

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

NOTIFICATION

New Delhi, the 10th February, 2012

CESTAT REMANDED POST DECISIONAL HEARING FINDINGS

Subject: Anti-dumping investigations concerning imports of Flat Base Steel Wheels originating in/exported from China PR.

No.14/8/2005-DGAD : - Having regard to the Customs Tariff Act 1975 as amended in 1995 and thereafter (hereinafter referred to as the Act) and the 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 referred to as the Rules) thereof:

Background

1. Whereas the Designated Authority (hereinafter referred to as the Authority) having regard to the Customs Tariff Act, 1975, as amended from time to time (hereinafter referred to as the Act) and the Customs Tariff (Identification, Assessment and Collection of Antidumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, as amended from time to time, (herein after referred to as the Rules) received an application from M/s. Kalyani Lemmerz Ltd, Pune and Wheels India Ltd, Chennai (hereinafter referred to as the Applicant) alleging dumping of Flat Base Steel Wheels of size 16” to 20” nominal diameter used in tubed tyre applications in commercial vehicles (hereinafter referred to as subject goods) originating in or exported from China PR (hereinafter referred to as subject country) and requested for the initiation of Anti Dumping investigations for levy of anti-dumping duties on the subject goods.
2. And whereas the Authority on the basis of sufficient evidence submitted by the applicant on behalf of the domestic industry, after examination of the same with regard to adequacy and accuracy, issued a Public Notice Vide No. 14/8/2005-DGAD dated 31st May 2006 published in the Gazette of India, Extraordinary, initiating Anti-Dumping investigations concerning imports of the subject goods originating in or exported from the subject country in accordance with the Rule 6 (1) of the Rules to determine the existence, degree and effect of alleged dumping and to recommend the amount of Anti Dumping Duty, which, if levied, would be adequate to remove the injury to the domestic industry.

3. And whereas the Designated Authority having regard to the Act and Rules investigated and recommended imposition of provisional Anti Dumping Duty on imports of flat base Steel Wheels originating in or exported from China PR, vide Preliminary Findings dated 12th January 2007 and amendments dated 21st February 2007 and 12th March, 2007. The provisional Anti Dumping Duty was imposed on the subject goods vide Customs Notification No. 51/2007 - Customs dated 29th March 2007. The Final Findings were issued by the Authority on 28th November 2007 and definite Antidumping duties were imposed by the Department of Revenue vide Customs Notification No 124/2007 - Customs dated 31st December, 2007.
4. And whereas, M/s Zhengxing Wheels Co. Ltd (also referred to as the "appellant") filed an appeal before CESTAT, challenging the imposition of definitive anti-dumping duty on imports of flat base steel wheel vide Customs Notification No 124/2007 - Customs dated 31st December, 2007.
5. The Hon'ble CESTAT vide its order dated 11th August, 2011 remanded the matter back to the Designated Authority with the operative part of the order, *inter alia*, as follows:

"Accordingly we allow these appeals by remand to the Designated Authority for affording post-decisional hearing to the appellants and for making such modifications to the Final Findings as may be necessary as a result of such post decisional hearing. The respondent-domestic industry and other interested parties, if any, shall also be allowed to participate in such post decisional hearing. Any modifications made in the final findings would be considered by giving effect to the same by the government by carrying out the necessary amendment to the impugned notification imposing anti-dumping Duty. This process shall be completed within 6 months from the date of this order and status quo shall be maintained meanwhile. Since we are allowing these appeals by remand, the related stay petitions, MAs and COs stand disposed off."

6. And whereas, in compliance with the said order of the CESTAT and without prejudice to the rights of the Designated Authority to challenge the orders dated 11th August, 2011 of Hon'ble CESTAT on the matters of law and principle, the Authority held a post decisional oral hearing for the known interested parties on 13th December 2011.
7. The essential facts of the action of the Authority pursuant to the post decisional hearing held by the Authority in compliance with the orders dated 11th August 2011 of Hon'ble CESTAT were disclosed to the interested parties by the Authority. In their post disclosure comments, the interested parties reiterated

their earlier submissions. The submissions made by the interested parties, including their post disclosure comments, have been examined and addressed by the Authority at respective areas of this finding.

