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**F. No. 7/30/2023-DGTR  
Government of India  
Department of Commerce  
Ministry of Commerce & Industry  
Directorate General of Trade Remedies  
4<sup>th</sup> Floor, Jeevan Tara Building, Parliament Street, New Delhi-110001**

Dated: 22<sup>nd</sup> April, 2024

**FINAL FINDING  
Case No. CVD-SSR- 13/2023**

**Subject: Sunset review investigation of countervailing duty concerning imports of “new pneumatic radial tyres for buses and lorries” originating in or exported from China PR.**

F. No. 7/30/2023-DGTR: - Having regard to the Customs Tariff Act 1975 as amended from time to time (hereinafter referred as the ‘Act’) and the Customs Tariff (Identification, Assessment and Collection of Countervailing Duty on Subsidized Articles and for Determination of Injury) Rules, 1995 thereof, as amended from time to time (hereinafter referred as the ‘CVD Rules’ or the ‘Rules’).

**A. BACKGROUND**

1. An anti-subsidy investigation into imports of “*new pneumatic radial tyres for buses and lorries*” (hereinafter referred to as “subject goods” or “product under consideration”) from China PR (hereinafter referred to as “subject country”) was initiated by the Authority vide notification no. 6/8/2018-DGAD dated 27<sup>th</sup> March 2018. Following a detailed investigation, the Designated Authority concluded that the subsidy provided by the Chinese government to the producers of the subject goods were countervailable in nature and the subject goods were exported from China PR at subsidized prices causing injury to the domestic industry. The Authority recommended the imposition of definitive countervailing duties on the imports of the subject goods from the subject county vide Final Finding No. 6/8/2018-DGAD dated 25<sup>th</sup> March 2019. The definitive measures were imposed by the Ministry of Finance vide Customs notification no. 1/2019-Customs (CVD), dated 24<sup>th</sup> June 2019. Pending the conclusion of the present review, the countervailing duty on China PR was extended vide notification no. 01/2024-Customs (CVD), dated 11<sup>th</sup> March, 2024 till 23<sup>rd</sup> July, 2024.
2. In terms of Section 9 (6) of the Act and Rule 24 (3) of the CVD Rules, the countervailing duties imposed shall, unless revoked earlier, cease to have effect on expiry of five years from the date of such imposition, and the Authority is required to review whether the expiry of the said countervailing duty is likely to lead to continuation or recurrence of subsidisation and injury to the domestic industry. In accordance with the same, the

Authority is required to review, on the basis of duly substantiated request made by or on behalf of the domestic industry as to whether there is a need for the continued imposition of the countervailing duty, and whether the expiry of the duty is likely to lead to continuation or recurrence of subsidisation and injury.

3. And whereas, Automotive Tyres Manufacturers Association (“ATMA”) has filed an application on behalf of the domestic producers namely Apollo Tyres Limited, J.K. Tyre Industries Limited and MRF Limited (hereinafter collectively referred to as “applicants”) before the Designated Authority in accordance with the Act and the Rules, requesting initiation of the sunset review investigation concerning imports of subject goods originating in or exported from the subject country.
4. The applicants have sought the continuation of the countervailing duty against imports of the subject goods from the subject country. The request was based on the ground that the expiry of the countervailing duty was likely to result in continuation of subsidized imports of the subject goods and consequent likelihood of recurrence of injury to the domestic industry.
5. And whereas, the Authority on the basis of sufficient evidence submitted by the petitioners, issued a public notice vide notification no. 7/30/2023-DGTR, dated 29<sup>th</sup> December 2023 published in the Gazette of India, Extraordinary, initiating the subject investigation in accordance with the Rules, to determine the existence, degree and effect of the alleged subsidy and to recommend the amount of anti-subsidy/countervailing duty, which, if levied, would be adequate to remove the injury to the domestic industry.
6. The scope of the present review covers all aspects of the final finding notification no. 6/8/2018-DGAD dated 25<sup>th</sup> March 2019.

## **B. PROCEDURE**

7. The procedure described herein below has been followed by the Authority regarding the subject sunset review.
  - i. The Authority, under the above Rules, received a written application from the applicants, as the domestic industry contending likelihood of continuation of subsidised imports and recurrence of injury to the domestic industry on imports of the product under consideration in India.
  - ii. The Authority notified the embassy of China PR in India about the receipt of the review application before initiating the investigation in accordance with Rule 6(5).
  - iii. The Authority in terms of Article 13 of WTO Agreement on Subsidies and Countervailing Measures (hereinafter referred to as “ASCM”) provided opportunity to the Government of China PR (hereinafter referred to as “GoC”) for pre-initiation consultations that were held with its representatives on 15<sup>th</sup> December, 2023. The comments of the representatives of the Government of the subject country were taken on record.

- iv. While GoC contended that there is lack of evidence or claimed that alleged policies are not countervailable within the meaning of the ASCM as they are internationally recognized and well-accepted in nature, whereby there is no financial contribution, nor do they confer benefit to specific enterprises or industries. The GoC stated that some Chinese laws and regulations cited for alleged subsidy programs have been either amended or repealed but the GoC has not substantiated their claims.
- v. The Authority issued a public notice dated 29<sup>th</sup> December 2023 published in the Gazette of India, Extraordinary, initiating the sunset review of anti-subsidy investigation concerning imports of the subject goods originating in or exported from the subject country.
- vi. The Authority sent a copy of the initiation notification dated 29<sup>th</sup> December 2023, to the Chinese embassy in India, the known producers, and exporters from China PR, known importers/users in India and other interested parties, as per the available information. The interested parties were advised to provide relevant information in the form and manner prescribed and make their submissions known in writing within the prescribed time limit.
- vii. The Authority provided a copy of the non-confidential version of the application to the known Chinese producers/exporters and to the embassy of China PR in accordance with Rule 7(3) of the Rules.
- viii. The Authority issued economic interest questionnaire (EIQ) to all interested parties and the concerned ministry. Response to EIQ was submitted only by the domestic industry.
- ix. The Authority sent a questionnaire to the GoC seeking relevant information in the form and manner prescribed regarding various schemes/programs where countervailable benefit might have been conferred onto the Chinese producers/exporters of the product under consideration. The response filed by GoC was taken on record and examined by the Authority.
- x. The Authority sent exporter's questionnaires to known producers/exporters in China PR, in accordance with Rule 7(4) of the Rules.
  - a. Shandong Yinbao Tyre Group Co. Ltd
  - b. Shandong Wando Boto Tyre Co. Ltd
  - c. Triangle Tyre Co. Ltd.
  - d. Zhongce Rubber Group Co. Ltd.
  - e. Shandong Yongfeng Tyres Co. Ltd.
  - f. Jiansu General Technology Co. Ltd. (General Science)
  - g. Guangzhou Pearl River Rubber Tyre Co. Ltd.
  - h. Giti Tyre (Anhui) Co. Ltd.
  - i. Shandong Province Sanli Tire Manufacture Co., Ltd
  - j. Shandong Haohua Tire Co., Ltd.
  - k. Prinx Chengshan Tire Company Ltd.
  - l. Kumho Tire Co. Inc.
  - m. Kumho Tire (Tianjin) Co., Inc

- n. Nanjing Kumho Tire Co., Ltd
  - o. Sailun Jinyu Group Co. Ltd
  - p. Double Coin Tire Group Ltd.
  - q. Tianjin Wanda Tyre Group Co., Ltd.
  - r. Taishan Shandong Tire Co., Ltd.
  - s. Jianxin Tire (Fujian) Co., Ltd.
  - t. Guizhou Tire
  - u. Sichuan Haida Rubber Group Co. Ltd
  - v. Shengtai Group Co., Ltd.
  - w. Shan Dong Jin Yu Industrial Co., Ltd.
  - x. Shandong Yinbao Tyre Group Co., Ltd.
  - y. Shandong Xingyuan International Trading Co., Ltd.
  - z. Shandong Hengfeng Rubber & Plastic Co., Ltd.
  - aa. Dingying Zhong Yi Rubber Co., Ltd.
  - bb. Haoyou Tyre Co., Ltd.
  - cc. Doublestar
  - dd. Shandong Linglong Tyres
  - ee. Double Money Group (Chongqing) Tire Co. Ltd.
  - ff. Xingyuan Tyre Group Co. Ltd.
- xi. In response to the above notification, the following producers/exporters have responded and submitted/filed exporters' questionnaire responses and/or legal submissions:
- a. Zhongce Rubber Group Co. Ltd.
  - b. Zhongce Rubber (Tianjin) Co., Ltd
  - c. Shandong Yinbao Tyre Group Company Ltd.
- xii. The Authority has examined exporter questionnaire responses filed by the above participating exporters. It was found that the responses filed are incomplete and not in the form prescribed by the Authority. None of the exporters have filed response to Part-II of the Exporter Questionnaire which is pertinent for sunset reviews.
- xiii. Questionnaires were sent to the known importers/ users/ associations of the subject goods in India calling for necessary information in accordance with the Rules.
- a. All India Motor Transport Congress
  - b. Society of Indian Automobiles Manufactures
  - c. All India Transporters Welfare Association
  - d. G. Industries
  - e. A.S. & Company
  - f. Celite Tyre Corporation
  - g. AGK Digital Private Limited
  - h. Akhil Impex Building
  - i. Alliance Traders
  - j. Amit Enterprises
  - k. Arora Enterprises

- l. Asis Enterprises
- m. Bhagwatee Impex
- n. Chadha Tyre Traders
- o. Chhabra Sales Corporation
- p. Dashmesh Trading Co
- q. Deep Enterprises
- r. Delhi Tyre Shoppe
- s. Eknoor Tyres Private Limited.
- t. Electro Link
- u. Ess Infraproject Private Limited
- v. Fine Traders
- w. Fish Aquarium Home
- x. Ganpati Overseas
- y. Genetic Sales Corporation
- z. Globus Corporation
- aa. Gupta Tyre House
- bb. H. D. International
- cc. H.S. Arora & Co. Ltd.
- dd. H.S. International
- ee. Harpreet International
- ff. Hayer Trading Co.
- gg. Hind Traders
- hh. Hind Traders
- ii. Indian Rubber Manufacturers Research Association
- jj. Indo China Impex
- kk. Indo Silicon Electronics Pvt. Ltd.
- ll. M S International
- mm. J.M. Shama Designs
- nn. Jaipex Ltd.
- oo. Jitender Overseas
- pp. Juneja Agencies
- qq. K.C. Impex
- rr. Kabeer Components Pvt Ltd
- ss. Kaks And Bills Pvt Ltd
- tt. Kingston Enterprise
- uu. Lokesh Impex
- vv. Vrinda Overseas
- ww. Mohan Enterprises
- xx. Nand Rubber Pvt. Ltd.
- yy. National Trading Company
- zz. New Vikas Tyres
- aaa. Pahwa Distributors
- bbb. Paras Auto Parts
- ccc. Pardeep Import Export
- ddd. Pioneer Trading Corporation

eee. Prem Trading Company  
fff. Pricon Engineering Services  
ggg. R C International  
hhh. R S Enterprises  
iii. Radhey Kishan Enterprises  
jjj. Rajpal Roadlines Pvt Ltd  
kkk. Rameshwar Dass & Co.  
lll. Rangi Road Carrier  
mmm. Renu Raj Trading  
nnn. Roadlion International  
ooo. Royal Traders  
ppp. Rynaa Overseas (India)  
qqq. S R Enterprises  
rrr. S. S. And Sons  
sss. S.K. International  
ttt. Saarwan Enterprises  
uuu. Sabharwal Trading Company  
vvv. Sachin Prasad Yadav  
www. National Trading Company  
xxx. Samar Traders Pvt. Ltd.  
yyy. Sanjog Impex  
zzz. Sanmati Portex Pvt Ltd  
aaaa. Sat Guru Traders  
bbbb. Saveer International  
cccc. Shiv Shakti Enterprises  
dddd. Shivaik Exim  
eeee. Simran India Inc.  
ffff. Simran Traders  
gggg. Som Projects & Associates  
hhhh. Sri & Co  
iiii. Sri Kumaran Traders  
jjjj. Zafco India Pvt. Ltd.  
kkkk. Sumant Bachhawat  
llll. Sun Traders  
mmmm. Supreem Trading Corporation  
nnnn. Surodhya Sales  
oooo. Trans Tyres (India) Pvt. Ltd.  
pppp. Uniglory International  
qqqq. Vaan Sales India Pvt. Ltd  
rrrr. Vikas Retail Private Limited  
ssss. Vortex Rubber Industries Pvt. Ltd.

- xiv. In response to the above notification Tyre Importers Welfare Association, claiming to be the importer's association of the subject goods, registered as an interested party. However, it did not file any legal submission or user/importer questionnaire

response or economic interest questionnaire response. Aggarwal Tyres also registered as an interested party, claiming to be an importer of the subject goods. It filed a legal submission to exclude imports under HS code 40118000. However, it did not file any response to user/importer questionnaire or economic interest questionnaire. None of these parties appeared before the Designated Authority during the oral hearing.

- xv. A list of all the interested parties was uploaded on the DGTR's website along with the request therein to all to email the non-confidential version of their submissions to all other interested parties.
- xvi. The Authority, vide communication dated 6<sup>th</sup> February 2024, upon request from certain interested parties, extended time to file questionnaire responses/ comments, to 7<sup>th</sup> March 2024.
- xvii. Exporters, producers, and other interested parties who have not responded to the Authority nor supplied sufficient information relevant to this investigation, have been treated as non-cooperative.
- xviii. The Authority accepted the confidentiality claims, wherever warranted, after due examination and such information have been considered confidential and not disclosed.
- xix. The applicants proposed the period of investigation as 1<sup>st</sup> April 2022 to 30<sup>th</sup> June 2023 (15 months) for the purpose of the present investigation. The applicants submitted that consideration of July 2022 – June 2023 as the investigation period would result in significant practical difficulties for the preparation of the costing data for the applicants domestic industry as these are multi-product companies having several plants.
- xx. The applicants companies further submitted that there would be no material difference in the merits of the case as the present case is based on continuation of subsidies and likelihood of injury which do not have any bearing on the period considered as POI. The Authority examined import volume and import price from the DGCI&S data considering the period April 2022 to June 2023 (annualised) and July 2022 to June 2023. It was seen that there was no material difference between import volume, value, and CIF price. In addition, the present investigation is concerning continuation of subsidies and likelihood of injury. The Authority has therefore, determined to accept the period of investigation proposed by the applicants which is 1st April 2022 to 30th June 2023 (15 months).
- xxi. Request was made to the Directorate General of Commercial Intelligence and Statistics (DGCI&S) to arrange transaction-wise details of imports of the subject goods for the past three years and the period of investigation (POI) and post-POI, which was received by the Authority. The Authority has relied upon DGCI&S transaction wise data for the required analysis after due examination of the transactions.

- xxii. Optimum 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) was worked out so as to ascertain if countervailing duty lower than the subsidy margin would be sufficient to remove injury to the domestic industry.
- xxiii. Verification of the information provided by the domestic industry to the extent deemed necessary was carried out by way of on the spot and desk study. Only such verified information, with necessary rectification, wherever applicable, has been relied upon for the purpose of this final finding.
- xxiv. The Authority held oral hearing on 19<sup>th</sup> March, 2024 to provide an opportunity to the interested parties to present the information orally in accordance with Rule 7(6). Oral hearing was held in hybrid mode. All the parties that presented their views orally were advised to file their submissions in writing by 23<sup>rd</sup> March, 2024. The interested parties were allowed to offer rejoinder to the submissions made by other interested parties latest by 27<sup>th</sup> March, 2024.
- xxv. A disclosure statement in terms of Rule 18 of CVD Rules was issued on 16<sup>th</sup> April 2024. Keeping in view the impending deadline interested parties were granted time till 20<sup>th</sup> April 2024 to provide their comments to the disclosure statement. The comments to disclosure statement received from the interested parties have been considered, to the extent found relevant and non-repetitive, in this final finding.
- xxvi. The submissions made by the interested parties during the course of this investigation to the extent found relevant have been considered by the Authority, in establishing essential facts under consideration.
- xxvii. Information provided by the interested parties on confidential basis was examined with regard to the sufficiency of the confidentiality claimed. 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.
- xxviii. Wherever an interested party has refused access to or has otherwise not provided necessary information in a timely manner during the course of the present investigation, or has significantly impeded the investigation, the Authority has considered such parties as non-cooperative and recorded the findings on the basis of the facts available.
- xxix. ‘\*\*\*\*’ in this final findings represents information furnished by interested parties on a confidential basis, and so considered by the Authority under the Rules.
- xxx. The exchange rate adopted by the Authority for the subject investigation is US \$1= INR 81.47.

