8 of 2013 that "..... therefore, the price movements in the raw material cost should ideally be reflected in the final price of tyre in a competitive market.
- t. DIPP too has done an exhaustive study on tyre prices which covered POI. CCI findings very candidly explain that the tyre pricing is rigged, has parallelism and cartelisation under the Competition Act 2002.
- u. Raw material prices are in the full public domain and had fallen to rock bottom during POI but domestic tyre prices have not come down, while import tyre prices for TBR have fallen in line with the global scene.
- v. In Disclosure Report, it seems it has been pre-supposed that there is injury to domestic tyre makers when their rate of return on investment or profits have been at all time high and it has been their virtual honeymoon period during POI..
- w. Already, it is well known that Custom Duty and CVD is being levied on their fixed bench mark price of \$149 for TBR tyre only as TBR imports are without tubes / tubeless in 95% cases. Hence, the exporter irrespective of their invoice price has to pay taxes / duty on the bench mark minimum import price fixed. In the Disclosure Statement it has not been clarified how the injury margin has been calculated.
- x. DGAD has not practically visited the Chinese tyre factories and the task has been virtually dictated by powerful domestic industry juggling with the data in a manner which suits domestic industry to fix unwanted injury margin and then suggesting imposition of ADD without any genuine and justified cogent reasons which meet the process of natural justice.
- y. Imposition of ADD is not in the larger interest of road transport industry, and tyre trade, both of whom have invested in a massive manner for their livelihood and provide jobs to lakhs of people in the country. Imposition of ADD at this juncture when road transport small businesses are passing through tough times and low returns and even lower fleet capacity utilisation, would be a body blow to the free and fair play of market forces.
- z. All tyres classifiable under customs subheading no. 40112010 and tubes and flaps classifiable under 40131020 and 40129049 respectively of Schedule I of the Customs Tariff Act, 1975 are within the scope of the PUC and all other kinds of tyres, tubes and flaps not classifiable under these customs

classification are beyond the scope of the PUC. The product as per Tyre size designation classifies the products based on the application.

- aa. From the endorsement in the BIS Licence of Shandong Wanda Boto Tyre Company Ltd it is clear that 8.25R16, 7.00R16, 7.50R16 & 235/75R17.5 have been included in the Light commercial Vehicle category of products as classified by IS 15636:2012 which clearly establishes that tyre size 235/75R17.5 used on 17.5 Inch >16 Inch rim dia code is a light truck sizes same as 8.25-R16 or 7.00R 16 used on 16 Inch Rims.
- bb. CEAT has also purchased the 17.5 inch LT tyre from Shandong Wanda Boto. This shows that CEAT tyres, one of petitioner in the case have imported the 17.5 Inch Rim tyres from Shangdong Wanda Boto with LT marking for LCV application. Either the product 17.5 inch rim tyres should be excluded from the purview of present investigation or CEAT tyres should be disqualified from being considered as domestic industry as per the prevalent Rule 2(b) of the Anti-Dumping Rules.
- cc. PUC ought to be defined as tyres imported under HS CODE 40112010 & having the size designation applicable for truck & bus tyres as defined in the BIS standard IS 15636:2012. Tyres used on other type of Vehicles such as Light Commercial Vehicle, Mining, Industrial etc ought to be excluded from the scope of this investigation. In India Buses & Lorries/ Trucks use tyres of Rim diameter code 20 Inch for Tube Type tyres & 22.5 for Tubeless Tyres only. PUC ought to exclude Tyres having nominal rim diameter of 17.5 inch tubeless used on Light commercial vehicles like tyres having nominal rim diameter of 16 Inch & below used on Light Commercial Vehicles.
- dd. TBR Tyres imported from China are not comparable in characteristics with Tyres produced by the domestic Industry in terms of Pricing, distribution & marketing. Chinese TBR is comparatively substantially cheaper as there are no advertising costs or brand promotional costs, no warranties too. Tyres produced by Domestic manufacturers are distributed throughout India and marketed with promotion of brand, carry warranty against premature failure due to manufacturing defects. Accordingly the Ex factory price of tyres marketed by domestic Industry include the cost of distribution, marketing, brand promotion & warranty, where as the Landed Price based on the CIF for tyres imported from China do not include any of the above costs and are correspondingly lower in price. Therefore, the Chinese tyres and those manufactured by domestic industry are not comparable and ought not to be treated as Like Articles.
- ee. The price index of the similar product from the same company is lower by 34% for tyres sold without warranty as compared to the tyres sold with warranty.
- ff. The tyres without warranty were offered by domestic industry after the period of investigation in order to participate in market segment of non warranty tyres created by importers of Chinese tyres. Hence, for the purpose of calculating dumping margin or injury margin the price of domestic industry should be reduced by 34%.