8. *** in this finding represents information furnished by an interested party on confidential basis and so considered by the Authority under the Rules.
9. The submissions made by the interested parties in the written form, who attended the post decisional oral hearing, including their post disclosure comments, are as follows:

Submissions made by M/s Zhengxing Wheels Co. Ltd.

- i. MET claim of Zhengxing Wheels should not be denied as the entire growth of the company has taken place only after it was privatized and there were practically no assets or capital that had been carried over from the erstwhile non market economy operations. Miniscule level of operations that were carried out before privatization would not have affected significantly the costs and prices of the exporter during the period of investigation.
- ii. Non recording of certain assets in the unaudited account cannot be regarded as having any impact on the MET claim of the exporter.
- iii. There is no significant price difference between the prices at which steel is being procured by the exporter and the price taken from UN-COMTRADE and therefore steel prices of the exporters should be accepted as such.
- iv. Normal value should be determined in line with para 7 of Annexure I to the Rules. List of market economy countries considered must be disclosed. Appropriate third country should be chosen and the steel prices prevailing should have been taken in line with the principles enunciated in para 7 of the Annex I to the AD Rules.
- v. VAT refund rate applicable on domestic sales and VAT refund rate applicable on export sales made by Zhengxing Wheels were the same i.e., 17%. Hence there is no case for adjustment of VAT in the ex-factory export price.
- vi. Injury margin and dumping margin have to be determined for three wheel sizes separately on account of significant difference in weight of steel.
- vii. Investigation is in violation of Rule 7 as the confidential submission submitted by the respondent has been disclosed.
- viii. Non confidential version of information submitted by the DI has not been made available to the Domestic Industry and therefore investigation is in violation of Rule 7.

- ix. Actual dumping margin should be disclosed. Authority has been disclosing constructed normal value, export price and dumping margin for every cooperating exporter and therefore should be disclosed in the instant case.
- x. Investigation is being conducted in violation of Rule 6, by not making information filed by one interested party available to the other.
- xi. 22% of return is claimed by Domestic Industry to project higher NIP and colour the entire injury analysis. Moreover, granting 22% return on capital employed is against the guidelines laid down by the Hon'ble CESTAT.
- xii. DI incurred phenomenal losses even before the imports started. The amount of losses in fact, has lowered during the injury period. Authority clearly failed to analyse the causes for losses suffered by the domestic industry during the period prior to commencement of imports.
- xiii. With the intention of capturing market the two producers has been undercutting and underselling the prices of each other in the domestic market. Loss on this account cannot be attributed to the exports made by Zhengxing Wheels.
- xiv. The injury parameters have not been adequately addressed.
- xv. The petitioners should submit non-confidential versions of the submissions made in confidential manner and also provide respondents with adequate opportunity to provide rebuttals to such submissions.

B. Submissions made by the Domestic Industry

- i. The information filed by the exporter with regard to its related entities is grossly incomplete. Group companies, who are involved either in production or in sale of the product under consideration have not responded before the Authority and therefore market economy treatment, cannot be considered.
- ii. The exporter has not given sufficient information to establish that prices of input reflect the market values. The claim now made by the exporter that its input prices are reflective of market values contradict its earlier claimed that the Chinese producers in fact have an advantage in terms of lower steel prices.
- iii. Govt. of China has resorted to ad hoc administration of subsidies and therefore Chinese producers cannot be granted market economy treatment.
- iv. Inputs consumed in production of steel such as coke, metcoke and electricity are available much lower than fair market value. Evidence has also been given to the Authority.
- v. Govt. of China has imposed export duty on a number of steel scrap items. The impact of these export duty is that the prices of scrap has remained low, which has in turn kept prices of steel artificially lower.