## **C. LEVEL OF COOPERATION BY GOVERNMENT OF CHINA PR**

8. The Authority notes that adequate opportunity was provided to the Government of China PR, through written communication and consultation, to provide relevant information concerning existence, operations & administration of various subsidy schemes contended by the applicants, countervailability of the same vis-à-vis the WTO ASCM and Indian Rules, and benefits availed by the Chinese producers/exporters under these schemes. The response filed by Government of China has been taken on record and examined by the Authority.

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

### **E.1. Submissions made by other interested parties**

9. The submissions made by other interested parties regarding the product under consideration and like article are as follows:
- i. Participating exporters have not exported the PUC.
  - ii. The present investigation concerns new pneumatic radial tyres used in buses and lorries/ trucks. It does not cover tyres used in construction, mining or industrial handling vehicles and machines. Scope of the PUC cannot be expanded in a sunset review.
  - iii. Imports under HS Code 40118000 should be excluded as it covers ‘new pneumatic tyres used in construction, mining or industrial handling vehicles and machines.
  - iv. The Authority is not empowered to investigate issues concerning misclassification of imported goods.
  - v. The domestic industry should have filed mid-term review or anti-circumvention application to include imports under additional HS code.
  - vi. In the case of Sheet Glass (Final Findings dated 21<sup>st</sup> February 2020), the Authority rightfully decided not to include additional HS codes in a sunset review in view of the decision of the Gujarat High Court in *Ajanta Pvt. Ltd. v. Union of India*.
  - vii. In cases where mining/ industrial tyres can also be fitted onto trucks/lorries, they ought to be classified under HS code 40118000 as per General Rules for Interpretation of the First Schedule of Customs Tariff.
  - viii. As per decision of the CESTAT in *M/s. The Tyre Mark Versus Commissioner of Customs*, Bangalore, 2021, tyres ought to be classified on the basis of their dominant use.
  - ix. The domestic industry has not provided any evidence to show misdeclaration of goods.
  - x. WCO decision is inapplicable as it holds that tyres having maximum speed of 110 km/hr are to be classified under HS code 40112010. The exporters are exporting tyres of speed limit 65 km/hr.

### **E.2. Submissions made by the domestic industry**

10. The submissions made by the applicants regarding the product under consideration and like article are as follows:

- i. The present investigation being a sunset review investigation, the scope of the product under consideration remains the same as defined in the original investigation.
- ii. Upon consideration of same product description and size as was considered in the original investigation, product under consideration would be found in both HS codes 40112010 and 40118000 in recent years.
- iii. Upon consideration of the import statement of HS code 40118000 during original investigation it would be evident that the PUC were not imported from China PR under this code. It is only a recent phenomenon undertaken by Chinese exporters to avoid payment of duties.
- iv. Significant imports of subject goods have been reported under tariff classification 40118000. Such imports match the product description and size which was considered as the PUC in the original investigation. These imports have increased substantially during the injury period as no CVD is being levied on these imports.
- v. The purpose of CVD is to provide remedy to the domestic industry against imports of “a product” that has been imported in the country at subsidised price. The classification of the product under which such imports occurred is entirely immaterial.
- vi. The Authority ought to extend CVD on imports of the PUC under tariff code 40118000. Such recommendation to include additional HS code would not amount to expansion of product scope. It is merely a measure to ensure collection of duty and stop duty avoidance through misdeclaration of customs classification.
- vii. As per Rule 4(d), the duty of the Authority is to identify the product to enable determination by MOF. It is not the duty of the Authority to prescribe HS classification. The Authority is required to merely describe the PUC. Designated Authority prescribes HS codes only to intimate MOF with regard to the HS codes under which PUC data was considered for determination, and to assist the MOF to make a determination.
- viii. The Authority has added additional HS codes in a sunset review time and again. These include sunset reviews concerning “*Colour Coated/Pre-painted flat products of alloy or non-alloy steel from China (2021)*”, “*Electrical Insulators from China (2019)*”, “*Viscose Filament Yarn from China (2018)*”, and “*Poly Vinyl Chloride (PVC) Paste/Emulsion Resin from Korea RP, Taiwan, China PR, Malaysia, Thailand, Russia and European Union (2016)*”.
- ix. Gujarat High Court’s decision in *Ajanta Pvt. Ltd. v. Union of India* (dated 4-11-2015) highlights the importance of including all possible HS codes to ensure collection of duty. The Honourable High Court held that the demand notice to levy anti-dumping duty from CBIC is without authority if the anti-dumping duty is levied in respect of HS codes not specified in the customs notification. Thus, this case pertains to chargeability and collection of duty. The DGTR is concerned with investigation, determination, and recommendation. The decision does not pertain to the inherent power of the Designated Authority to recommend collection of trade remedial measures through recommending additional HS codes. DGTR’s practice regarding precedence of product definition over tariff classification remains the same.
- x. The scope of the PUC is determined by rim diameter of tyres. It is not based on application of vehicle. So long as a new pneumatic radial tyre having rim diameter above 16 inches can be used in a bus lorries/truck, it is included within the scope.

- xi. As per World Customs Organization's Classification decision in 67<sup>th</sup> Meeting (2021), certain tyres having similar specification to radial tyres for buses and lorries but used in vehicles for transportation of goods in construction, mining or industry applications are also to be classified under HS code 40112010.
- xii. Participating exporters are misrepresenting that they have not exported the PUC. The applicants have analysed transaction wise import data from market intelligence which shows significant imports of the PUC under HS code 40118000 by both Zhongce and Shandong Yinbao.
- xiii. The authorities across the world are taking proactive actions to counter duty avoidance. Recently in February 2023, Eurasian Economic Union concluded that Chinese exporters are circumventing anti-dumping duty on TBR tyres. To counter circumvention, the Authority broadened the scope of its anti-dumping duty to include tyres for trucks, buses and trolleybuses, dump trucks, truck trailers and semi-trailers. An anti-dumping duty was also extended to imports under additional HS code 8708.70.990.9 as it was found that TBR tyres are exported in Eurasian Economic Union as tyre and wheel assemblies.
- xiv. The domestic industry is selling the like article to the products on which domestic industry has sought inclusion. Allowing imports of these products without CVD only because these are reported under 40118000 would defeat the very purpose for which the present CVD is being proposed for extension.
- xv. The domestic industry had earlier filed anti-circumvention petition and the DGTR has not considered the same on the grounds that SSR is being undertaken and the issue can be addressed therein. Therefore, the information and evidence presented in the anti-circumvention application ought to be considered in this investigation.
- xvi. The exporters have misled the authority in contending that they have exported NPUC in the present period. The import data shows export of the PUC.
- xvii. Majority of the supply made by the exporters during the POI are actually imports of the PUC.
- xviii. It was open for the exporter to present the information and then contend that it pertains to NPUC. The exporter chose not to provide any relevant information, and merely made statements that they have supplied NPUC. This is blatant suppression of information and directly covered by the Hon'ble Supreme Court's decision in Designated Authority vs Haldor Topsoe [2000 120 ELT 11 SC] wherein the Court held that the party is obliged to first provide relevant information before assuming any evidence or fact to be final. The authority should apply adverse facts to the exporter and recommend residual duty on the exporter.
- xix. The usage of tire in the Country shows that the imported product has in fact been used for fitment in buses and lorries.
- xx. Imports under HS code 40118000 during the POI of original investigation do not show imports of the product that are now being reported in this code.

#### **D.1. Examination of the Authority**

11. The scope of product under consideration in the original investigation was defined as follows:

*“8(a)..... Accordingly, the product under consideration 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 tyres. 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.”*

*(b) 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 only that type of tyre 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.*

*(c) Product under consideration is classified under chapter 40 of the Customs Tariff Act, 1975, Tyres are classified under customs sub-heading 40112010 whereas tubes and flaps are under 40131020 and 40129049 respectively. The customs classification is indicative only and in no way binding upon the product scope.*

*(d) New/unused pneumatic radial tyres produced by the domestic industry are like article to the new/unused pneumatic radial tyres imported from China PR. The Authority holds that there is no known difference in the subject goods produced by the domestic Industry and that exported from China PR. Subject goods produced by the petitioners and imported from China PR 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 Authority holds that the product under consideration produced by the applicants domestic industry is like article to the subject product under consideration imported from subject country in accordance with the Anti-Subsidy Rules.”*

12. The present investigation being a sunset review investigation, the scope of the product under consideration remains the same as defined in the original investigation. The Authority considers that the customs classification is only indicative and is not binding on the scope of the PUC investigation. The Authority considers imports of the product under consideration, irrespective of its classification.
13. In the original investigation, the Authority had considered product description reported in the import transactions and ascertained whether the same pertains to the product under consideration. It is noted that the imports of the product under consideration were being made after specifying the size of the tyre.
14. The product under consideration is classified under Chapter 40 of the First Schedule to the Customs Tariff Act, 1975. Tyres are classified under HS code 40112010 and tubes and flaps are classified under HS codes 40131020 and 40129049 respectively.

15. The Authority called upon DGCI&S transaction-wise import data to examine imports of subject goods under HS codes 40112010, 40131020, 40129049 and 40118000. It is seen that significant imports of tyres having rim diameter above 16 inches which are typically used in buses, trucks and lorries have been reported under HS code 40118000. Products of these descriptions were considered product under consideration at the time of original investigation and included in quantifying volume and value of the imports. Whereas products of these descriptions were earlier being reported under 40112010, products of these descriptions are also being reported under 40118000. The Authority considers that if some products have been imported under different classification, even though these carry the same description as the description of the product under consideration considered by the Authority, the same cannot be excluded for the purpose of the determination.
16. Even World Customs Organization's Classification decision in 67th Meeting (2021) clarifies that certain tyres having similar specification to TBR tyres but used for vehicles for transportation of goods in construction, mining or industry applications are also to be classified under HS code 40112010. Thus, even if TBR tyres can also be used for mining or other industrial applications, they are to be treated as TBR tyres under HS code 4011201.
17. As regards the decision of CESTAT in *M/s. The Tyre Mark Versus Commissioner of Customs*, Bangalore, 2021, the Authority notes that it is instructive for the purpose of classification of tyres. In the present, the primary contention is not customs classification of tyres. In the present case, the Authority has to determine if certain imports under 40118000 are covered within product scope for the purpose of levying of CVD. The Authority has examined these imports on the basis of description given in the import data and has considered these products under consideration only if these carry the description as was adopted at the time of original investigation.
18. As regards the decision of Gujarat High Court in the matter of *Ajanta Pvt. Ltd. vs. Union of India*, the Authority notes that the said decision is with regard to chargeability of anti-dumping duty in force, and is not applicable to the present case. It has no bearing on Authority's established practice of considering customs classification as indicative, and not binding on the scope of the PUC. The decision holds that the revenue authorities can levy anti-dumping duty only in respect of tariff codes specified in the customs notification. In fact, this decision goes on to show the criticality of including all possible HS codes to fulfil the purpose of the duty being imposed. The Authority is however required to consider all such imports which pertain to the product under consideration, irrespective of the classification under which these were reported. Further, the countervailing duty to be charged only on those products which fall within the scope of the product under consideration. If some other products are reported on such classification, the same would not be subject to countervailing duty.
19. The Authority is not restrained from including a HS code in a sunset review investigation, if the information on record shows that the imports of the product have been reported in that HS code. The Authority is governed by the description of the product under consideration, irrespective of the classification where these have been imported. If a product has been imported in more than one HS code, and the same has been allowed by

customs authorities, the same in itself establishes possibility of classification of that product under more than one HS code. The scope of sunset review is not narrower than a mid-term review in so far as this aspect is concerned. This can be seen from past DGTR practice in cases of “*Poly Vinyl Chloride (PVC) Paste/Emulsion Resin from Korea RP, Taiwan, China PR, Malaysia, Thailand, Russia and European Union (2016)*”, and in the matter of mid-term review relating to “*Natural Mica Pearl Industries Pigments excluding cosmetic grade from China PR (2023)*”.

20. As regards reference to final findings of the DGTR in the matter of Sheet Glass (2020), the Authority notes that during the original investigation, the Authority recommended duty under HS codes 70042011, 70042019, 70031290, 70031990, 70033090, 70042099, 70049019, 70049099, 70052110, 70053090, 70091090, 70091010, 70099100, 70119090. The Ministry of Finance imposed duty in respect of HS codes 70042011, 70042019 only. During the sunset review, the Authority did not include additional HS codes as Ministry of Finance did not impose duty on other HS codes despite the Authority’s recommendations.

21. The table below shows the imports of the subject goods in the HS Code 40112010 and 40118000:

<b>Period</b>	<b>Unit</b>	<b>HSN 40112010</b>	<b>HSN 40118000</b>	<b>Other Codes</b>	<b>Total</b>
2019-20	MT	13,436	1,264	325	15,025
2020-21	MT	1,325	2,782	93	4,200
2021-22	MT	123	7,783	274	8,179
POI (A)	MT	0	20,634	516	21,150

22. In view of the above, the Authority concludes that the scope of the product under consideration is same as was notified in the original investigation, i.e., “*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, classified under customs sub-heading 40112010, 40131020 and 40129049.*” The customs classifications are indicative only and the measure shall be applicable if the imported product confirms to the description of the product under consideration. However, it is clarified that if the PUC is imported under HS code 40118000, the same shall be subjected to the measures.

23. There are no known differences in the subject goods produced by the domestic industry and that exported from the subject country. The present investigation is a sunset review investigation and the Authority had earlier held that the goods supplied by the domestic industry are like article to the PUC.

24. The Authority earlier at the time of original investigation held that the subject goods produced by the domestic industry are comparable to the goods imported from the subject country in terms of technical specifications, manufacturing process & technology, functions & uses, pricing, distribution & marketing, and tariff classification of the goods. The two are technically and commercially substitutable. None of the interested parties

have contended that the goods supplied by the domestic industry is not a like article to the PUC. Therefore, for the purpose of the present investigation, the subject goods produced and supplied by the domestic industry are being treated as 'like article' to the subject goods being imported from the subject country.

### **E. Scope of the domestic industry and standing**

#### **E.1 Submissions made by other interested parties**

25. The submissions made by other interested parties regarding domestic industry and standing are as follows:

- i. The application does not contain sufficient evidence to support standing of the applicants to represent domestic industry.

#### **E.2 Submissions made by the domestic industry**

26. The submissions made by the applicants regarding domestic industry and standing are as follows:

- i. The present application has been filed by ATMA on behalf of Apollo Tyres Ltd, J.K Tyre Industries Ltd., and MRF Limited. The applicants' companies are not related to any exporters of the subject goods in the subject country or any importer of the subject goods in India.
- ii. There are other domestic producers of the subject goods in India such as Bridgestone India Private Limited, Continental India Ltd, Michelin India Private Limited and CEAT Limited.
- iii. The production by the applicants' companies constitutes more than the Indian production. The production of the applicants companies accordingly constitute a major proportion in the Indian production.
- iv. The applicants' companies have not imported the product under consideration from the subject country. Nor are they related to any importer or exporter of the product under consideration.
- v. The requirement of standing is not relevant for a sunset review investigation. In any case, the applicants' domestic industry meets the requirements of standing under Rule 6(3) of the CVD Rules.