- gg. Injury caused to Domestic Industry is because of their own market decisions as they chose not to reduce the price of product even though raw material prices fell down during POI. Chinese exporters lowered their price of TBR when cost of raw material went down. Thus, customers preferred imported TBR which was of comparable quality and priced lower than domestic industry tyres.
- hh. The dumping margin of the non-sampled producers and exporters has been determined as the weighted average of the dumping margins of the sampled producers and exporters as per Rule 18(2). It is arbitrary, vague, unfair and onerous for un-sampled exporters as the prices at which sampled exporters sell Product in India is much cheaper and its quality and other characteristics differ. Hence, it will not be fair to assess value based on the weighted average of the highest selling products as product made by our client exporter is more expensive and differs in its characteristics from product made by sampled exporters
- ii. M/s Qingdao Doublestar Tire Industrial Co. Ltd., China PR has fully co-operated with DGAD right from the start of the investigation. Doublestar has filed questionnaire response running into many pages dated 05.07.2016. As per direction of DGAD, Doublestar has filed clarification response twice dated 24.10.2016 and 20.03.2017 respectively.
- jj. There was no mala fide intention of Doublestar to mislead DGAD. Only in one invoice, inadvertent error was noticed.
- kk. As per understanding of the exporter, Flap is not a part of PUC, if invoiced separately in an invoice. Accordingly, Doublestar has reported information about tyre only and enclosing complete information including flaps now.
- ll. Rejection of complete response is in violation of Principle of Natural Justice which is specified in Para 5, 6 and 7 of Annexure II of Anti-Dumping Agreement.
- mm. In other investigations, the Designated Authorities was kind enough in granting an opportunity to all participating exporters/domestic producers by pointing out errors/omissions. In instant case, no such opportunity was ever granted to Doublestar.
- nn. Doublestar has provided revised Appendix 2 including Flaps and the same may please be taken on record for final finding.
- oo. Grounds or rejection of response are factually incorrect. The rejection of complete response is on wrong premise and also in gross violation of various provisions of AD Agreement.
- pp. PUC as per Initiation Notification clearly states that PUC is classified under sub heading No 40112010 alone. Thus, TBR tyre imported along with tube and flap and invoiced as one price, the same shall fall under the scope of investigation. In case tube and flap even though invoiced in one invoice but priced separately and cleared under different customs classification shall not fall under the scope of investigation.
- qq. Doublestar accordingly filed response considering TBR Tyres as PUC for the following reasons:
  - i. PUC is classified in Chapter 40 under customs sub-heading No.

40112010 and tubes and flaps are classified under 40131020 and 40129049 respectively. In case the Initiation Notification has mentioned that PUC i.e., TBR falls under separate Customs Head and Tubes and Flaps which are non PUC fall under different Custom Head, conclusion is that non reporting of information of Flaps (a non PUC) as one of the reasons for rejection of whole response is unsustainable.

- ii. Cost and Price of Flaps is almost half of the price of TBR Tyres. Accordingly, both TBR and Flaps are different products.
- iii. Manufacturing technology and facilities for production of flaps are entirely different from TBR. Accordingly, both TBR and Flaps are different products and the same has been acknowledged by the petitioners.
- iv. Raw Materials used for manufacture of Flaps are entirely different from manufacture of Radial Tyres.
- v. TBR and Flaps are separately priced and shown as independent products in the invoices. If combined price of TBR and Flaps is shown in the Invoice and cannot be separated, the same may be treated as one product. In such a situation it will not be possible to segregate the price of TBR and Flaps. In case both TBR and flaps are priced separately in the Invoice, the same shall be treated as separate products. Doublestar has separately invoiced flaps.
- vi. Flap constitutes a negligible portion of the total sales of TBR and Flaps. Flaps constitute only 3.66% of the total exports to India and hence could not have distorted the final result about the dumping margin.
- vii. Flaps have been separately priced in the Invoice raised by the exporter. In respect of all sampled invoices except one the prices mentioned duly reconcile with the prices claimed in questionnaire. Minor error in one Invoice is due to punching error. It would have been rectified if the Authority has pointed out the same.
- viii. All goods have been exported on FOB Basis, Ocean Freight and other expenses were borne by the importers.
- ix. In any event Doublestar is willing to provide details of sales of flaps to show that average price of both TBR and TBR including flaps is almost same. Weighted average export price of TBR is almost similar to export price if flaps are also considered as part of PUC.
- x. Doublestar has clearly indicated about PUC and provided the data accordingly. Authority should have informed about any deficiency in respect of PUC. Non-provision of the flap data does not affect the accuracy of Doublestar's data. Initiation Notice manifests that the purpose of the investigation is to impose the ADD on tyres excluding flaps and tubes to protect the domestic industry. Flaps and tubes are not the purpose of this investigation.
- xi. Doublestar has not reported the correct invoice value in some of the