- vi. Turkey can be constituted as an appropriate market economy third country for China. Europe has considered Turkey as an appropriate market economy third country for China in numerous investigations. Relationship of Turkish producer with domestic industry is immaterial.
- vii. Weighted average cost of production of the domestic industry should be adopted. There is no basis for presumption that the surrogate country cost should be the lowest of Indian producers' cost.
- viii. Authority should not have considered consumption norms of the responding non-market Chinese producers as the records maintained by them cannot be relied upon.
- ix. Domestic Industry is unaware of any claims made on VAT refunds. Either no claim was made during the course of the investigations, or, the exporter has filed significant information purely on confidential basis, without filing any non confidential version.
- x. The entire data was converted on weight basis. Once weight of the product is considered, there would not be significant difference in the cost of different sizes of wheels. Further, the exporter has not established that there are significant differences in the associated costs and prices of the product.
- xi. Domestic industry has earlier provided workings showing that if the exporter was procuring steel at the same or similar prices, it could not have exported the product without suffering huge financial losses. It thus follows that the steel price considered by the company is very low.
- xii. The exporter filed several submissions & documents, several times during the proceedings, in blatant violation of Rule 7 and trade notice in this regard, without providing non confidential version of such submissions.
- xiii. No disclosure of actual dumping margin should be made to the exporter that would lead to disclosure of any information provided by the domestic industry on confidential basis.
- xiv. The exporter filed detailed submissions based on the submissions made by the petitioner, which proves that they had access to public file.
- xv. The landed price of imports is materially below the selling price of each of the companies. There was no reason for Tata Motors to resort to imports, if the imports were not materially cheaper than the domestic industry.
- xvi. The losses in the past are due to the existence of excessive capacity as compared to demand. If the overhead costs are adjusted for excessive capacity, it would be seen that the domestic industry was in profits.

Examination by the Authority

10. The various submissions made by the interested parties are addressed by the Authority as under:

MET Claim, Normal value, Export price, Injury margin and Dumping margin

11. In the final findings dated 28th November 2007, the Authority has adequately addressed the MET claim of Zhengxing Wheels Co. Ltd. The Authority verified the said respondent producer/exporter and justifiably came to the conclusion in the final findings that they are not operating under market economy environment and therefore did not accord market economy status to them. With regard to the MET claim of Zhengxing Wheels Co. Ltd, the Authority observed in the final findings dated 28th November 2007, as follows:

“E.3 Examination by the Authority

41. *The Authority has noted the arguments of the interested parties. The questionnaire response and Market Economy Response of the Company were examined and an on-spot investigation and verification was carried out in the premises of the exporter.*

E.3.1 Salient features emerging from the exporter verification

42. *Zhangzhou Xiangcheng Xiaoxi Automobile Wheel Factory was registered on *** as “collective enterprise” supervised by Economic United Association of *** having registered capital of RMB of *** which was increased to RMB *** on ***. On ***, it became a sole proprietorship, having registered capital of RMB ***. The Association organized an evaluation and auditing of all assets of the enterprise and the profits were paid to the Association and the principal invested by the investors was repaid to them. The restructured enterprise was solely owned by ***, one of the original investors. On ***, Zhangzhou Xiangcheng Zhengxing Automobile Wheel Factory was converted into a joint stock cooperative, having registered capital of RMB ***. As per business license of ***, it was registered as “limited liability company” having registered capital of RMB ***, which was increased from time to time and became RMB *** during ***.*

43. *On being asked why a private individual had to start the company as a collective form of enterprise, the exporter attributed this to the fact that the private individuals did not have land use rights and the investors had to go to the Association to get these. The rights, which were with another company, were transferred to the exporter through an agreement in *** for a total payment of *** RMB paid in installments from *** to ***. The Authority noted, however, that the exporter had claimed that a collective form of organization was socially more acceptable to labourers and others.*

44. *The exporter was asked why in the business licence of ***, the enterprise was depicted as Zhangzhou Xiangcheng Xiaoxi Automobile Wheel Factory, but in the fund raise agreement of *** the word “Xiaoxi” was missing. The response was that Zhangzhou and Xiangcheng represented names of geographical locations in China, and the investors had planned to use these*

names, but at the time of registration, Xiaoxi was included to distinguish it from others likely to be set up in the same location, an inclusion that was itself indicative of private ownership, as it would not have been required of a state-owned enterprise. Xiaoxi was replaced by Zhengxing in ***.