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

27. Rule 2(b) of the CVD Rules defines domestic industry as:

*“domestic industry” means the domestic producers as a whole engaged in the manufacture of the like article 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 subsidised article, or like article from other countries or are themselves importers thereof, the term “domestic industry” may be interpreted as referring to the rest of the producers”*

28. The present application has been filed by Automotive Tyre Manufacturer's Association on behalf of domestic producers of the product namely, Apollo Tyres Limited, J.K. Tyre Industries Limited and MRF Limited.
29. It is seen from the information on the record that the applicants account for more than 60% of the entire production in India. The applicants have not imported the subject goods from the subject country and that they are not related to any exporter of the subject goods in the subject country or importer of the subject goods in India. Accordingly, the Authority hold to determines that the applicants constitute domestic industry as defined under Rule 2(b) of the CVD Rules, and the application meets the requirements of standing under Rule 6(3).

## **F. Confidentiality**

### **F.1 Submissions made by the other interested parties**

30. Following submissions have been made by other interested parties with regard to confidentiality issues:
- i. The application filed by the petitioners have failed to provide nonconfidential summaries of the information claimed confidential without any reasonable justification thereby violating the Rules and Trade Notices.
  - ii. The application filed by the petitioners have failed to comply with the requirements of the Trade Notice No. 10/2018 date<sup>d</sup> 7th September, 2018.

### **F.2 Submissions made by the domestic industry**

31. Following submissions have been made by the domestic industry with regard to confidentiality issues:
- i. The confidentiality claimed by exporters is so excessive that one cannot even gauge from NCV which subsidy schemes have been availed.
  - ii. The responses filed by other interested parties are deficient and in violation of Trade Notice 10/2018 and Trade Notice 01/2013, thereby preventing the domestic industry from defending their rights. The exporters have claimed information in public domain confidential, showing excessive confidentiality claimed on no-basis.
  - iii. The applicants have claimed such information as confidential, confidentiality of which has been permitted under the rules and as per consistent practice of the Authority.
  - iv. The applicants have provided sufficient non confidential version of the application. No interested party has been able to point out any specific instance of information which has been claimed confidential and confidentiality of which is not justified under the rules.

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

32. With regard to confidentiality of information, Rule 8 of Anti-Subsidy Rules provides as follows:

*“Rule 8: Confidential information. (1) Notwithstanding anything contained in subrule (1), (2), (3) and (7) of rule 7, subrule (2) of rule 14, subrule (4) of rule 17 and subrule (3) of rule 19 copies of applications received under subrule-*

*(1) of rule 6 or any other information provided to the designated authority on a confidential basis by any party in the course of investigation, shall, upon the designated authority being satisfied as to its confidentiality, be treated as such by it and no such information shall be disclosed to any other party without specific authorisation of the party providing such information.*

*(2) The designated authority may require the parties providing information on confidential basis to furnish nonconfidential summary thereof in sufficient details to permit a reasonable understanding of the substance of the confidential information and if, in the opinion of a party providing such information, such information is not susceptible of summary, such party may submit to the designated authority a statement of reasons why summarization is not possible.*

*(3) Notwithstanding anything contained in subrule (2), if the designated authority, is satisfied that the request for confidentiality is not warranted or the supplier of the information is either unwilling to make the information public or to authorise its disclosure in generalised or summary form, it may disregard such information.”*

33. A list of all the interested parties was uploaded on the DGTR’s website along with the request therein to all to email the non-confidential version of their submissions to all other interested parties.

34. 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 the 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 also notes that all interested parties have claimed their business-related sensitive information as confidential.

### **G. Miscellaneous Submissions**

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

35. The following submissions have been made by the domestic industry with regard to other issues:

- i. There is no need to continue countervailing duty as there are non-tariff barriers such as quality control order and import restrictions which are reducing imports.
- ii. Truck and bus radial tyres have been subjected to trade remedial measures in India numerous times.

- iii. Import data considered by the applicants is unreliable.
- iv. Countervailing duty should be adjusted for anti-dumping duty which is being assessed subject to provisional assessment order passed by Delhi High Court in its Order dated 9<sup>th</sup> January 2023 in Writ Petition filed by ATMA [WP (C) 225/2023].

### **G.2 Submissions made by the domestic industry**

36. The following submissions have been made by the domestic industry with regard to other issues:
- i. The unit of measurement used in the questionnaire responses by the respondents are in numbers (PCS) which fail to comply with the standard determined i.e., weight (MT) by the Authority in the original investigation.
  - ii. Import duty restrictions and quality control order have no bearing on the case. The present case pertains to continuation of duty. On the other hand, import restrictions are imposed as per the discretion of the government and quality control orders are enforced to regulate quality of the products.
  - iii. The question of adjustment against anti-dumping duty on subject goods does not arise as Ministry of Finance has not implemented Hon'ble Delhi Court's ad-interim direction as on date.

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

37. The Authority has considered the submissions made by the parties and determines as follows.
38. As regards subject goods being subjected to trade remedies numerous times, the Authority notes that there is no bar on the number of times redressal can be sought against unfair imports. The Rules require the Authority to determine whether cessation of countervailing duty is likely to lead to continuation or recurrence of subsidisation and injury to the domestic industry. The recommendation for extension of countervailing duty is made only when the requisite legal requirements are met. Further, it is seen that it is not only the Designated Authority that is taking trade remedial action against subject imports but also numerous other countries such as USA, Europe, Eurasian Economic Union, Egypt and South Africa. In fact, it is seen that the quantum of measures invoked by other authorities is much higher than the quantum of measures imposed by the Authority.
39. The import policy and certification requirements constitute statutory discretion vested in the government. It has no bearing on the scope of the present sunset review which is for the purpose of examining extension of countervailing duty. The government has only restricted the imports of the subject goods by way of licensing but has not banned imports. The licenses can be obtained after meeting the terms and conditions.
40. With regard to adjustment of countervailing duty with anti-dumping duty, the Authority has specified how anti-dumping duty and countervailing duty should be collected. The actual duty collection of anti-dumping duty is subject to the outcome of the writ petition pending before the Honourable Delhi Court. The Authority had determined the question of adjustment of countervailing duty and anti-dumping duties in its final findings in the

original investigation dated 25<sup>th</sup> March 2019, in the event that anti-dumping duty and countervailing duty is levied simultaneously:

*“Having regard to the lesser duty rule followed by the Authority, the Authority recommends imposition of definitive countervailing duty equal to the lesser of margin of subsidy and margin of injury, from the date of notification to be issued in this regard by the Central Government, so as to remove the injury to the domestic industry. Since, product under consideration is already attracting anti-dumping duty from China PR, the amount of countervailing duty to be imposed is equivalent to the difference between the quantum of countervailing duty mentioned in Col No.7 below and antidumping duty payable, if any. If the countervailing duty is less than the anti-dumping duty payable, the differential amount would be in the negative and no countervailing duty shall be collected in such case.”*

41. With regard to unreliability of import data submitted by the petitioners, the Authority has in any event relied on DGCI&S transaction-wise data for the purpose of its determinations regarding imports.

#### **H. Determination of Subsidy and Subsidy Margin**

42. The application filed by the domestic industry provided adequate *prima facie* evidence of existence of countervailable subsidies in the subject country on the subject goods. Government of Peoples Republic China (“GoC”) was invited for consultations, which were held on 15<sup>th</sup> December, 2023. The present investigation was initiated on the basis of *prima facie* evidence.
43. The producers and exporters and GoC were advised to file response to questionnaire and were given adequate opportunity to provide verifiable information/evidence on the existence, degree, and effect of alleged subsidy program for a making an appropriate determination of existence and quantum of such subsidies.
44. Although the Government of China PR and the participating exporters filed response to the questionnaires, they failed to provide response in the form and manner prescribed by the Authority. GoC has provided information only in respect of participating exporters whereas in a countervailing duty investigation, industry wide information is mandatory to ascertain financial contribution, benefit and specificity. The program wise responses filed by GoC and exporters are also incomplete as response to each subsidy program and all applicable evidences have not been provided. Further, vital information regarding direct/indirect ownership/control of government in tyre companies has not been disclosed even though such information is available in public domain. Therefore, wherever the response filed by GoC and exporters have been found incomplete or inadequate, the Authority is constrained to rely on facts available on record, including the information provided by the domestic industry in its petition, determinations earlier made by the Authority, determinations made by other investigating authorities and information/evidence filed by the domestic industry during the course of the investigation.

45. As per the petition the Chinese producers/exporters of the subject goods have received countervailable subsidies under the following programs of various levels of governments and they have been classified under six broad categories: grants, tax and VAT incentives, preferential loans and lending/financing, export financing and export credit, provision of goods at less than adequate remuneration, and equity infusion. The various programs classified under these categories are listed below:

**I. Schemes previously countervailed in the Original Investigation**

46. In the original investigation, the Authority had held that following schemes are countervailable:

**a. Programs in the Form of Grants**

- i. Program no. 1: Fixed Asset Investment Subsidies
- ii. Program no. 2: Reimbursement of Anti-dumping and/or Countervailing Legal Expenses by the Local Governments
- iii. Program no. 3: Special fund for foreign economic and trade development
- iv. Program no. 4: Export Assistance Grant
- v. Program no. 5: Subsidies for Companies Located in the Hefei Economic and Technology Development Zone
- vi. Program no. 6: Anhui Province Subsidies for Foreign-Invested Enterprises
- vii. Program no. 7: Hefei Municipal Export Promotion Policies
- viii. Program no. 8: Various subsidy programs for enterprises located in Hangzhou Economic and Technology Development Area
- ix. Program no. 9: Funds for “Outward Expansion” of Industries in Guangdong Province
- x. Program no. 10: Research and Development Assistance Grant
- xi. Program no.11: Fund for Industrial Transformation and Upgrading / Grants related to technological upgrading, renovation or transformation
- xii. Program no. 12: Special funds for energy saving technology reform / promotion of circular economy/ incentive fund for transformation of energy-saving technology
- xiii. Program no. 13: Grants for purchase of equipments
- xiv. Program no. 14: Special funds for infrastructure construction
- xv. Program no. 15: Various Government grants- Received by producers/exporters of China PR/ Ad hoc grants provided by central, provincial and municipal/regional authorities
- xvi. Program no. 16: Grant for Bringing in Foreign Intellectuals
- xvii. Program no. 17: Grants for Employment Stabilization, Graduates Training and recruitment provided by provincial/prefectural/municipal government authorities
- xviii. Program no. 18: Postdoctoral researchers funding
- xix. Program no. 19: Grants for maintenance and operation of equipments
- xx. Program no. 20: Relocation Compensation provided by provincial/prefectural/municipal government authorities

- xxi. Program no. 21: Ad-hoc grants for implementing specialized projects/pilot projects provided by provincial/prefectural/municipal government authorities
- xxii. Program no. 22: Grants/Awards for Industrial Design
- xxiii. Program no. 23: Grants/Awards for Technological Innovation
- xxiv. Program no. 24: Talent introduction fund
- xxv. Program no. 25: Research report writing expenditure refund
- xxvi. Program no. 26: Service industry development fund
- xxvii. Program no. 27: Self-owned Brand Development Registration Fee refund
- xxviii. Program no. 28: Import Equipment interest subsidy
- xxix. Program no. 29: Export Rewards
- xxx. Program no. 30: Patent Creation and Support Fund
- xxxi. Program no. 31: Listing Fee Grant
- xxxii. Program no. 32: Subsidies for listed companies
- xxxiii. Program no. 33: Shandong Province Key Industry Technical Reform Project Loan Financial Discount Interest Fund
- xxxiv. Program no. 34: Nanhai New District Industrial Park Land Special Fund
- xxxv. Program no. 35: Grants for financing loans and interest
- xxxvi. Program no. 36: Special funds for land in Nanhai New District Industrial Park

**b. Programs in the form of Tax and Vat Incentives**

- xxxvii. Program no. 37: Tax Policies for the deduction of research and development (R&D) expenses
- xxxviii. Program no. 38: Preferential tax policies/ Income Tax Reductions for companies that are recognized as high and new technology companies
- xxxix. Program no. 39: Tax credit concerning the purchase of special equipment

**c. Programs in the Form of Preferential Loans and Lending**

- xl. Program no. 40: Government Policy Lending
- xli. Program no. 41: Preferential Loans to State Owned Enterprises
- xl.ii. Program no. 42: Discounted Loans for Export-Oriented Enterprises and Export Loan Interest Subsidies
- xl.iii. Program no. 43: Preferential loans and interest rates to the Tyre Industry

**d. Programs in the form of Export Financing and Export Credit**

- xliv. Program no. 45: Export Seller's Credit
- xl. v. Program no. 46: Export Buyer's Credit
- xlvi. Program no. 47: Other Export Financing from State-Owned Banks

**e. Programs in the Form of Provision of Goods and Services at Less Than Adequate Remuneration (LTAR)**

- xl. vii. Program no. 48: Provision of Electricity for Less Than Adequate Remuneration
- xl. viii. Program no. 49: Land Use Rights at LTAR in Industrial and Other Special Economic Zone

- xlix. Program no. 50: Provision of Land to State Owned Enterprises at LTAR
  - l. Program no. 51: Land Use rights at LTAR for Foreign Invested Enterprises
  - li. Program no. 52: Land-Use Rights at LTAR in Economic Development Zones
  - lii. Program no. 53: Provision of Carbon Black for Less Than Adequate Remuneration

## **J. New Programs**

47. The domestic industry has contended that there are more countervailable programs providing benefits, resulting in lower costs, thereby allowing Chinese producers to sell at a lower price. The list of such new programs is provided below:

### **a. Programs in the Form of Grants**

- i. Program no. 54: National Award for Green Factory
- ii. Program no. 55: Famous Brands of China recognized by central, provincial or municipal/regional authorities
- iii. Program no. 56: Compensation for land acquisition and demolition spending funds
- iv. Program no. 57: Funds for making investments in overseas subsidiaries
- v. Program no. 58: Department of Commerce exchange rate subsidies
- vi. Program no. 59: Grants for fixed asset investment for enterprises in Hubei
- vii. Program no. 60: Special Fund for High-quality Development for enterprises located in Hubei
- viii. Program no. 61: Road Transportation Subsidy
- ix. Program no. 62: Intellectual Property Awards provided by provincial/prefectural/municipal government authorities
- x. Program no. 63: Special funds for high-tech enterprises in Yantai Economic Development Zone
- xi. Program no. 64: Electricity subsidy
- xii. Program no. 65: Enterprise social security subsidy
- xiii. Program no. 66: Transformation and upgrading of key export industries
- xiv. Program no. 67: Incentive funds/ Awards for increasing production and efficiency of key enterprises
- xv. Program no. 68: Incentive funds for Expansion of production-oriented export enterprises
- xvi. Program no. 69: Industrial enterprise disaster relief funds

### **b. Programs in the form of Tax and Vat Incentives**

- xvii. Program no. 70: Export tax rebate/Tax Refund on Exports
- xviii. Program no. 71: Accelerated depreciation of fixed assets
- xix. Program no. 72: Tax incentives on urban land use tax for high tech enterprises
- xx. Program no. 73: Refund/Rebate/Remission of taxes and fees by central, provincial or municipal/regional governmental authorities

- xxi. Program no. 74: Import Tariff/Charges and VAT Relief for Imported Equipment
- xxii. Program no. 75: Import Tariff/Charges and VAT Relief for Imported Inputs

**c. Programs in the form of Equity Infusion**

- xxiii. Program no. 76: Grant of Shares in Prometeon Tyre Group S.r.l. to Aeolus Tyres by ChemChina
- xxiv. Program no. 77: Preferential Financing under One Belt One Road Initiative for Companies making Outward Investments
- xxv. Program no. 78: Debt for Equity Swaps

**d. Programs in the Form of Provision of Goods and Services at Less Than Adequate Remuneration (LTAR)**

- xxvi. Program no. 79: Provision of Nylon Tyre Cord Fabric for Less Than Adequate Remuneration
- xxvii. Program no. 80: Provision of Synthetic Rubber for Less Than Adequate Remuneration
- xxviii. Program no. 81: Provision of Natural Rubber for Less than Adequate Remuneration

**e. Programs in the Form of Preferential Financing**

- xxix. Program no. 82: Provision of Loan Guarantee/Credit Loan Guarantee/Export Credit Guarantee by GOC/ State owned Banks

48. Principle of judicial economy allows the Authority to refrain from undertaking detailed investigation in respect of those program wherein the Authority is not required to quantify benefits. The Authority has examined whether countervailable schemes as determined during the original investigation continue, and whether there is evidence of continued benefit being received under the said schemes. The present investigation is a sunset review investigation, and the objective of the investigation is to ascertain whether the Chinese producers continue to benefit from countervailable subsidies. However, the GoC and the exporters have filed incomplete and inadequate responses. The Authority has considered it unnecessary to quantify benefits under these schemes that were earlier investigated and found countervailable. However, the Authority has examined hereinbelow whether the subsidy programs countervailed at the time of original investigations continue to give countervailable benefits.