transactions and rectified the typo/punching error. The said error was unintentional and there was no mala fide intention of the exporter in providing the data to the DGAD.

- rr. Minor inadvertent errors in filing of response cannot be a basis of rejection of complete response. Rejection of complete response on some minor error is in violation of Para 5 of Annexure II of AD Agreement and AD Rules.
- ss. The Appellate Body in US — Hot-Rolled Steel, analysing the concept of cooperation under paragraph 7 of Annex II, noted that this provision does not indicate the degree of cooperation which is expected from interested parties to avoid the possibility of the authorities resorting to a “less favourable” result. The degree of cooperation required is to cooperate to the “best” of their abilities”. Maintaining the principle of good faith requires a balance to be struck by the investigating authorities between the effort that they can expect interested parties to make in responding to questionnaires, and the practical ability of those interested parties to comply fully with all demands made of them by the investigating authorities.
- tt. Paragraphs 2 and 5 of Annex II and Article 6.13 of the AD Agreement call for a “balance between the interests of investigating authorities and exporters” and therefore see “cooperation” as “a two way process involving joint effort”. Thus, before rejecting response of an exporter, the Authority must notify the said exporter and also give an opportunity to provide explanation within a reasonable period of time.
- uu. Designated Authority has violated the Principle of Natural Justice by not informing Qingdao Doublestar in advance about its decision to reject its response and should have granted an opportunity to explain its position. No such opportunity was ever granted.
- vv. The Authority has claimed that “Doublestar has not reported the correct invoice value in some of the transactions.” As per Rule 6 (8) of AD Rules, 1995 Authority must have informed us about the mismatch and given us an opportunity to provide the data as per requirements. However, no such intimation was ever given to us. Resorting to facts available by treating a producer/exporter as non cooperative is permitted only under specified conditions laid down under the Law. In the instant investigation the Designated Authority has not fulfilled those conditions.
- ww. In US—Hot-Rolled Steel, the Appellate Body concluded that, investigating authorities are directed to use information if three, and, in some circumstances, four, conditions are satisfied. These conditions are that the information is (i) verifiable, (ii) appropriately submitted so that it can be used in the investigation without undue difficulties, (iii) supplied in a timely fashion, and, where applicable, (iv) supplied in a medium or computer language requested by the authorities. The Appellate Body concluded that, “if these conditions are met, investigating authorities are not entitled to reject information submitted, when making a determination”.
- xx. Violation of Para-6 of Annex-II of Agreement on Implementation of Article-VI of the GATT which casts a responsibility on the Authority to intimate

- immediately the reasons for proposed rejection of data and must give an opportunity to further give explanation within a reasonable period. The same has been held by Appellate Body and Panel in number of its decisions.
- yy. Separate individual dumping margin should be granted to M/s Qingdao Doublestar Tire Industrial Co. Ltd., China PR, based on its response filed.
  - zz. Petitioners themselves have never considered TBB and TBR as one and the same product as could be seen from the fact that petitioners have already filed five cases in respect of Truck and Bus Tyres i.e., three in respect of TBB and two in respect of TBR but in none of the petition or investigation they have claimed to be one and the same without any distinction.
  - aaa. That marginal increase in the inventory of the subject goods should be seen in the light of increase in capacity, capacity utilisation and production as well as sales. The increase in inventory is still lower if compared in proportion to production and sales. Moreover, significant decline in export performance of the DI is the reason of increase in inventory of the DI and the same cannot be attributed to importation of subject goods.
  - bbb. the market share of the other Indian producers have increased despite importation of subject goods which clearly establishes that no injury is being caused by importation of subject goods.