45. The verification showed that as per the asset evaluation report of ***, there was a huge revaluation from *** RMB to *** RMB when the enterprise was restructured from collectively owned to sole proprietorship through (a) an unexplained re-valuation of inventory by RMB ***. (b) increase in quantity of wheels, without clarifying if these were the company's own or purchased from others. (c) revaluation of building at RMB ***, though, as per the books of accounts, there was none. (d) unexplained increase in accounts payable of RMB ***. The exporter held that some part of the inventory and buildings had not been accounted for prior to revaluation, which admission itself raised doubts on the reliability of the audited accounts. Further, that the increase in net assets after revaluation was only RMB ***, the rest being the investment by *** from personal sources. It was found that the total asset value went up by RMB ***, funded through creditors to the extent of RMB ***. Besides, the details of financing of the capital base of the sole proprietorship by *** were not divulged during the verification.

46. The capital base was reduced to RMB *** in less than a month on conversion from sole proprietorship to a joint stock cooperative and then enhanced to RMB *** in *** on further restructuring to a limited liability company. The exporter has denied any special reason why the sole proprietorship was converted in to a limited liability company in two stages, instead of directly, stating that the sole proprietor had the freedom to choose the form of organisation. The enhanced capital base of the limited liability company was contributed in kind of RMB *** and in cash of RMB *** (as per the capital verification report of ***). In a short span of 4 months, as per the capital verification report of ***, there was an increase in registered capital to RMB ***, contributed as RMB *** in cash and RMB *** in assets. In Jan 2005, *** contributed physical assets valuing RMB ***, raising the registered capital of the company to ***.

47. Further, as per capital verification report of ***, in ***, *** had consigned *** school to pay RMB *** into the company's bank account and later paid RMB ***, thus enhancing the capital contribution to RMB ***, including assets valued at RMB ***. The reason for transferring the money through the school was held to be that borrowings from companies could not be directly transferred to the individual private accounts due to limitation on cash withdrawal. Besides, *** owned the school, too.

48. During the verification, the source of funds from which *** drew money for investment could not be verified. Subsequently it was said that loans totaling RMB *** had been taken from *** to ***, at *** interest rates,

repayable over *** years, which transactions did not appear to be of a commercial nature, since there was no annual repayment schedule for the loans in the agreements submitted to the Authority. Instead, there were only fixed dates of repayment.

49. The producer/exporter claimed that there were no controls on export of the subject goods, on production or sale of the subject goods in the domestic market or price controls on domestic or export sales or any export quotas. The raw material, steel, was subject to the system of 'designated trading' whereby only designated enterprises were permitted to import or export steel, but this system was abolished just prior to the POI, as seen from the public notice of 8th December, 2004 issued by China's Ministry of Commerce. In addition, the company had stated that they procured local inputs through spot contracts, and enjoyed 17% VAT return on export sales. Profits from exports were distributed among shareholders after the obligatory statutory and discretionary requirements were met.

50. During the plant visit, the production process for the manufacture of the subject product was seen. For the manufacture of steel coils, HR coils were used and from end 2004, steel coils were punched using an asymmetric multiple-punching process, for which, the company itself designed and developed a new shearing machine. For the manufacture of steel rim, the company purchased steel profiles of varying thickness at different points for conversion into rims and slotted angles for manufacturing rings. Finally, the steel disc, rim and ring were welded/assembled together to make the wheel. A cross section diagram of the rim profile and engineering drawings of disc, rim and ring were produced. Consequently, consumption norms and wastage were held to be lower.

51. The company was asked why there was no fund outflow towards repayment of loans of one year duration in the cash flow statement, to which they replied that they applied for extensions with the bank for loans due within the year. Thereafter, the company was requested to provide details of credit policy and applications for grant of short term loans and on their deployment. Though these were not furnished during the verification, they were made available subsequently.

52. During verification, the reasons for the exponential growth in current liabilities of the company since 2003, and particularly during the POI, could not be explained. The exporter held the growth to be commensurate with the growth in the volume of business and that the current ratio had reduced during 2005 compared to the previous year and all their activities were fully disclosed in the financial statements.