49. The domestic industry has alleged existence of a number of new schemes. These were not brought before the Authority at the time of the original investigations. The domestic industry contended that the Chinese producers have received countervailable benefits in these schemes as well. However, the domestic industry has not provided any information and evidence for quantification of benefits in these schemes. Barring two Chinese producers, none of the Chinese producers participated in the present investigation. The responding exporters have stated that they have not supplied any PUC during present

POI. Even otherwise, the questionnaire response filed by the responding exporters are incomplete. Since, the domestic industry has not provided information and evidence for quantification of benefit, the present investigation is a sunset review investigation, and the domestic industry itself has not claimed increased countervailing duty margin, the Authority considers that it is not necessary to examine countervailability of these programs. Accordingly, the new schemes brought on record by the domestic industry have not been examined.

## **K. Examination of Subsidy Programs**

### **K.1 Submissions made by the other interested parties**

50. The following submissions have been made by the other interested parties with regard to subsidy and subsidy margins:

- i. The petitioners failed to provide sufficient evidence to show existence of the program or how the program relates to tyre producers.
- ii. The participating respondents are not located in the geographical region in respect of which subsidy program is applicable.
- iii. The petitioners fail to provide the accounting records, vouchers, or any other evidence to prove that the companies under investigation have actually received the subsidy benefits associated with the program.
- iv. Subsidy schemes are not specific.
- v. Concept of non-market economy does not exist in countervailing duty laws in India.
- vi. External benchmarks for less than adequate remuneration analysis is not consistent with Indian laws.
- vii. Chinese commercial banks and state-owned enterprises are not “public bodies.” State ownership is not the sole criterion to determine if an entity is a public body.
- viii. Individual duty rates as determined in the original investigation should be recommended for participating exporters.
- ix. GoC and the participating exporters have filed complete questionnaire response as prescribed by the Authority.
- x. GoC has not provided information in respect of non-participating exporters as it does not have access to their information. It has responded to the best of its ability.

### **K.2 Submissions made by the domestic industry**

51. The following submissions have been made by the domestic industry with regard to subsidy and subsidy margins:

- i. Chinese laws and regulations, various government reports, screenshots of government websites, WTO reports, media reports and independent studies and analysis undertaken by reputed organisations such as OECD, detailed findings of other investigating agencies in their anti-subsidy investigations corroborated with annual reports of major tyre producers, all show sufficient evidence for financial contribution, benefit, and specificity.
- ii. In the original investigation, the Authority found countervailability of programs on the basis of geographic specific subsidies availed by Giti Tyre Anhui Co. Ltd.

- and Guangzhou Pearl River. These exporters are not participating in the present SSR, but this does not change countervailability of subsidy schemes
- iii. The Annual Reports of major tyre producers itself show availment of subsidies. The onus is on the participating exporters to show their accounting records or vouchers to show that they have not availed subsidies
  - iv. GOC has failed to provide adequate response to counter *de jure and de facto* specificity of the alleged subsidy programs.
  - v. China is considered as a “non-market economy” by almost all investigating authorities precisely because of rampant price distortions prevailing in all industries across the board. Price distortions in China is documented by European Commission in its Working Document “*Significant Distortions in the Economy of the People's Republic of China for the Purposes of Trade Defence Investigations*.”
  - vi. WTO allows investigating authorities to reject domestic prices as a benchmark price to address ‘price distortions’ as held by WTO Panel in *US – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China*. DGTR has also considered external benchmarks in *Anti-subsidy investigation concerning imports of “Fiberboards” originating in or exported from Indonesia, Malaysia, Thailand, Vietnam, and Sri Lanka (Case No. CVD 6/2019)*.
  - vii. Even when the state-ownership is not considered as the sole criterion to determine whether state owned banks in China are public bodies, the investigating authorities including India, USA and Europe have consistently held that Chinese banks possess, exercise and vested with governmental authority. Therefore, they are public bodies as per CVD law.
  - viii. The domestic industry is requesting for continuation of imposition of residual duty on all exporters due to their failure to cooperate in the present investigation.
  - ix. GoC has suppressed information regarding direct and indirect ownership/control of the government in tyre companies in China. Such information is available in the public domain. However, neither GoC nor participating exporters provided this information in their response.

### **K.3 Examination of Subsidies**

#### **A. Grants: programs claimed to be countervailed in original investigation: Program no. 1 to 36**

### **K.4 Submissions made by the other interested parties**

52. Following submissions were made by GoC and participating exporters regarding subsidy programs in the nature of grants:
- i. In respect to program no. 1 to 36 and 54 to 69 the GoC has stated that participating exporters have not applied for some of the programs, the domestic industry has not provided sufficient evidence for some of the programs, some of the programs are not specific and some of the programs are not applicable to the participating exporters. Therefore, the Standard Questions Annexure and Grant Annexure are not applicable.
  - ii. As per the GoC the subsidy program alleged as program no. 2 does not exist as a subsidy scheme. Further, Program no. 13 is not specific.

- iii. Zhongce Rubber Group has availed grants under program no. 8, 12, 17, 18, 20, 23, 24, 29, 30, 31 and 62. The document relied upon by the domestic industry to claim that Zhongce has failed to provide complete information regarding grants is share prospectus and not annual report. This document is a consolidated report which lists subsidies received by all subsidiaries of Zhongce Rubber Group. These subsidiaries are not producers of the PUC and not participating in the investigation.
- iv. Shandong Yinbao Tyre Group Co., Ltd has availed grants under program no. 17, 23 and 62.

#### **K.5 Submissions made by the domestic industry**

53. Following submissions were made by the domestic industry regarding subsidy programs in the nature of grants:
- i. In the original investigation, the Authority had countervailed subsidy programs in the nature of grants under program no. 1 to 36. Neither the participating exporters nor the GoC have submitted any evidence to show that the subsidy programs are not continuing.
  - ii. GoC is required to respond to program-wise questionnaire in respect of all exporters and not just participating exporters.
  - iii. Neither GoC nor participating exporters have provided response to Grants Annexure.
  - iv. None of the participating exporters or GoC have provided response in respect of new programs in the nature of grants (Program no. 54 to 69). The Annual Report of Zhongce Rubber in fact specifies receipt of numerous grants which Zhongce has failed to disclose in its response.

#### **K.6 Examination of the Authority**

54. The Authority has examined program no. 1 to 36 which domestic industry had claimed to be countervailable on the basis of Authority's final findings in the original investigation. Barring program no. 15, 35 and 36, the Authority determines that all programs from 1 to 36 were held to be countervailable by the Authority in the original investigation. Program no. 15, 35 and 36 have been removed as they are general or duplicate programs which have already been covered by other programs.
55. The GoC and the participating exporters have provided incomplete and inadequate response in respect of these subsidy programs. No substantive evidence has been provided to support the claim that these grants are not countervailable. Further no evidence has been provided to support the claim that benefits received under these schemes have discontinued.
56. In any event, the benefit for a non-recurring subsidy program related to capital assets continues for the entire average useful life of the assets which is typically taken as 10 years as per DGTR practice in countervailing duty investigations. Therefore, for non-recurring subsidy programs related to capital assets, the benefit would be deemed to continue in the present sunset review, considering that the life of the assets is not completed.

57. Even when there are two Chinese producers who have participated in the present investigations, these producers have claimed that they have not exported any PUC to India during the present POI. Thus, the Authority has not examined continuation of countervailable benefits for individual participating producers. The Authority has examined whether the Chinese producers as such continue to receive countervailable benefits under these programs.
58. In respect of program no. 1, 3, 4, 9, 11, 14, 15, 16, 19, 21, 22, 25, 26, 27, 28, 32, 36, 54, 56, 57, 58, 59, 60, 61, 63, 64, 65, 66, 67, 68, 69 the GoC has merely submitted that participating exporters have not applied for these programs. The Authority notes that program no. 1, 3, 4, 9, 11, 14, 15, 16, 19, 21, 22, 25, 26, 27, 28, 32, 36 are in the nature of grants. Since these are in the nature of grants, the Authority is required to consider these over the average useful life (AUL) of the company. It is noted that GoC has not provided any documentary evidence substantiating its claim that the respondents have not availed any grant during the AUL and the POI.
59. Analysis of annual report of the participating producers clearly show receipt of grants. It is noted that the company has received significant amount of grant during the present period. Thus, receipt of grant even during the current period is established even by the questionnaire response filed by the participating producers itself. In addition, the domestic industry has also filed annual reports of other tyre producers Triangle Tire Co Ltd, Shandong Linglong Tire Co. Ltd., Aeolus Tire Co Ltd., Wanda Group Co. Ltd. and Giti Tire Co. Ltd. for the calendar year 2022 as evidence of grants. These annual reports also show receipt of significant amount of grants during the current period.
60. The Authority notes that program no. 54, 56, 57, 58, 59, 60, 61, 63, 64, 65, 66, 67, 68, 69 are new programs identified by the petitioners. As stated before, the Authority has considered it appropriate not to examine new programs. Therefore, countervailability of these has not been examined.
61. The two Chinese participating producers have claimed that they have not exported any PUC to India during the present POI. Countervailability requires examination of financial contribution, benefit, and specificity. Financial contribution requires examination of legal texts that govern subsidy programs. Benefit analysis involves examination of whether the recipient is more advantageous than others in a market or if a recipient has received financial contribution which is not based on commercial considerations. Specificity requires examination of eligibility criteria of subsidy programs in order to determine if a subsidy program is enterprise specific or industry specific or geographically specific. Further, specificity analysis is not limited to legal text alone (*de jure* subsidy). The Authority is also required to examine grant of subsidy in fact (*de facto* subsidy), which involves an examination of whether a subsidy has been granted to limited number of enterprises (even though the legal text may not mention such specificity criteria) or the subsidy is predominantly used by certain enterprises or disproportionately large sum of subsidy is granted to certain enterprises. This analysis can certainly not be done on the basis of information submitted for participating exporters alone. GoC has not responded to the questionnaire in the prescribed format by avoiding to provide industry wide information in respect of all enterprises involved in production and sale of the product under consideration.

62. In respect of program no. 13, “*Grants for Purchase of Equipment*”, GoC claimed that it is not specific. During the original investigation, the exporters themselves reported that they have received such grants. GoC has not submitted any evidence to show that these grants are not enterprise or industry specific. The Authority considers that the benefit under this program became available throughout the life of the equipment so bought. Availment of this benefit was admitted by the exporters in the original investigation. Therefore, the Authority continues to hold program no. 12 as countervailable.
63. The Authority examined the document regarding Zhongce Rubber submitted by the petitioners to claim that Zhongce Rubber has not disclosed grant programs. The document is titled as “Prospectus for Initial Public Offering of shares and listing on the main board” of Zhongce Rubber Group Co., Ltd. The document identifies numerous subsidy programs in the nature of grants which are evidently not disclosed by Zhongce in its response. In this regard, Zhongce has submitted that the share prospectus is a “consolidated report” of Zhongce Rubber Group as a whole. It is not required to disclose subsidies received by all subsidiaries. The Authority has examined that Zhongce Rubber has following wholly owned subsidiaries:
- i. Hangzhou Chaoyang Rubber Co., Ltd.
  - ii. Zhongce Rubber (Jiande) Co., Ltd.
  - iii. Hangzhou Zhongce Qingquan Industrial Co., Ltd.
  - iv. Hangzhou Haichao Rubber Co., Ltd.
  - v. Zhongce Rubber (Anji) Co., Ltd.
  - vi. Zhongce Rubber (Tianjin) Co., Ltd.
64. Out of these subsidiaries, it is evident from publicly available information that Hangzhou Zhongce Qingquan Industrial Co., Ltd.<sup>1</sup> and Zhongce Rubber (Tianjin) Co., Ltd. produce the PUC. Out of these two only Zhongce Rubber (Tianjin) Co., Ltd. has filed response. Therefore, it is evident from the consolidated report and absence of response by Hangzhou Zhongce Qingquan Industrial Co., Ltd. that Zhongce Rubber has not disclosed all subsidy programs availed by its subsidiaries that produce the PUC.

**B. Tax and VAT incentives: Program no. 37 to 39 (subsidy programs investigated in the original investigation)**

**i. Program no. 37**

**K.7 Submissions made by other interested parties**

- i. The GOC and participating exporters have stated that the programs in the nature of Tax and VAT incentives are not specific.

**K.8 Submissions made by the domestic industry**

65. The domestic industry made the following submissions-

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<sup>1</sup> <https://www.tirereview.com/hangzhou-zhongce-sets-prudent-growth-course/>

i. With regard to subsidy programs in the nature of Tax and VAT incentives the domestic industry has stated that, in the original investigation, the Authority had countervailed subsidy programs in the nature of tax incentives under program no. 37 to 39.

ii. Neither the participating exporters nor the GoC have submitted any evidence to show that the subsidy programs are not continuing to confer benefit.

### **K.9 Examination of the Authority**

66. In respect of Program no. 37, “*Tax Policies for the deduction of research and development (R&D) expenses*”, the Authority examined countervailability of this program as program no. 27 in the original investigation. The relevant extracts of the findings are provided below:

*“183.The Authority notes that the program was governed under Article 30.1 of the Corporate Income Tax Law of the PRC and Article 95 of the Regulations on the Implementation of Enterprise Income Tax Law of the PRC. Further, the SAT issued Notice on Issuing the Administrative Measures for the Pre-tax Deduction of Enterprise Research and Development Expenses (for Trial Implementation) (Guo Shui Fa (2008) No. 116) to clarify R&D expense allowed to be deducted on a weighted basis.*

*184.The above instrument also stipulates that where the R&D expenses actually incurred by an enterprise have not been included in the current loss and profit as intangible assets, 50% of the amount of R&D expenses actually incurred during year shall be deducted from the amount of taxable income in addition to the deduction based on actual expenses. Where any intangible assets are formed, 150% of the costs of the intangible assets shall be amortized before tax payment.*

*185.The Authority notes that Guo Shui Fa (2008) No. 116 was replaced with Notice of the Ministry of Finance and the State Administration of Taxation on Issues concerning the Policies for the Weighted Pre-tax Deduction of Research and Development Costs (Cai Shui (2013) No. 70) dated January 1, 2013 and then further replaced with Notice of the Ministry of Finance, the State Administration of Taxation and the Ministry of Science and Technology on Improving the Policies for the Weighted Pre-tax Deduction of Research and Development Expenses (Cai Shui (2015) No. 119) dated January 1, 2016. The same is still in effect.*

*186.The Authority notes that this program has been earlier examined by some other investigating Authorities in the past, which establishes its existence. For example, countervailability of this program has been established by the EU authorities in Organic Coated Steel Products.*

*187.Zhongce Rubber Group Co, Ltd, one of the responding exporters from China PR has submitted in its questionnaire response that it availed this subsidy and has provided information with regard to the amount of subsidy during the POI.*

*188.Program provides for a financial contribution in the form of revenue foregone which is otherwise due and a benefit is thereby conferred. Subsidy is also specific*

*because it is limited to enterprise which are engaged in research and developmental activities. The fact that Zhongce Rubber benefitted from the program shows that program was in fact used by the tyre producers in China PR that exported the subject product to India during the POI. Therefore, Authority holds that countervailing duty should be imposed against this program.*

67. Zhongce Rubber Group Co, Ltd, and Shangdong Yinbai Tyre Group Co. Ltd. participating exporters from China PR have submitted in their questionnaire response that they have availed this subsidy and have provided information with regard to the amount of subsidy during the POI.
68. GOC in its response has claimed that the program is not countervailable, as it is not specific. GoC claimed that this program is available to all enterprises, regardless of whether they are classified as high and new technology enterprises. However, in the original investigation the Authority had determined that the program is specific, because it is limited to enterprise which are engaged in research and developmental activities. The GoC had not contested this determination. The Authority notes that the continuation of the program has not been disputed by the GoC. In fact, the GoC has admitted continuation of the program. Therefore, the Authority holds that this program continues to grant countervailable benefit.