#### **Examination by the Authority**

112. The Authority notes that most of the submissions by parties are repetitive in nature and were already addressed earlier in the disclosure statement. The findings above ipso facto deal with these arguments of the parties. Further, the Authority has examined submissions of interested parties herein below to the extent relevant and not addressed elsewhere:

- a. With regard to the submissions made by the domestic industry to disclose the NIP, the Authority notes that the same has already been provided to them. With regard to the request for providing the non-confidential version of the verification report of the exporters/producers, copy of all the communications sent via mail or letter to the opposing interested parties and replies filed by these interested parties, it is noted that the non-confidential version of all communications has been placed in the public file and can be accessed by any interested party. Normal value determination is based on the international price of raw materials taken from WTA data. It is clarified that WTA data is not a public domain information and is accessible to Govt. of India under an agreement signed with an international data compiling agency. This agreement with the agency prohibits Govt. of India from circulating this information to any interested party and public at large.
- b. Regarding export price of the sampled exporters, Authority has considered the submissions made by each sampled individual producer/exporter and the necessary adjustments have been made by the

Authority to arrive at the net export price at ex-factory level. The Authority has calculated the ex-factory export price based on verified data provided by the sampled producers/exporters. The calculation with regard to same cannot be disclosed as it is confidential in nature.

- c. The Authority has determined the dumping margin as per the verified information on record and the applicable Act & Rules.
- d. With regard to the submissions made by the Petitioners that disclosure statement contains three dumping margins for one producer, Authority has addressed the same in the present finding and has granted one rate for all the export chains pertaining to one producer. The Authority has also granted same rate of duty to related producers as per its consistent practice.
- e. The Authority has already concluded that the domestic industry is suffering material injury and therefore there is no merit in conducting threat of injury analysis.
- f. With regard to the issue of substitutability of TBB tyres, Authority has addressed the same in the relevant portion of the findings.
- g. With regard to the injury analysis, the Authority has already examined all the mandatory parameters prescribed under the law. The Authority does not find it necessary to do segment wise analysis of OEM segment and replacement segment or to do quarterly analysis in the present investigation.
- h. With regard to the various submissions made by the domestic industry regarding threat of material injury, it is to be noted that the Authority has already concluded that the domestic industry is suffering material injury and therefore there is no merit in conducting threat of injury analysis.
- i. Keeping in mind the factual matrix of the case, the Authority has decided to levy fixed duty in terms of USD per MT
- j. As regards the list of non-sampled co-operating exporters and the duty rates applicable for them, the Authority notes that the list of such producers/exporters is provided in the final findings. Separate anti-dumping duty rate has been prescribed for such non-sampled co-operating exporters/producers based on the weighted average of the duty rates of the co-operating sampled producers/ exporters.
- k. The Designated authority notes that determination of dumping margin & injury margin is based on data submitted by the exporters/producers in response to the questionnaire.
- l. As regards the objectivity in the examination of injury, the Authority notes that neither the Indian Anti-dumping Rules nor the WTO Anti-dumping Agreement provides for any specific manner in which injury determination is to be carried out by the Designated Authority. The Authority also notes that negative trend in all injury parameters is not essential to arrive at a finding of material injury to the domestic industry. In any case, the Domestic industry has suffered negative volume and

- price effect and this is adequately evidenced by positive price undercutting and price underselling.
- m. Due to dumped imports, domestic industry has suffered injury on some of the other relevant economic parameters as well. For example, it has accumulated inventories, and has experienced decline in market share throughout the injury investigation period. Existence of positive price undercutting & underselling further proves that there is causal link between dumped imports and injury to the domestic industry.
  - n. The Authority has carefully examined the PUC issue and notes that domestic industry is manufacturing radial tyres of nominal rim dia of above 16". Interested parties have not provided evidence to support further modification of PUC.
  - o. As per Trade Notice 2/2004 dated 12<sup>th</sup> May 2004 application for anti-dumping investigation should contain information and data relating to period of investigation and previous three financial years. The data for previous three years would be utilized for trend analysis for determination of injury. Accordingly, the authority has analysed the data for the POI and the previous three financial year for injury analysis purposes. This is the consistent practice followed by the authority in all the investigations. There is no bar on the Authority to select a period of investigation of 18 months. There have been several cases where period of investigation of 18 months has been adopted by the Authority.
  - p. Issue regarding anti-competitive practices and cartelisation is beyond the scope of this anti-dumping investigation.
  - q. Regarding the issue of raw material prices, it is to be noted that the Authority has adopted international raw material prices (to the extent possible) for calculating the normal value and has not relied solely on the cost of the domestic industry in this regard.
  - r. The product under consideration (PUC) in the present investigations is 'New/Unused pneumatic radial tyres with or without tubes and/or flap, of rubber, having nominal rim dia code above 16" used in buses and lorries/trucks'.
  - s. The PUC is classified in Chapter 40 under customs sub-heading No. 40112010 and tubes and flaps are classified under 40131020 and 40129049 respectively of Schedule I of the Customs Tariff Act, 1975. Tubes and or flaps imported without New/Unused pneumatic radial tyres are outside the scope of the PUC. The Custom classification, however, is indicative only and not binding on the scope of investigation. Tyres are generally used in various kinds of vehicles such as trucks, buses, lorries, light commercial vehicles, passenger car, jeep, tractor, two-wheeler, three-wheeler, animal pulled vehicles, earthmover, industrial tyres, aircrafts etc. However, the product under consideration is the type that is used in buses & lorries / trucks. All other types of tyres are beyond the scope of the product under consideration in the present investigations.