53. Details on *** of the notes payable to and *** of current assets receivable from a subsidiary in ***, could not be furnished. The exporter

stated that in the annual accounts, by error, notes payable to the subsidiary had been shown as for purchase of goods, but the explanation did not tally with the audited annual accounts.

54. The company could not furnish supporting evidence during the verification that the actual steel price paid by them or prevailing in China were reflective of international prices, a requirement that was very critical for grant of MET. Later, details of the international steel price from UN-COMTRADE were made available to prove that Chinese steel price was fairly close to the international price. These prices pertained to flat rolled products based on the data of a single country and ranged from \$0.378/kg to 0.677/kg, which rendered them unacceptable.

55. In view of the foregoing, the Authority concludes that the company costs and prices are significantly distorted due to carry-over effects from the erstwhile non-market economy system and therefore, do not qualify for consideration for the purpose of determination of normal value of this company. Accordingly, the Authority proceeds to determine the normal value for this exporter in terms of para 7 of annexure I to the Rules.”

12. In the submissions made pursuant to the post decisional hearing, Zhengxing Wheels Co. Ltd has claimed that the entire growth of the company has taken place only after it was privatised and there were practically no assets or capital that had been carried over from the erstwhile non market economy operations. They further submitted that miniscule level of operations that were carried out before privatisation did not affect significantly the costs and prices of the exporter during the period of investigation. However, the Authority notes that M/s Zhengxing Wheels Co. Ltd, failed to furnish sufficient documentary evidence in support of their MET claim either during the on the spot verification conducted by the Authority or subsequently including their submissions made pursuant to the post decisional hearing held by the Authority in compliance with the orders of Hon'ble CESTAT. In view of the reasons adequately and elaborately addressed by the Authority in the final findings, the Authority reaffirms its findings on the market economy claim made by the respondent producer/exporter and the normal value determined by the Authority in terms of the provisions laid down under Para 7 of Annexure I to the Rules.
13. As regards the claim of M/s Zhengxing Wheels Co. Ltd that VAT refund rate applicable on domestic sales and VAT refund rate applicable on export sales made by Zhengxing Wheels were the same i.e., 17% and hence the same should not have been adjusted in the ex-factory export price, the Authority notes that the adjustments made by the Authority to determine net export price in respect of the respondent producer/exporter are based on the information verified by the Authority and the practice adopted by the DGAD.
14. As regards the submission made by M/s Zhengxing Wheels that injury margin and dumping margin should be determined separately for each size of wheel on

account of significant difference in weight of steel, the Authority notes that in the final findings the entire data was converted on weight basis and the relevant calculations were made on weighted average basis. In view of the above the submission that injury margin and dumping margin should be determined separately for each size of wheel does not have any relevance.

15. As regards the submission of the domestic industry that Turkey should be considered as an appropriate surrogate market economy third country for China PR, the Authority notes that in terms of para 7 of the Annexure I of the Rules, due account should be taken of the level of development of the market economy third country while selecting an appropriate market economy third country. Keeping in view the differential levels of economic development between China PR and Turkey and the level of development of the subject product, the Authority does not select Turkey as an appropriate market economy third country for China PR.

Confidentiality

16. As regards the confidentiality issue, the Authority observed in the final findings date 28th November 2007, as follows:

“D.1 Confidentiality

8. *In addition to comments relating to various aspects of the case, both the domestic industry and the participating exporter from China PR have raised the issue of excessive confidentiality claimed by the other party. The domestic industry has argued that (a) the exporter has made a lot of submissions without simultaneously providing a non-confidential version; (b) the exporter has not disclosed a lot of information nor given any reason for claiming confidentiality (c) neither in law nor in fact can the business licence of a company be claimed confidential as the exporter had done and (d) given the manner of exporter response, they should be allowed to comment on the information provided to the Authority to rule out the possibility of the exporter filing incorrect information. The exporter, however, has argued that the domestic industry has not provided a proper non-confidential version of its cost of production and other details or of submissions made subsequent to the initial application.*

9. *The Authority noted the degree and extent of cooperation and information submitted by the participating exporter and that non-confidentiality issues have been subsequently addressed by filing non-confidential versions of submissions made. The submissions filed by the exporter have been accepted though certain claims made have not been accepted, but the non-acceptance of certain claims or rejection of certain*

information by the Authority does not render the exporter non-cooperative. The information, which is by nature confidential or which has been provided on a confidential basis by the interested parties' along with non-confidential summary thereof, has been treated confidential."