**ii. Examination of Program no. 38**

69. In respect of Program no. 38, “*Preferential tax policies/ Income Tax Reductions for companies that are recognized as high and new technology companies*”, the Authority examined countervailability of this program as program no. 31 in the original investigation. The relevant extracts of the findings are provided below:

*“216. The Authority notes that this program has been earlier examined by some other investigating Authorities in the past and existence and countervailability of this program has been established. For example, (a) by the EU authorities in organic coated steel products as well as coated fine paper.*

*217. Aeolus Tyre Co, Ltd and Triangle Tyre Co, Ltd, two of the responding exporters from China PR who have submitted questionnaire response and have stated that they availed this benefit and have provided information with regard to the amount of subsidy received by them during the POI.*

*218. Program provides for financial contribution in the form of revenue foregone and benefit is thereby conferred. Program is also specific because it is limited to certain enterprises. The fact that Aeolus Tyre Co. Ltd. and Triangle Tyre Co. Ltd., benefitted from the program shows that program was in fact used by the tyre producers in China PR that exported the subject product to India during the POI. Therefore, the Authority holds that countervailing duty should be imposed against this program.”*

70. Aeolus Tyre Co. Ltd. and Triangle Tyre Co. Ltd. who availed this program during the original investigation have not participated in the present sunset review. The participating

exporters have not availed this program. However, as mentioned above, countervailability of a program is not determined by participating exporters alone.

71. GOC has claimed that the program is not specific as it is applicable to all high and new technology enterprises, and certification of high and new technology enterprise is applicable to all legal person enterprises within China without any bias as to enterprise type, industrial sector, or geographical location. However, GOC has not submitted any evidence to substantiate this claim. The Authority has also previously found this program to be countervailable in Hot Rolled Cold Rolled Steel (2017) after examining in detail the specificity of the eligibility criteria of High and New Technology Enterprises:

*“310. Under these regulations enterprises with ‘Advanced and New-Tech enterprises Certificates’ and those located in specified regions or zones are eligible for reduction of the normal tax rate of 25% to the preferential rate of 15%.”*

72. The GoC has not provided any document to show that the conclusion drawn by the Authority in the previous determination no longer holds true. Further, as per the regulation quoted above, the reduction in normal tax rate is available only to enterprises with ‘advanced and new-tech enterprises certificates’ and to those located in specified regions. This itself establishes that the program is specific as it is not available to all enterprises. Therefore, the Authority holds that this program continues to grant countervailable benefit.

### **iii. Examination of Program no. 39**

73. In respect of program no. 39, “*Tax credit concerning the purchase of special equipment*”, the Authority examined countervailability of this program as program no. 39 in the original investigation. The relevant extracts of the findings are provided below:

*“225. The Authority notes that the program was governed under Article 34 of the Enterprise Income Tax Law of the PRC and Article 100 of the Regulations on the Implementation of Enterprise Income Tax Law of the PRC. Further, the Ministry of Finance, the State Administration of Taxation, the National Development and Reform Commission and Other Departments issued the Catalogues of the Special Equipment for Energy and Water Conservation and Environmental Protection Eligible for Enterprise Income Tax Preferences (Cai Shui (2008) No. 115), which was replaced by 2017 Version (Cai Shui (2017) No. 71).*

*226. The Authority notes that this program has been earlier examined by some other investigating Authorities in the past and existence and countervailability of this program has been established. For example, by the EU authorities in organic coated steel products.*

*227. Shandong Yongfeng Tire Co. Ltd, one of the responding exporters from China PR who has submitted questionnaire response has stated that it availed this benefit and has provided information with regard to the amount of subsidy received by the company during the POI.*

*228. The program provides for financial contribution in the form of revenue foregone and benefit is thereby conferred on the recipient. The program is also specific because it is limited to certain enterprises that purchase special equipment. The fact that Shandong Yongfeng benefited from the program shows that program was in fact used by the tyre producers in China PR that exported the subject product to India during the POI. Therefore, the Authority holds that countervailing duty should be imposed against this program.”*

74. Shandong Yongfeng who availed this program during the original investigation has not participated in the present sunset review. The participating exporters have not availed this program. However, as mentioned above, countervailability of a program is not determined by participating exporters alone.
75. GOC has claimed that this program is not specific, as specificity is only limited to enterprises that purchase special equipment without regard to enterprise type, industrial sector, or geographical location. However, the very fact that the program is specific to enterprises that purchase special equipment itself shows enterprise specificity as held by investigating authorities including DGTR in past cases. In the original investigation the Authority had determined that the program is specific. The Authority notes that the continuation of the program has not been disputed by the GoC. In fact, the GoC has admitted continuation of the program. Therefore, the Authority holds that this program continues to grant countervailable benefit.

**C. Preferential loans and lending/financing (programs that were investigated at the time of original investigation): Program no. 40 to 47**

- Program no. 40: Government Policy Lending
- Program no. 41: Preferential Loans to State Owned Enterprises
- Program no. 42: Discounted Loans for Export-Oriented Enterprises and Export Loan Interest Subsidies
- Program no. 43: Preferential loans and interest rates to the Tyre Industry
- Program no. 44: Export Credit Insurance Subsidy
- Program no. 45: Export Seller's Credit
- Program no. 46: Export Buyer's Credit
- Program no. 47: Other Export Financing from State-Owned Banks

**K.10 Submissions made by other interested parties**

76. Following submissions were made by other interested parties regarding preferential loans and lending:
- i. Bank of China de-regulated interest rates as per notice of the People's Bank of China on adjusting the deposit and loan interest rates of financial institutions.
  - ii. Chinese commercial banks and state-owned enterprises are not “public bodies” as per Notice of the China Banking Regulatory Commission and Article 4 of China's Commercial Bank Law.
  - iii. State ownership is not the sole criterion to determine if an entity is a public body.
  - iv. Evidences in the petition are irrelevant and insufficient to support the allegation.
  - v. Specific subsidy does not exist in this program.

- vi. Exporter Seller's Credit program does not constitute financial contribution.

#### **K.11 Submissions made by the domestic industry**

- 77. Following submissions were made by the domestic industry regarding preferential loans and lending:
  - i. The Authority had held these programs to be countervailable in the original investigation. No evidence has been provided that the benefit of such subsidised loans has discontinued.
  - ii. GOC and the participating exporters have filed incomplete and inadequate response. No response has been filed in respect of loans annexure to show that lending rates are at market rates.
  - iii. Article 34 of the Law on Commercial Bank law, which applies to all financial institutions operating in China, provides that '*Commercial banks shall conduct their business of lending in accordance with the needs of the national economic and social development and under the guidance of the industrial policies of the State*'. Although Article 4 of the Bank Law states that '*Commercial banks shall, pursuant to law, conduct business operations without interference from any unit or individual. Commercial banks shall independently assume civil liability with their entire legal person property*', US Department of Commerce and European Commission has determined that Article 4 of the Bank law is applied subject to Article 34 of the Bank law, i.e. where the State establishes a public policy the banks implement it and follow State instructions.

#### **K.12 Examination by the Authority**

- 78. In the original investigation, the Authority examined countervailability of the above programs in the nature of preferential loans and lending as program no. 52 to 57. The relevant extracts of the findings are provided below:

*“334. During the course of investigation, the Authority noted that certain participating exporters from China PR have received benefit in the form of preferential lending from state owned banks. Authority has determined that such preferential lending has resulted in financial contribution in the form of direct transfer of funds. Authority has determined countervailing duty against such preferential lending by comparing the interest rate charged by the state-owned bank from the exporter receiving loan with the commercial benchmark interest rate prescribed for the long term and short-term borrowing by the People’s Bank of China (Central Bank of China). Benefit was calculated based on the difference between these two rates. The Authority has not separately identified whether the loan granted by state owned banks were for exports or for other reasons.”*

- 79. GOC has contended that Chinese state-owned banks are not public bodies. It has contended that state ownership is not the sole criterion for determining if an entity is a public body.
- 80. The Authority has examined prevailing position in law regarding public bodies as per WTO jurisprudence. In United States — definitive anti-dumping and countervailing

duties on certain products from China, the Appellate Body established the legal standard for determination of public bodies which is consistently followed by all investigating authorities. It determined that public body within the meaning of Article 1.1(a)(1) of the SCM Agreement must be an entity that possesses, exercises or is vested with governmental authority. The Appellate Body described several types of evidence or indicators that an administering authority can consider in determining whether an entity “possesses, exercises or is vested with governmental authority.” First, one can look at legal instruments. Second, one can look at the actions of the entity. Third, one can look at whether the government exercises “meaningful control” over the entity.

81. Investigating authorities, including USA and Europe, have consistently found that Chinese commercial banks possess, exercise, and are vested with governmental authority. By way of an example, relevant extracts from European Commission’s Final Finding in respect of *Countervailing Duty imports of certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries, with a load index exceeding (dated 9<sup>th</sup> November 2018)* is provided below. The detailed findings of the European Commission would show how Chinese banks exercise government functions.

*“At the general level, Article 34 of the Bank law, which applies to all financial institutions operating in China, provides that **‘Commercial banks shall conduct their business of lending in accordance with the needs of the national economic and social development and under the guidance of the industrial policies of the State’**. Although Article 4 of the Bank Law states that ‘Commercial banks shall, pursuant to law, conduct business operations without interference from any unit or individual. Commercial banks shall independently assume civil liability with their entire legal person property’, the investigation showed that Article 4 of the Bank law is applied subject to Article 34 of the Bank law, i.e. where the State establishes a public policy the banks implement it and follow State instructions.*

*In addition, Article 15 of the General Rules on Loans provides: **‘In accordance with the State’s policy, relevant departments may subsidize interests on loans, with a view to promoting the growth of certain industries and economic development in some areas.’***

*On that basis, the Commission concluded that the GOC has created a normative framework that had to be adhered to by the managers and supervisors appointed by the GOC and accountable to the GOC. Therefore, the GOC relied on the normative framework in order to exercise control in a meaningful way over the conduct of the three cooperating state-owned banks whenever those were providing loans to the tyres industry...The Commission also sought concrete proof of the exercise of control in a meaningful way on the basis of concrete loans...The verification visits revealed that with the sole exception of certain loans in foreign currency, loans were provided to the four groups of sampled exporting producers at interest rates close to the People’s Bank of China (‘PBOC’) benchmark interest rates, regardless of the companies’ financial and credit risk situation. Hence, the loans were provided below market rates when compared to the rate corresponding to the risk profile of the four sampled exporting producers. In addition, the sampled companies had received revolving loans, which allow them to immediately replace*

*the capital repaid on loans at the maturity date by fresh capital from new loans. In the case of two of the sampled groups of companies, payment schedules were restructured or debt was forgiven because of financial difficulties...The Commission also found that loans which should have been reported by the banks as 'not normal' loans had not always been indicated as such in the national central credit register by the three cooperating state-owned banks. The obligation to report such 'not normal loans' exists in particular when loans had been restructured, when the debtor defaulted on its payments, or when revolving loans had been issued. Such occurrences were found for all four groups of sampled exporting producers. According to the CBRC's 'Guidelines on risk-based loan classification', all of these instances should have been included in the central credit register. This lack of reporting by the financial institutions leads to a distorted picture of the company's credit situation in the central credit register, as the register does not show the real creditworthiness of the company. As a result, even if a financial institution were to apply a market-based risk assessment, it would have done so based on inaccurate information. The Commission therefore concluded that the GOC has exercised meaningful control over the conduct of the three cooperating state-owned banks with respect to their lending policies and assessment of risk concerning the tyres industry."*

82. Consistent with approach followed by majority of investigating authorities, the Designated Authority has also considered Chinese banks as public bodies in all of its countervailing duty investigations where China has been a subject country.
83. In respect of program no. 44, "Export Credit Insurance Subsidy", the Authority examined countervailability of this program as program no. 58 in the original investigation. The relevant extracts are provided as follows:

*"342. The Authority also notes that some of the participating producers have reported benefit received in the form of export credit insurance premium subsidy as grants (other than the benefit under this program) and the same has already been countervailed by the Authority."*

84. As benefit in the form of export credit insurance premium subsidy have already been countervailed in the form of grants, this subsidy is not being examined separately to avoid duplicity.
85. As mentioned above, programs were already examined in the original investigation, and the Authority has no different view on the programs from the views made in the original investigation.

**D. Provision of goods at less than adequate remuneration: Program no.48 to 53**

Program no. 48: Provision of Electricity for Less Than Adequate Remuneration

Program no. 49: Land Use Rights at LTAR in Industrial and Other Special Economic Zone

Program no. 50: Provision of Land to State Owned Enterprises at LTAR

Program no. 51: Land Use rights at LTAR for Foreign Invested Enterprises

Program no. 52: Land-Use Rights at LTAR in Economic Development Zones  
Program no. 53: Provision of Carbon Black for Less Than Adequate Remuneration

### **K.13 Submissions made by the other interested parties**

86. Following submissions were made by other interested parties regarding above schemes relating to provision of goods at less than adequate remuneration:
- i. Electricity prices in China PR are market determined as per notice on Further Deepening the Market-Oriented Reform of On-Grid Electricity Price for Coal-fired Power Generation (FGJG (2021) and notices from Provincial-Level Pricing Authorities about the Elimination of the Industrial and Commercial Electricity Sale Catalogue.
  - ii. According to the provisions on the Assignment of State-owned Construction Land Use Right through Bid Invitation Auction and Quotation, provision of land use rights in China is not specific.
  - iii. External benchmarks for LTAR schemes ought to be rejected as the concept of non-market economy in countervailing duty laws of India does not exist.
  - iv. The GOC does not interfere in or influence pricing in this market. Prices fluctuate in accordance with market dynamics.

### **K.14 Submissions made by the domestic industry**

87. Following submissions were made by the domestic industry regarding above schemes relating to provision of goods at less than adequate remuneration.
- i. Program no. 48 to 53 were held to be countervailable by the Authority in the original investigation. No substantive evidence has been filed to rebut countervailability of the programs.
  - ii. GOC and the participating exporters have filed incomplete and inadequate response. No response has been filed in respect of provision of goods/services annexure to show that goods received from GOC, provisional government, local government, or state-owned enterprises are at market rates.
  - iii. It is for the Authority to determine the “adequacy of remuneration” and not for the exporter to pre-judge and assume that all goods and services provided to the company are at par with market prices.
  - iv. The electricity market in China is characterised by an important participation of SOEs in the various stages of the supply chain. There is a significant difference between the normal power tariff and actual tariff paid by the said producers and the difference amounts to subsidy provided by the State. The program provides financial support in the form of provision of electricity at subsidized rates, to enterprises, classified as encouraged industries.
  - v. As per Land administration Law of PRC, 2004 land is provided to certain industries at concessional rates. High and new technologically advanced enterprise and certain other categories of industries also receive exemption from administrative charges and provision of land use rights for less than adequate remuneration.
  - vi. CCP exerts significant control over economic activities in China. GOC exercises meaningful control over State owned enterprises and uses them to effectuate its goals of

upholding the socialist market economy, allocating resources, and maintaining the predominant role of the state sector.