- t. The PUC was clearly defined in the initiation notice as “New/Unused pneumatic *radial tyres with or without tubes and/or flap*, of rubber, having nominal rim dia code above 16" used in buses and lorries/trucks”. There was no occasion for the interested parties to construe the PUC as only radial tyres. Doublestar tried to misguide the Authority by presenting the data of only tyres in its questionnaire response even though it had exported both tyres and flap collectively to India. In addition to this Doublestar also did not report the correct invoice value for some of the transactions. In its disclosure comments, Doublestar has tried to impress that there was no *mala fide* intention on the part of Doublestar to report only tyres as it understood the PUC to be only tyres. This submission of Doublestar cannot be accepted as the definition of PUC was very clear in the initiation notice and no other co-operating producer/exporter from China PR has made such an error. Thus, there is no merit in the submission made by Double Star and accordingly the Authority rejects the response filed by Double Star. The ex-factory export price of Doublestar has been determined on the basis of facts available.

### **Conclusion on Injury and Causation**

113. From the above examination of injury and causal link, the Authority concludes that the domestic industry has suffered injury as a result of dumping of the subject goods from the subject country. There has been a significant increase in the volume of dumped imports from the subject country in absolute terms throughout the injury period and in relation to consumption in India. The dumped imports have had adverse effect on the prices of the domestic industry in the market. The dumping margin for the subject country has been determined and is considered significant. Market share of the subject imports has significantly increased and that for domestic industry has decreased. The Authority concludes that the domestic industry has suffered injury as a result of dumped imports from the subject country.

### **Recommendations**

114. After examining the submissions made and issues raised, and considering the facts available on record, the Authority concludes that:
- (a) The product under consideration has been exported to India from the subject country below normal value.
  - (b) The domestic industry has suffered material injury on account of subject imports from the subject country.
  - (c) The injury has been caused by the dumped imports of the subject goods from the subject country.
115. The Authority notes that the investigation was initiated and it was notified to all interested parties. Adequate opportunity was given to the exporters, importers and other interested parties to provide information on the aspects of dumping, injury and causal link. Having initiated and conducted an investigation into dumping,

injury and the causal link thereof in terms of the Anti-Dumping Rules and having established a positive dumping margin as well as material injury to the domestic industry caused by such dumped imports, the Authority is of the view that imposition of definitive anti-dumping duty is necessary to offset dumping and injury.

116. Having regard to the lesser duty rule, the Authority recommends imposition of definitive anti-dumping duty equal to the lesser of margin of dumping and margin of injury, so as to remove the injury to the domestic industry. Accordingly, the Authority recommends imposition of definitive anti-dumping duties on the imports of the subject goods, originating in or exported from the subject country, from the date of notification to be issued in this regard by the Central Government, as specified in Col 8 of the duty table appended below.