17. Regarding the allegation of disclosure of confidential information pertaining to Zhengxing Wheels Co. Ltd, the Authority notes that none of the confidential information has been disclosed. The Authority further notes that any information which is otherwise available in the public domain or are given in average/range basis in the findings, does not render the same to be disclosure of confidential information.
18. With regard to the submission of Zhengxing Wheels that non confidential version of information of the domestic industry has not been made available, the Authority notes that the non confidential information submitted by the various interested parties have been made available by the Authority in the public file.
19. As regards the submission that actual dumping margin should be disclosed, the Authority notes that disclosure of such information will amount to disclosure of confidential information and as a matter of practice, such information are not disclosed by the Authority. Nevertheless, the methodology of determination of dumping margin and the range of dumping margin percentage are given in the final findings issued by the Authority.

Injury and Causal Link

20. As regards the determination of injury and causal link the Authority gave a detailed analysis in the final findings dated 28th November 2007. However, the Authority has hereunder examined the submissions made by the interested parties pursuant to the post decisional hearing:
 - i. As regards the submission made by M/s Zhengxing Wheels that 22% of return is claimed by DI to project higher NIP and colour the entire injury analysis, the Authority notes that 22% of return on capital employed has been provided by the Authority in the final findings as per the consistent practice being followed in other antidumping cases and therefore the contention of M/s Zhengxing Wheels is devoid of merit.
 - ii. As regards the submission that the Authority failed to analyse the causes for losses suffered by the domestic industry during the period prior to the commencement of imports, the Authority notes that the issue has been well addressed in the final findings dated 28th November 2007, as follows and does not warrant re-examination:

"74. The second parameter of injury was that the domestic industry suffered a loss during POI compared to 2004-05 despite increase in selling prices. The exporter has contended that the domestic industry had a loss of

45 units during POI compared to a loss of 100 units during 2002-03 and yet they claimed injury due to dumped imports.

	2002-03	2003-04	2004-05	POI	Variation in POI vis-à-vis	
					2003-04	2004-05
Cost of Production	100	101	115	126	25	11
Selling Price	100	104	120	129	25	(104)
Profit/Loss	(100)	(2)	72	(45)	(43)	(117)

The table showed that while both costs and selling prices increased by 25 units during POI as compared to 2003-04, losses have mounted during POI. Further, costs increased by 11% points during POI over 2004-05 while sales prices increased by 9% points. A mere 2% increase in costs could not have led to a change in the loss of 117% points. Hence, the only conclusion possible was that the domestic industry's method of determining profits/losses has not been consistent and they have changed their method during POI to show unduly high loss."

21. As regards the submission made by Zhengxing Wheels that, with the intention of capturing market the two domestic producers has been undercutting and underselling the prices of each other in the domestic market and the loss on this account cannot be attributed to the exports made by Zhengxing Wheels, the Authority notes that there is no perceptible competition among the domestic producers, except that which is obvious of a market economy. The non-attribution analysis made by the Authority in its final findings dated 28th November 2007 shows that the dumped imports from the subject countries, through their volume and price effects, have caused significant injury to the domestic industry.

CONCLUSION & RECOMMENDATION

22. After examining and addressing the submissions made by the interested parties pursuant to the post decisional oral hearing held by the Authority, in compliance with the orders dated 11th August 2011 by the Hon'ble CESTAT, the Authority concludes that no modification is warranted in the final findings issued by the Authority vide Notification No.14/8/2005-DGAD dated 28th November 2007. The Authority, therefore, hereby re-affirms its findings made vide Notification No.14/8/2005-DGAD dated 28th November 2007 and the recommendations made therein.

Vijaylaxmi Joshi
Designated Authority