- vii. State owned enterprises in China accounts for approximately 26.44 % of the total output of carbon black in China.
- viii. State-owned enterprises supply carbon black to tyre exporters in China. The price of input supplied is typically much below the benchmark rates i.e. prices prevailing in market economies.
- ix. The fact that input suppliers are ostensibly privately or foreign-owned companies is not dispositive for determining whether such suppliers are “authorities” because of possible GOC or CCP involvement in these companies.
- x. GoC must establish that input suppliers are independent from government control.
- xi. SOEs represents 31.43 % of the domestic output of synthetic rubber in China.
- xii. Chinese Government continues to hold significant interference in the operations (as is evident from the treatment of non-market economy). For the purpose of less than adequate remuneration, any in-country benchmark would not be an appropriate benchmark, as it would not reflect the actual value of the underlying goods or services. Out-of-country benchmarks must be considered.
- xiii. Natural rubber is the single largest element of cost. Chinese producers are getting natural rubber at lower prices – either from within China, or from Chinese invested plantations outside China. Trade of natural rubber is limited to few firms in China under “designated trading” as indicated in Annex 2B of the Accession Protocol. Natural rubber prices within China are not reliable.
- xiv. As per US Department of Commerce countervailing duty findings for Truck and Bus Tires from China, nylon tyre cord fabric is predominantly produced by GOC controlled Nylon tyre cord producers. State-owned producers accounted for a large percentage of the synthetic rubber and butadiene produced in the country.

#### **K.15 Examination of the Authority**

88. In respect of Program no. 48, regarding “Provision of Electricity for Less Than Adequate Remuneration”, the Authority examined its countervailability as program no. 63 of the original investigation. The relevant extracts of the findings are provided below:

*“364. However, the Authority notes that Government of China is providing electricity to certain enterprises at less than adequate remuneration. Provision of electricity at less than adequate remuneration amounts to financial contribution in the form of provision of services. Authority observes that electricity at less than market rates amount to conferring of benefit. This subsidy program is also specific because it is limited to certain type of enterprises in China PR. Therefore, the Authority notes that the provision of electricity by the GOC is a countervailable subsidy program.”*

89. It is seen that none of the participating exporters or GOC have provided a response to provision of goods/services annexure. Therefore, the Authority continues to hold this program countervailable on the basis of its findings in the original investigation.

90. In respect of Program no. 49 to 52 regarding provision of land/ land use rights at less than adequate remuneration, the Authority examined countervailability of this program as program no. 65 to 67. The relevant extracts of the findings are provided below:

*“371. However, Authority notes that Government of China is providing land use rights to certain enterprises at less than adequate remuneration. Provision of land use rights at less than adequate remuneration amounts to financial contribution in the form of provision of services. Authority observes that land use rights provided at less than market rates amount to conferring of benefit. This subsidy program is also specific because it is limited to certain type of enterprises in China PR. Therefore, the Authority notes that the provision of land use rights by the GOC is a countervailable subsidy program.”*

91. It is seen that none of the participating exporters or GOC have provided a response to provision of goods/services annexure. Therefore, the Authority continues to hold this program countervailable on the basis of its findings in the original investigation.
92. In respect of Program no. 53 regarding provision of Carbon Black for Less Than Adequate Remuneration, the Authority examined countervailability of this program as program no. 68. The Authority held that the program was countervailed.

## **L. Methodology for Injury Determination and Examination of Injury and Causal Link**

### **L.1 Submissions made by the other interested parties**

93. Following submissions were made by other interested parties regarding injury:

- i. Petitioners have exaggerated the increase in volume of imports from the subject country and have deliberately invented injury. In fact, there is no increase in the injury and there is no factual or legal basis for the petitioners to claim injury due to subsidized products.
- ii. Inter-company competition between the domestic producers is impacting profitability of the industry.
- iii. Petitioners have abusively withheld and manipulated information related to the allegations of injury.
- iv. There is improvement in all economic parameters. No injury can be attributed to imports from China.
- v. Overall performance of the applicants companies has improved in the post-POI period.

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

94. The domestic industry made following submissions regarding injury.
- i. The domestic industry is not claiming volume injury. In any event, likelihood of injury is of significance in a sunset review.
  - ii. The exporters’ have referred to the overall profitability of the applicants companies, whereas the scope of investigation is limited to the PUC defined by

the Authority. There is no reason why the Authority must consider overall profitability when the applicants have provided detailed costing and financial data for the PUC, which has been duly verified by the Authority.

- iii. The profitability of the domestic industry in respect of the PUC has only improved in the recent period due to the imposition of duty. The return on investment remains low. Any deterioration would lead to significant injury.
- iv. Imports are significantly undercutting price and the cost of the domestic industry.

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

95. The submissions made by the domestic industry and the other interested parties with regard to the injury and causal link related issues have been examined. The injury analysis made by the Authority hereunder *ipso facto* addresses the various submissions made by the interested parties.
96. Rule 13 of the Rules read with Annexure-I thereto 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 subsidised imports and the effect of the subsidised imports on prices in the domestic market for like products and the consequent impact of these imports on the domestic producers of such products.*”
97. Rule 24 of the Rules provides that the provisions of Rules 7, 8, 9, 10, 11, 12, 13, 18, 19, 20, 21, and 22 shall apply mutatis mutandis in case of a review. In case the performance of the Domestic industry shows that it has not suffered injury during the current injury period, the Authority shall determine whether cessation of the present duty is likely to lead to recurrence of injury to the domestic industry.
98. The Authority has examined the various injury parameters on account of imports from the subject country before proceeding to examine the likelihood aspects of subsidy and injury. It has been examined as to whether there is an increase in imports, in absolute terms or in relation to production or consumption. In considering the effect of the subsidised imports on prices, it is considered necessary to examine whether there has been a significant price undercutting by the subsidised 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. For the examination of the impact of the subsidised 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 subsidy, etc. have been considered in accordance with Annexure-I of the Rules. The Authority has taken note of various submissions of the domestic industry and other interested parties and has analysed the same considering the facts available on record and applicable laws. The injury analysis made by the Authority hereunder *ipso facto* addresses the various submissions made by the parties.

#### **a. Assessment of Demand**

99. The demand or apparent consumption has been determined as the sum of domestic sales of the Indian producers and the imports from all sources.

Particulars	Unit	2019-20	2020-21	2021-22	POI (A)
DI Sales	MT	***	***	***	***
Trend	Index	100	109	128	155
Other Producers Sales	MT	***	***	***	***
Trend	Index	100	93	159	216
Subject imports	MT	15,025	4,200	8,179	16,920
Other imports	MT	12,232	6,767	6,093	4,666
<b>Total demand</b>	<b>MT</b>	<b>***</b>	<b>***</b>	<b>***</b>	<b>***</b>
Trend	Index	100	101	132	166

100. It is seen that the demand for the subject goods has increased throughout the injury period.

#### b. Import Volumes

101. With regard to the volume of the subsidized imports, the Designated Authority is required to consider whether there has been a significant increase in the subsidized imports either in absolute terms or relative to production or consumption in India.

Particulars	Unit	2019-20	2020-21	2021-22	POI (A)
Subject imports	MT	15,025	4,200	8,179	16,920
Other imports	MT	12,232	6,767	6,093	4,666
Total Imports	MT	27,257	10,966	14,272	21,587
<b>Subject country imports in relation to</b>					
Indian Production	%	4%	1%	2%	3%
Demand	%	3%	1%	1%	2%
Total Imports	%	55%	38%	57%	78%

102. It is seen that:

- a. Subject imports declined in 2020-21 after imposition of countervailing duty and anti-dumping. Thereafter, imports increased substantially as imports began to be classified under other tariff codes, particularly HS Code 40118000.
- b. Imports from the subject country hold predominant share in relation to total imports in India.
- c. The subject country imports in relation to Indian production and demand has remained below 4% owing to countervailing duty being in force.

#### c. Price Effect

103. With regard to the effect of the subsidised imports on prices, it is required to be analysed whether there has been a significant price undercutting by the alleged imports as compared

to the price of the like products in India, or whether the effect of such imports is otherwise to depress prices or prevent price increases, which otherwise would have occurred in the normal course. The impact on the prices of the domestic industry on account of the imports from the subject country has been examined with reference to price undercutting, price suppression and price depression, if any. For the purpose of this analysis, the cost of production, non-injurious price (NIP) and net sales realization (NSR) of the domestic industry have been compared with the landed price of imports of the subject goods from the subject country.

#### d. Price Undercutting

104. For the purpose of price undercutting analysis, the selling price of the domestic industry has been compared with the landed price from the subject country. The landed value has been calculated after adding the appropriate customs duty, and other duties applicable to the imports of the product under consideration from the subject country. Accordingly, the undercutting effects of the subsidised imports from the subject country is as follows:

Particulars	Unit	2019-20	2020-21	2021-22	POI
Net Sales Realisation	Rs/MT	***	***	***	***
Trend	Indexed	100	102	108	119
Landed Price without CVD	Rs/MT	1,43,707	1,58,301	1,53,866	1,67,731
Trend	Indexed	100	110	107	117
Price Undercutting	Rs/MT	***	***	***	***
Trend	Indexed	100	84	109	124
Price Undercutting	%	***	***	***	***
Range	%	40-50%	30-40%	40-50%	45-55%

105. It is seen that the price undercutting is positive and significant throughout the injury period.

#### e. Price Suppression and Depression

106. In order to determine whether the subject imports are depressing or suppressing the domestic prices and whether the effect of such imports is to suppress prices to a significant degree or prevent price increases which otherwise would have occurred in normal course, the changes in the costs and prices over the injury period is examined. The table below shows factual position:

Particulars	Unit	2019-20	2020-21	2021-22	POI
Cost of Sales	₹/MT	***	***	***	***
Trend	Indexed	100	96	112	119

Selling Price	₹/MT	***	***	***	***
Trend	Indexed	100	102	108	119
Landed Price without CVD	₹/MT	1,43,707	1,58,301	1,53,866	1,67,731
Trend	Indexed	100	110	107	117

107. It is seen that imports are not causing suppression/depression at present because of duties imposed. In the event of expiry of duty, the imports are likely to suppress / depress the prices of the domestic industry significantly, given that landed price of imports is below cost of sales. It is seen that the landed price of subject imports is below the cost on account of raw materials for the domestic industry.

#### **M. Economic parameters pertaining to the domestic industry**

##### **i. Capacity, production, capacity utilization and sales**

108. The capacity, production, sales, and capacity utilization of the domestic industry over the injury period is given in the table below:

<b>Particulars</b>	<b>Unit</b>	<b>2019-20</b>	<b>2020-21</b>	<b>2021-22</b>	<b>POI (A)</b>
Installed Capacity	MT	***	***	***	***
Production	MT	***	***	***	***
Capacity Utilization	%	68%	69%	78%	83%
Domestic Sales	MT	***	***	***	***
Export Sales	MT	***	***	***	***
Trend	index	100	96	142	131

109. It is seen that –

- i. The installed capacity and production of the domestic industry have increased over the injury period.
- ii. The capacity utilization of the domestic industry has increased.
- iii. The domestic sales have increased throughout the injury period.
- iv. The export sales declined in 2020-21 due to Covid outbreak and increased thereafter.

##### **ii. Market share**

110. Market share of the domestic industry, other Indian producers, imports from the subject country, and other countries are shown in the table below:

Particulars	Unit	2019-20	2020-21	2021-22	POI (A)
Domestic industry	%	69.3%	74.6%	67.4%	64.6%
Trend	Index	100	108	97	93
Other Indian producers	%	25.3%	23.2%	30.4%	34.8%
Trend	Index	100	92	120	138
Subject imports	%	3.00%	0.80%	1.20%	2.00%
Other imports	%	2.50%	1.30%	0.90%	0.50%

111. It is seen that the market share of the subject imports declined in 2020 with the imposition of countervailing duty along with anti-dumping. Thereafter, the market share of the subject imports increased as imports began to be classified under other tariff codes, particularly HS Code 40118000. The level of imports from other countries remains substantially low. The share of the domestic industry has declined since 2021, while the share of other Indian producers has increased. The domestic industry contended that about 2/3<sup>rd</sup> of their sales is in OEM and imports are present in aftermarket only. Thus, the domestic industry contended that while the overall share of imports appears only in the region of 2%, it is almost three times in the demand in aftermarket.

### iii. Profitability, Cash Profits, and Return on Capital Employed

112. Profits, cash profits, PBIT, and return on investment of the domestic industry over the injury period is given in the table below:

Particulars	Unit	2019-20	2020-21	2021-22	POI
Profit/ (loss)	₹/MT	***	***	***	***
Trend	Index	100	173	58	120
Cash Profit	₹/MT	***	***	***	***
Trend	Index	100	145	76	105
Profit before Interest & Tax	₹/MT	***	***	***	***
Trend	Index	100	165	67	119
Return on capital employed	%	***	***	***	***
Trend	Index	100	137	64	114

113. It is seen that:

- i. The profitability of the domestic industry has improved over the injury period, barring decline in FY 2020-21 due to Covid. Similarly, cash profit and ROCE has also improved.
- ii. However, the long-term profitability of the domestic industry is threatened given that the landed price of imports is below cost of sales, and even below domestic industry's costs on account of raw materials. If the duty is removed, the volume of imports is likely to increase substantially impacting long-term profitability of the domestic industry.

#### iv. Inventories

114. Inventory position with the domestic industry over the injury period and the POI is given in the table below:

Particulars	Unit	2019-20	2020-21	2021-22	POI
Opening	MT	***	***	***	***
Closing	MT	***	***	***	***
Average Inventory	MT	***	***	***	***
Trend	Index	100	88	75	75

115. It is seen that the average inventory with the domestic industry has declined throughout the injury period.

#### v. Employment, Wages and Productivity

116. Employment, wages, and productivity of the domestic industry over the injury period is given in the table below:

Particulars	Unit	2019-20	2020-21	2021-22	POI
No of employees	Nos.	***	***	***	***
Trend	Index	100	114	123	120
Salary & Wages	₹ Lacs	***	***	***	***
Trend	Index	100	106	127	181
Productivity per day	MT/Days	***	***	***	***
Trend	Index	100	105	129	187

117. It is seen that the number of employees has remained stable. Salaries and wages paid have increased. Productivity increased over the injury period. The domestic industry has not claimed injury on this account.

#### vi. Growth

118. Growth of the domestic industry is as follows:

Particulars	Unit	2019-20	2020-21	2021-22	POI (A)
Production	%	-	5%	23%	16%
Demand	%	-	1%	31%	26%

Market Share of DI	%	-	8%	-10%	-4%
Domestic sales	%	-	9%	18%	21%
Capacity Utilisation	%	-	4	8	10
PBIT Domestic	%	-	73%	-66%	106%
Cash Profit	%	-	45%	-48%	39%
Return on capital employed	%	-	37%	-53%	77%

119. It is seen that the volume parameters of the domestic industry have shown consistent growth over the injury period owing to countervailing duty imposed in June 2019. The growth in price parameters was positive in 2020-21, and negative in 2021-22 and once again positive in the present POI.

#### **vii. Ability to Raise Capital Investment**

120. It is seen that the production capacity of the domestic industry has increased over the injury period. Tyre production is highly capital intensive. In the last three years, tyre industry in India has invested close to Rs. 4,800 crores in new capacity creation and debottlenecking for existing capacities. The return on capital employed, following the trend of profits, increased till 2020-21 but declined thereafter and recovered during the POI.