**Duty Table**

<b>No.</b>	<b>Heading/ Subheading</b>	<b>Description of goods *</b>	<b>Country of Origin</b>	<b>Country of Exports</b>	<b>Producer</b>	<b>Exporter</b>	<b>Duty Amount</b>	<b>Unit</b>	<b>Currency</b>
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
1.	40112010	New/unused pneumatic radial tyres with or without tubes and/or flap of rubber (including tubeless tyres) having nominal rim dia code above 16” used in buses and lorries/trucks” <i>excluding tubes and or flaps imported without New/Unused</i>	China PR	China PR	Shandong Yinbao Tyre Group Co., Ltd	Shandong Yinbao Tyre Group Co., Ltd	403.21	MT	US\$

No.	Heading/ Subheading	Description of goods *	Country of Origin	Country of Exports	Producer	Exporter	Duty Amount	Unit	Currency
		<i>pneumatic radial tyres</i>							
2.	-do-	-do-	China PR	China PR	Shandong Yinbao Tyre Group Co., Ltd	M/s. Cantop International (Qingdao) Co., Ltd	403.21	MT	US\$
3.	-do-	-do-	China PR	China PR	Shandong Yinbao Tyre Group Co., Ltd	Tiremart (Qingdao) Inc.	403.21	MT	US\$
4.	-do-	-do-	China PR	China PR	Aeolus Tyre Co., Ltd	Aeolus Tyre Co., Ltd	277.53	MT	US\$
5.	-do-	-do-	China PR	China PR	Qingdao Yellow Sea Rubber Co., Ltd	Qingdao Yellow Sea Rubber Co., Ltd	277.53	MT	US\$
6.	-do-	-do-	China PR	China PR	Qingdao Yellow Sea Rubber Co., Ltd	Tiremart (Qingdao) Inc.	277.53	MT	US\$
7.	-do-	-do-	China PR	China PR	Shandong Hengfeng Rubber & Plastic Co., Ltd.	Shandong Hengfeng Rubber & Plastic Co., Ltd.	245.35	MT	US\$
8.	-do-	-do-	China PR	China PR	Non-Sampled Producer/ exporters as per list given below****		316.10	MT	US\$
9.	-do-	-do-	China PR	China PR	Any combination other than S. No. 1 to 8		452.33	MT	US\$

No.	Heading/ Subheading	Description of goods *	Country of Origin	Country of Exports	Producer	Exporter	Duty Amount	Unit	Currency
10.	-do-	-do-	China PR	Any country	Any	Any	452.33	MT	US\$
11.	-do-	-do-	Any country other than those subject to anti- dumping duty	China PR	Any	Any	452.33	MT	US\$

\*\*\*List of Non Sampled Producers/Exporters is as under:

S.No.	Producer	Exporter
1.	Shandong Wanshine Tyre Co., Ltd	Shandong Wanshine Tyre Co., Ltd
2.	Shandong Wanshine Tyre Co., Ltd	Tiremart (Qingdao) Inc
3.	Shandong Wanshine Tyre Co., Ltd	Koryo International Industrial Limited
4.	Shandong Wanshine Tyre Co., Ltd	Qingdao Nama Industrial Co. Ltd
5.	Shandong Wanshine Tyre Co., Ltd	Winshine Industrial Co. Ltd
6.	Zhongce Rubber Group Co. Ltd	Zhongce Rubber Group Co. Ltd
7.	Shandong Cocrea Tyre Co., Ltd	Shandong Cocrea Tyre Co., Ltd
8.	Shandong Cocrea Tyre Co., Ltd	Qingdao Champion International Trading Co. Ltd
9.	Jiangsu General Science Technology Co., Ltd	Jiangsu General Science Technology Co., Ltd
10.	Shandong Yongtai Group Co., Ltd.	Shandong Yongtai Group Co., Ltd.

<b>S.No.</b>	<b>Producer</b>	<b>Exporter</b>
<b>11.</b>	Shandong Hengyu Science & Technology Co., Ltd.	Shandong Hengyu Science & Technology Co., Ltd.
<b>12.</b>	Shengtai Group Co., Ltd	Shengtai Group Co., Ltd
<b>13.</b>	Shengtai Group Co., Ltd	Best Choice International Trade Co., Limited
<b>14.</b>	Shandong Xingyuan Tire Group Co., Ltd.	Shandong Xingyuan Int Co. Ltd
<b>15.</b>	Good Friend Tyre Co. Ltd	Good Friend Tyre Co. Ltd
<b>16.</b>	Good Friend Tyre Co. Ltd	Qingdao Jinhaoyang Int Co. Ltd
<b>17.</b>	Triangle Tyre Co. Ltd	Triangle Tyre Co. Ltd

117. An appeal against these findings after its acceptance by the Central Government shall lie before the Customs, Excise and Service Tax Appellate 88 Tribunal in accordance with the Customs Tariff Act, 1975 as amended in 1995 and Customs Tariff Rules, 1995.

(Dr. Inder Jit Singh)  
Designated Authority