#### **viii. Conclusion on Injury**

121. The examination of the imports of the subject goods and their impact on the performance of the domestic industry shows that the volume of subsidised imports from China PR increased. Even though the volume is limited, it is significant considering that majority of these have been imported under 40118000. Landed price of imports is very significantly below the price and cost of the domestic industry, thus showing likelihood significant price and cost undercutting in the event of cessation of countervailing duty. The domestic industry has not suffered any suppressing/depressing effect on its prices. Production, capacity utilisation and domestic sales of the domestic industry have increased over the injury period. The performance of the domestic industry in terms of profits, cash profits and return on capital employee has also improved over injury period. The Authority concludes that the domestic industry has not suffered continued injury. However, performance of the domestic industry is fragile vis-à-vis competition with subsidised imports from China PR, as the landed value of imports is below selling price and cost of production of the domestic industry.

#### **N. MAGNITUDE OF INJURY MARGIN**

122. The Authority has determined the NIP for the domestic industry by adopting the information/data relating to the cost of production provided by the domestic industry for the period of investigation. The NIP has been considered for comparing the landed price

from the subject country for calculating injury margin. For determining the non-injurious price, the best utilisation of the raw materials of the domestic industry over the injury period has been considered. The same treatment has been carried out with the utilities. The best utilisation of production capacity over the injury period has been considered. It is ensured that no extraordinary or nonrecurring expenses were charged to the cost of production. A reasonable return (pre-tax @ 22%) on average capital employed (i.e., average net fixed assets plus average working capital) for the PUC was allowed as pre-tax profit to arrive at the non-injurious price. The NIP so determined has been considered for calculating injury margin.

123. Since participating exporters have claimed that they have not exported the subject goods to India during the POI, the landed price for all the exporters has been determined on the basis of DGCI&S data.
124. Based on the landed price and NIP determined as above, the injury margin for producers/exporters from China PR has been calculated by the Authority and the same is provided in the table below.

<b>Producers</b>	<b>All producers</b>
Non-Injurious Price (₹/MT)	***
Landed Value (₹/MT)	1,67,731
Injury Margin	***
Injury Margin (%)	***%
Injury Margin (Range %)	40-50

## **O. CAUSAL LINK**

125. As per the Rules, the Authority, inter alia, is required to examine any known factors other than subsidised imports which are injuring or are likely to cause injury to the domestic industry, so that the injury caused by these other factors may not be attributed to the subsidised imports. While the present investigation is a sunset review investigation and causal link has already been examined in original investigation, the Authority examined whether other known listed factors have caused or are likely to cause injury to the domestic industry. It was examined whether other factors listed under the Rules could have contributed or are likely to contribute to the injury suffered by the domestic industry.

### **a) Volume and Value of Imports from Third Countries**

126. It is seen that the volume of non-subject imports is quite low. Further, the domestic industry has not claimed continued injury in the present case.

### **b) Contraction in demand or changes in the pattern of consumption**

127. The demand for the PUC has increased consistently over the injury period. Therefore, the domestic industry has not suffered injury due to possible contraction in demand.

### **c) Trade restrictive practices of and competition between the foreign and domestic producers**

128. The Authority notes that there is no trade restrictive practice.

**d) Developments in Technology**

129. The Authority notes that technology for production of the product has not undergone any change. Further, the responding producer has also not stated that there is any development in technology.

**e) Export Performance**

130. The Authority has relied on segregated data for domestic and export operations, to the extent the same could be.

**f) Performance of other products**

131. The Authority has considered the data relating to the performance of the subject goods only.

**g) Parameters establishing causal link**

132. The following parameters establishes causal link between Chinese imports and likelihood of injury to the domestic industry in the event of cessation of duty.

**Comparison of Raw Material Cost of the domestic industry with CIF Import Price of PUC from China during POI**

<b>Particulars</b>	<b>Unit</b>	<b>POI</b>
<b>Total cost of raw material consumed</b>	₹/MT	***
Conversion costs	₹/MT	**
Other Cost	₹/MT	**
Fixed Cost and Return	₹/MT	**
<b>CIF Import Price</b>	₹/MT	<b>1,46,888</b>

- a. The landed price of imports from China PR is below selling price, cost of production, and non-injurious price of the domestic industry. The CIF import price from China PR is below the raw materials costs for the domestic industry. The price undercutting in the present investigation period is significant. Therefore, in the event of cessation of countervailing duty, the domestic industry is likely to suffer price undercutting. The extent of price undercutting shall result in decline in selling price of the domestic industry and consequently adverse effects on profits, cash profits and return on investment earned by the domestic industry.
- b. Given the large volume of unutilised production capacities in China PR, further capacity expansion undertaken by Chinese producers and the price at which

Chinese producers have exported the product in third country, coupled with positive price undercutting, imports of the product are likely to increase rapidly in the event of cessation of countervailing duty and the domestic industry is likely to lose sales in the market. The increase in imports in a short duration in the event of cessation of countervailing duty is likely to result in significant decline in sales, production, capacity utilization, and market share of the domestic industry.

## **P. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF INJURY**

133. In a review investigation the Authority is required to determine whether the subsidisation has continued and whether it is likely to be continued. In addition, the Authority determines whether injury to the domestic industry is likely to continue or recur due to subsidised imports if the duty is allowed to cease.

### **P.1 Submissions made by the other interested parties**

134. Following submissions were made by other interested parties regarding likelihood:

- i. The exporters are not required to file Part II of the questionnaire as it pertains to anti-dumping duty investigations.
- ii. The product has been placed in the restricted category and the imports have reduced drastically.
- iii. Capacity of Chinese producers and third country exports are irrelevant as China is exporting to India in insignificant quantities.
- iv. The domestic industry is not vulnerable to injury as its profitability has increased.

### **P.2 Submissions made by the domestic industry**

135. Following submissions were made by the domestic industry regarding likelihood:

- i. The exporters have failed to file Part II of the questionnaire response regarding likelihood. Therefore, the Authority ought to conclude likelihood on the basis of information on the record filed by the petitioners.
- ii. The domestic industry is vulnerable to injury due to low return on investment and substantial increase in imports during the POI.
- iii. Continuation of subsidies shows that the domestic industry would be adversely impacted upon cessation of duty.
- iv. Third country exports by China are at injurious and price attractive volumes.
- v. Numerous countries like USA, Europe, South Africa, Eurasian Economic Union have enforced trade remedial measures against unfair exports of subject goods from China. This has restricted China's market for exports.
- vi. The export markets for China are further limited as the Chinese producers have acquired or set up manufacturing facilities in different countries around the world.
- vii. The producers have undertaken significant capacity additions over the injury period.
- viii. India is an attractive market for producers considering huge potential for radicalisation and replacement market.

### **P.3 Examination of the Authority**

136. As the participating exporters have failed to provide information regarding likelihood parameters, the Authority has determined likelihood on the basis of facts available in the petition, final findings in the original anti-subsidy investigation dated 25<sup>th</sup> March 2019 and final findings in the recently concluded anti-dumping sunset review investigation dated 16<sup>th</sup> September 2022.

137. Following parameters show likelihood of continuation of subsidization and consequent injury to the domestic industry in the event of cessation of countervailing duty.

i. Significant Increase in Imports

138. A significant increase in imports during POI, indicates likelihood of substantially increased imports in the event of cessation of duty.

ii. Continuation of Subsidies

139. The data on record clearly shows that there are significant subsidies being provided to the Chinese producers for the production of the subject goods. The likelihood of continuation of subsidies is indisputable as evident from the annual reports of the exporters. That being the case, the injury is likely to recur in the absence of duties.

iii. Third Country Injurious and Price Attractive Exports

140. Table below shows volume of exports from China PR to various third countries and comparison of the same with selling price and NIP of domestic industry.

<b>Particulars</b>	<b>Volume MT (Annualized)</b>
Total exports to third countries	41,30,674
Exports at injurious price	39,79,906
Share of exports at injurious price	96%
Exports at Price Attractive Volumes	39,48,479
Share of exports at Price Attractive Volumes	96%
Share of injurious exports to demand in India	466%
Share of price attractive exports to demand in India	463%
Demand in India	8,53,683

Source: Trademap

141. It is seen that the volume of exports to third countries at price below the NIP and selling price in India, is far more than gross Indian demand.

iv. Measures on Chinese exports to Third Countries

142. The domestic industry has submitted that there are several trade remedial measures in place on the subject imports from China PR.

143. It would be seen that the exporters in China are exporting significant volumes at dumped/subsidised prices in third countries. Europe and USA authorities have countervailed subsidised tyre exports from China. In addition, USA, Europe, Egypt, Eurasian Economic Union and South Africa currently have in force anti-dumping duty against the subject goods from China. Brazil, Turkey, and Columbia had also previously imposed duties. Eurasian Economic Union has even found circumvention of duties previously imposed. These measures in other jurisdictions establish unfair nature of exports from the subject country.

<b>Country</b>	<b>Investigation</b>	<b>Product</b>	<b>Duty</b>	<b>Imposition</b>
Brazil	Anti-dumping	Tires of radial construction (20", 22" and 22.5" diameter) used for buses and trucks.	\$1.12 - \$2.59 per kg	Jun-09
	Anti-dumping			Apr-15
Turkey	Anti-dumping	New pneumatic tires, of rubber.	60% of CIF value	Jun-11
Colombia	Anti-dumping	Radial tires under heading 4011.20.10.00.	Benchmark of \$5.37 per kg	Jun-13
Egypt	Anti-dumping	Tires for buses and lorries.	3.8% - 60% of CIF value	Feb-14
Eurasian Economic Union	Anti-dumping	New truck tires	14.79% - 35.35%	Nov-15
EU	Anti-dumping	Tyres for buses or lorries (new and retreaded)	€0.37 - €38.98 per item	Nov-18
	Anti-subsidy	Tyres for buses or lorries (new and retreaded)	€3.75 - €57.28 per item	Nov-18
USA	Anti-dumping	New pneumatic tires, of rubber, with a truck or bus size designation.	9% - 22.57%	Feb-19
	Anti-subsidy	New pneumatic tires, of rubber, with a truck or bus size designation.	38.61%- 52.04%	Feb-19
Egypt	Anti-dumping	Tyres for buses and lorries	9.8% to 36.9%	Mar-21
Eurasian Economic Union	Anti-circumvention of ADD	Circumvention of duties on truck tyres. ADD extended to imports under HS code 8708.70.990.9	14.79% - 35.35%	Oct-22
South Africa	Anti-Dumping	Pneumatic tyres of rubber for passenger, truck and bus tyres	7.18% to 43.6%	Jul-23

United Kingdom	Anti-subsidy and anti-dumping Transition reviews	Pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries, with a load index exceeding 121.	Reviews initiated to examine if EU measures should be extended to UK	May-23
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144. It can be seen that the quantum of duty imposed in other jurisdictions is significantly higher than the rate of duty imposed in India (9%-17.5%).

- v. Chinese manufacturing in third countries reducing volumes that can be sold by Chinese producers in these markets and resultant likelihood of increase in imports in India

145. The expansion of Chinese manufacturing of the subject goods by setting up plants in third countries have reduced the market for subject goods for the exporters in third countries. In the event of cessation of the existing countervailing duty, particularly in absence of countervailing duty, India would be a target of trade diversion of subject goods by Chinese producers.

- vi. Significant capacity additions by the Chinese producers

146. In the final findings, dated 16<sup>th</sup> September 2022, the Authority has noted that exporters in subject country have:

- a. capacities far higher than the Indian demand.
- b. significant unutilized capacities which are likely to be utilized to export to India in the event of cessation of existing duties.

147. Further information provided by the domestic industry with regard to subject country shows significant capacity additions and expansions undertaken by the manufacturers in the subject country.

SN	Producer	Period	Capacity additions
1	Shandong Linglong Tyre	Feb 2018	Production commenced in Gaungxi plant. <sup>2</sup>
		Nov 2019	Production commenced in Hubei plant. The plant has a capacity of 2.4 million TBR tyres p.a. <sup>3</sup>
		Apr 2020	Construction of new plant is in progress in Changchun. The plant has a capacity of 120 million radial tyres p. a. <sup>4</sup>
2	Doublestar Tire	Nov 2019	Production commenced in Doublestar DongFeng plant. <sup>5</sup>

<sup>2</sup> <https://www.tyrepress.com/2019/05/guangxi-linglong-tire-starts-earthmover-tyre-production/>

<sup>3</sup> <https://www.tyrepress.com/2019/12/linglong-hubei-tbr-tyre-plant-officially-opens/>

<sup>4</sup> <https://www.tirebusiness.com/news/linglong-starts-tire-production-new-factory>

<sup>5</sup> <https://www.tirebusiness.com/manufacturers/doublestar-trials-new-tire-factory-shiyan-building-recycling-plant>

3	Guangxi New Guilun Rubber	2019	New plant set up with a capacity of 1.5 million TBR tyres p.a. <sup>6</sup>
4	Aeolus Haoyou	2017	Acquired a factory in Taiyuan <sup>7</sup>
5	Jilin Linglong	2019	New plant commissioned for TBR production at the Hubei Linglong Tire Co., Ltd. factory in Jingmen, China <sup>8</sup>
6	Prinx Chengshan (Shandong) Tire	2020	Approval from the Board for capacity expansion of 3.85 million tyres p.a. The project was expected to be operational by Q4 of 2021. <sup>9</sup>
7	Jilin Linglong	2021	TBR Tyre production started at the Jilin Linglong plant in Changchun, China. The plant can produce 1.2 million TBR tyres annually. <sup>10</sup>
8	Zhongce Rubber	2022	ZC Rubber's subsidiary in Xindeng Town, Fuyang District, Hangzhou City is planning to add 2.5 million tyres to its production capacity. <sup>11</sup>
9	Hankook Tyre	2023	Hankook expands Chongqing factory's TBR tyre capacity to increase annual production capacity from 900,000 to 1.036 million) within 16 months <sup>12</sup>

vii. Potential demand in the Indian market

148. The domestic industry has submitted that radialisation (shift from traditional bias tyres to radial tyres) is a major factor for growth in the Indian market. It was submitted that 52% trucks and buses in India run on radial tyres as of FY 2020. Whereas China achieved 90% radialisation in the same market segment as early as 2012. In addition, India is a major market for replacement market segment.

viii. Conclusion on Likelihood

149. With the imposition of countervailing duty, the economic parameters of the domestic industry have improved. However, substantial increase in imports during POI under 40118000 establishes likelihood of increase in imports if the present duty is allowed to cease. The likelihood of injury is established by continuation of subsidies to the Chinese producers, very significant exports from China to rest of the world at a price below selling price, cost of production and non-injurious price for the domestic industry. Significant capacity additions in China, existence of unutilised capacities over and above current

<sup>6</sup> [http://en.skytire.cn/3/article\\_294.html](http://en.skytire.cn/3/article_294.html)

<sup>7</sup> <https://www.aeolustyre.biz/aeolus-history.html>

<sup>8</sup> <https://www.tyrepress.com/2019/12/linglong-hubei-tbr-tyre-plant-officially-opens/>

<sup>9</sup> <https://www1.hkexnews.hk/listedco/listconews/sehk/2021/0831/2021083100318.pdf>

<sup>10</sup> <https://www.tyrepress.com/2021/12/china-jilin-linglong-begins-truck-tyre-production/>

<sup>11</sup> <https://www.tyrepress.com/2022/08/zc-rubber-plans-to-add-a-2-5-million-tyres-production-capacity/>

<sup>12</sup> <https://www.tyrepress.com/2023/08/hankook-expands-chongqing-factorys-tbr-tyre-capacity/#:~:text=Specifically%2C%20the%20tyre%20manufacturer%20plans%20to%20expand%20Chongqing%20factory%27s%20TBR%20tyre%20capacity,-Tyrepress>

significant exports to third countries at a price below the price in India further shows likelihood of substantial increase in imports in India in the event of cessation of countervailing duty. Existence of trade remedial measures by a number of countries globally further establishes the likelihood of injury to the Indian industry.

**Q. Indian Industry's Interest and other issues**

**Q.1 Submissions made by the other interested parties**

150. The following submissions have been made by other interested parties with regard to the Indian industry's interest:

- i. Continuation of duty would be contrary to public interest.
- ii. The existing duty has served its purpose and requires termination.

**Q.2 Submissions made by the domestic industry**

151. The following submissions have been made by domestic industry with regard to the Indian industry's interest:

- i. Absence of participation from user/importer industry show they are not adversely impacted.
- ii. Impact of prevailing duty is merely 0.21% per MT KM basis.
- iii. Countervailing duty does not preclude imports. It only ensures imports at fair prices.
- iv. The subject imports are entirely unnecessary as there exists no demand supply gap in the country. The domestic industry has more than sufficient capacities to cater to the entire demand in the country.
- v. There is healthy inter-se competition among multiple domestic producers. This ensures consistent supply at reasonable prices for consumers.
- vi. The Indian industry sources its raw materials primarily from the domestic market. Significant investments have been made in the domestic market in raw materials such as natural rubber, PBR, SBR, carbon black on the back of tyre industry.
- vii. The tyre industry provides direct & indirect employment to about 20 Lakh persons. The employment generation is expected to increase by at least 37 lakhs by 2032.
- viii. Indian tyre industry is one of the consistent and leading exporters, supplying tyres to more than 100 markets worldwide. The domestic industry can focus on the export market only when it is ensured of fair competition in the domestic market. The applicants companies itself contributed INR 5,777.83 crores in foreign exchange earnings in FY 2022-23.
- ix. The domestic industry has adopted environment-friendly methods of production. It also spends heavily on CSR activities which the exporters would not do
- x. In the last three years, tyre industry in India has invested close to Rs. 4,800 crores in new capacity creation and debottlenecking for existing capacities for TBR segment. Continuation of duty is essential to ensure continued investment.

**Q.3 Examination of the Authority**

152. The Authority recognizes that the imposition of countervailing duties might affect the price levels of the product in India. However, fair competition in the Indian market will not be reduced by the imposition of countervailing duty. On the contrary, imposition of anti-subsidy measures removed the unfair advantages gained by subsidization, prevent the deterioration of the domestic industry and help maintain availability of wider choice to the consumers of the subject goods. The purpose of countervailing duty, in general, is to eliminate injury caused to the domestic industry by the unfair trade practice of subsidy 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. Imposition of countervailing duty, therefore, would not affect the availability of the product to the consumers. It would not restrict imports from the subject country in any way.
153. The Authority issued gazette notification inviting views from all interested parties, including importers, consumers, and other interested parties. The Authority also prescribed a questionnaire for the importers and consumers to provide relevant information with regard to present investigations, including possible effect of countervailing duty on their operations.
154. Even though the Authority has prescribed formats for the users to quantify the impact of countervailing duty and elaborate how the extension of countervailing duty shall adversely impact them, it is noted that none of the interested parties have provided relevant information. It is thus, noted that the interested parties have not established any impact of extending the countervailing duty on the user industry with verifiable information.
155. The Authority notes that the response to the economic interest questionnaire, was furnished only by the domestic industry. None of the consumers or traders of the subject goods have participated in the present investigations, nor furnished a response to the economic interest questionnaire. Furthermore, it is noted that no party has presented any evidence to show significant adverse effect of the duties in force. This lack of evidence and silence of the consumers and importers underscores the Authority's position and reinforces the necessity of countervailing duty measures to ensure fair trade practices.
156. It is seen that the demand of the PUC in India has increased by 66% since 2019. The Automobile industry has thrived in India and has not indicated any evidence of adverse impact of present duties.
157. The domestic industry has highlighted that the consumers are not adversely impacted by the duties because of the low impact of the duties. The impact on the consumer has been calculated on per MT per KM basis. Taking the average life of a tyre as 120,000 kms and carrying capacity of a truck as 15 MT, the impact of the prevailing duty comes to a mere 0.21% as can be seen from the table below. This is assuming that the tyre prices were increased by the Indian industry by the quantum of countervailing duty imposed. The changes in profitability of the domestic industry however does not show that the domestic industry had increased the prices by the quantum of countervailing duty. In fact, considering the changes in the costs and prices, it is seen that it can be construed that the domestic industry increased its prices by about 1.5% over and above what was necessary to address increase in costs. Thus, even if it is assumed that the domestic industry

increased its prices by 1.5% due to countervailing duty, it is seen that the impact on the eventual product was only 0.0322%.

Particulars	Unit	Amount
Tyre Weight	Kgs	60
No of Tyres per Vehicle	Nos	14
Tyre Weight per Vehicle	Kgs	840
CIF Price	Rs/Kg	180
CVD	%	9.12%
CVD	Rs/Kg	16.42
CVD per Vehicle	INR	13,789
Tyre Life	Kms	1,20,000
CVD per KM	INR/KM	0.11
Capacity of Truck	MT	15
CVD	Per MT KM	0.01
Freight Rate	Per MT KM	3.6
Impact Analysis	%	0.21%
Increase in price by the domestic industry	%	1.5%
Possible impact due to CVD	%	0.0322%

158. Even if it is considered that the extension of countervailing duty might affect the price levels of the subject goods, the impact of the duty on the consumer shall be negligible. Further, fair competition in the Indian market will not be reduced by countervailing duty, particularly if the levy of the countervailing duty is restricted to an amount necessary to redress the injury to the domestic industry. The objective of imposition of countervailing duty is to remove the unfair advantage gained by provision of subsidy to exporters in the subject country; to prevent the injury to the domestic industry and help maintain availability of wider choice to the consumers of the subject goods.
159. The Authority further determines that the continuation of countervailing duty will not lead to scarcity of the subject goods in India. It is noted that countervailing duty does not restrict imports, but ensures that imports are available at fair prices. The domestic industry is holding unutilised production capacities exceeding the current volume of imports. The domestic industry has significant exports of the product. The continuation of duty would not affect the availability of the product in the market. In any case, the combined capacities of the Indian industry are more than the demand in India, thereby ensuring that there remains sufficient supply in the country.
160. Continuation of countervailing duty will not lead to any unfair trade practices as there are a number of producers of the PUC in India that are inter-se competing in the market.
161. It is seen that the domestic industry has grown during the tenure of the countervailing duty. While the capacities of the domestic industry were low during the original investigation, the capacities have increased in India. The Indian tyre industry has invested close to Rs. 4,800 crores in new capacity creation and debottlenecking for existing capacities in the TBR segment.

162. It is seen that due to the addition in capacities in India, India is now *Atma Nirbhar* (self-sufficient) for the production of the PUC. While the Indian tyre industry is catering to almost the entire demand in India, tyre industry has also been one of the consistent exporters, supplying tyres to numerous markets worldwide.
163. The domestic industry has also highlighted that the upstream industry has made investment in the production of raw materials in India on the back of tyre industry and an increase in demand for tyres. The domestic industry has also highlighted various import substitution initiatives undertaken and joint development programs that are actively supported by the domestic industry to ensure growth of the upstream industry in India. The Indian industry has also invested in a \*\*\* crore project in collaboration with the National Bank for Agriculture and Rural Development (NABARD) to increase rubber production in the northeast regions. This is a big step in making India self-sufficient in rubber production.
164. The Authority further notes that the recommendation for imposition of duty is made only when the requisite legal requirements are met. From the information on record, it is also noted that the impact of countervailing duty is negligible to the consumers of the product under consideration, and the Authority is of the view that the imposition of countervailing duty will be in public interest.

## **R. Post Disclosure Analysis**

165. The Authority has examined all post-disclosure comments made by the interested parties in these final findings to the extent deemed relevant. Any submission which was merely a reproduction of the previous submission and which had been adequately examined by the Authority have not been repeated for the sake of brevity.

### **R.1 Submissions made by the other interested parties**

166. The other interested parties have made following submissions:
- i. Tyres having rim diameter above 16 inches cannot be the determinative criterion for deciding the PUC. Such tyres are also imported not just in HS code 40118000 but also under other HS codes 40117000 (tyres used on used on agricultural or forestry vehicles and machines) and 40119000 (new pneumatic tyres of rubber not covered under any under sub-heading of 4011).
  - ii. It is nowhere stated in the final findings of the original investigation that tyres above 16 inches were considered as the PUC irrespective of their use in buses and lorries/trucks.
  - iii. At the time of the original investigation, tyres imported under HS code 40118000 were of more than 16 inches only and were still considered as NPUC.
  - iv. The Authority has not disclosed precisely all the 'import descriptions' under HS code 40118000 that are considered as the PUC.

- v. Inclusion of HS code 40118000 in the duty table will create a situation where genuine imports of mining tyres under HS code 40118000 will also be subject to countervailing duty.
- vi. In the event the Authority decides to include HS Code 40118000 in the duty table, the Authority should clearly mention that tyres of a kind used on construction, mining or industrial handling vehicles and machines imported under HS Code 40118000 are outside the scope of the PUC.
- vii. Respondents cannot be considered as ‘non cooperative’ and cannot be denied individual rate of duty only because some information may be considered as missing. In the case of GM Balls SSR (Apr 2023), the Authority recommended continuation of the same individual duty for the exporter even when it was found that the response filed by the exporter was incomplete.
- viii. Continuation of countervailing duty, if any, should not be more than 2 years, given low volume of imports and improvement in economic performance of the domestic industry. Reliance is placed on past DGTR findings.
- ix. Subsidy margins have not been provided in the disclosure statement.
- x. DGTR is giving undue protection to the domestic industry by applying 22% ROCE.

## **R.2 Submissions made by the domestic industry**

167. The domestic industry has submitted the following:

- i. The Authority has rightfully determined to include the PUC imports under HS code 40118000 within the scope of the PUC and levy of countervailing duty on the basis of product description and tyre specifications considered during the original investigation.
- ii. During the original investigation, the PUC mine remedial effect of duties.
- iii. Only producers in China are exporting the PUC under HS code 40118000. No other country exported the PUC under HS code 40118000, showing clear intent of duty avoidance by producers in China.
- iv. The Authority has rightfully determined that customs classification is indicative only and not dispositive of the scope of the PUC. So long as a truck and bus tyre having rim diameter above 16 inches is imported under both HS code 40112010 and 40118000, it would be included in the scope of the PUC and levy of countervailing duty.
- v. In the original investigation, the Authority had determined scope of the PUC not on the basis of the application of vehicle but on the basis of product description. i.e., “New/Unused pneumatic radial tyres having nominal rim dia code above 16” used in buses and lorries/trucks”. Such buses and lorries/trucks may find application on the road or off the road. Application of the vehicle was not binding on the scope. Only application of tyre was binding which is for fitment on buses and lorries/trucks.
- vi. Participating exporters failed to fully cooperate in the investigation. The exporters have not only failed to provide response in the prescribed format, they have also

misrepresented and misled the Authority in contending that they have only exported NPUC. Import statement on record would show that the products exported are nothing but the same products that are at present subject to countervailing duty and very similar to the goods that were exported at the time of original investigation. It is for the Authority to determine if the products exported are the PUC or NPUC and not for the exporters to decide for themselves. In addition, the producers have failed to provide response to Part II of the questionnaire which is vital for analysing likelihood parameters.

vii. Consistent with past practice of the Authority, in cases of non-cooperation by exporters in a sunset review, the Authority ought to apply adverse facts to the exporters and recommend residual duty as was determined in the original investigation. Reliance was placed on:

- Sunset Review investigation concerning imports of “Carbon Black used in Rubber Applications” originating in or exported from China PR and Russia, dated 22<sup>nd</sup> December 2020.
- Sunset Review investigation concerning imports of “Phthalic Anhydride” originating in or exported from Russia, dated 5<sup>th</sup> January 2021.
- Sunset Review of anti-dumping duty imposed on imports of “Amoxicillin/ Amoxicillin Trihydrate”, originating in or exported from China PR, dated 15<sup>th</sup> February 2022.

### **R.3 Examination of the Authority**

168. The analysis of the Authority is as follows:

- i. As regards the contention that subsidy margin has not been provided in the disclosure statement, it is clarified that the present case is a sunset review and the objective of the investigation is to ascertain whether the Chinese producers continue to benefit from countervailable subsidies as ascertained in the original investigation. The Authority has examined whether countervailable schemes as determined during the original investigation continue, and whether there is evidence of continued benefit being received under the said schemes. The domestic industry alleged new schemes, but has not provided information for quantification.
- ii. The interested parties have preferred non-cooperation. The Government of China has not only filed skeleton response, but also limited the same to only the participating exporters, that too without providing all the relevant information and evidence. The Chinese producers have not claimed that the quantum of benefit has substantially declined, nor have established how the countervailing duty margin should be re-calculated. Therefore, the Authority has limited its determination to an examination whether the Chinese producers continue to benefit with countervailable subsidy programs.

- iii. As regards the contention that the continuation of duty should not be for more than two years. In this regard the interested parties have not provided sufficient justification for limiting the duration of measures to two years. The Authority considers that the normal duration of countervailing duty is five years and the Authority determines whether the countervailing duty should be extended further. Under normal circumstances, the Authority recommends extension of duration by five years.
- iv. Further, the Authority considers that since extension of measures is on the grounds of likelihood of continued subsidisation and likelihood of injury to the domestic industry in the event of cessation of countervailing duty, there is no justification for limiting duration of extension to a shorter period. In fact, the domestic industry has shown the volume of subsidised and injurious exports from China to various countries globally which is significantly higher than the Indian consumption.
- v. Further, the extent of unutilised capacities with the Chinese producers is quite significant, having regard to gross domestic demand. In the past, even in cases involving low volume of imports, and improvement in economic performance of the domestic industry, the Authority has recommended continuation of duty for full five years. This includes recent determinations made in "*Grinding Media Balls from China and Thailand*", "*Aluminium Alloy Road Wheels*" and "*Flat Base Steel Wheels*".
- vi. In the present case, the volume of imports is higher than those products. The Authority also notes that the domestic industry has capacity sufficient to cater to the demand for the product in the country, has undertaken capacity expansions and is exporting significant volumes. Therefore, the Authority finds it appropriate to recommend continuation of the measure for further 5 years.
- vii. The Authority notes that while contending that products of the same description could have been imported under 40117000 and 40119000 code also, the exporters have provided no evidence to substantiate the same. Further, even when exporters have information available with regard to their own exports to India, and the Government of China is participating in the present investigation, the exporters have not provided any information on the goods exported under 40117000, 40118000 and 40119000.
- viii. The Authority therefore holds that not only the claim made is wholly unsubstantiated, but also the exporters have preferred not to provide information available with regard to exports. As held by the Hon'ble Supreme Court in the matter of Gopal Krishnaji Ketkar v. Mahomed Haji Latif & Ors. (1968 3 SCR 862).
- ix. The Authority also notes that even Government of China has been participating in the present investigation and therefore has all relevant facts with regard to the claims made by the Chinese producers and as reported in China customs. However, Government of China has preferred not to provide the relevant information with regard to goods exported by Chinese producers.
- x. It is pertinent to note that within the current investigation, the purview of the PUC remains consistent with that delineated in the original investigation, i.e. "*New/Unused pneumatic radial tyres having nominal rim dia code above 16' used in buses and lorries/trucks.*" It is noteworthy that these buses and lorries/trucks may

be utilized for both on-road and off-road purposes. However, it is imperative to underscore that the examination framework does not extend to encompassing the broader applications of buses or lorries/trucks. Consequently, the focus of the present investigation is confined solely to the tyres as outlined in the original investigation that is designed for installation in buses or lorries/trucks.

- xi. The Authority had determined in the original investigation the scope of the PUC not on the basis of the application of buses and lorries/trucks but on the basis of product description. i.e., “*New/Unused pneumatic radial tyres having nominal rim dia code above 16” used in buses and lorries/trucks*”. Such buses and lorries/trucks may find application on the road or off the road. Application of the buses and lorries/trucks was not binding on the scope. Only application of tyre was binding which is for fitment on buses and lorries/trucks.
- xii. As regards the contention that at the time of original investigation, tyres imported under HS code 40118000 were of more than 16 inches only and were still considered as NPUC, the Authority has examined imports under 40118000 at the time of the original investigation and finds that these were not carrying the same description as is now being found in the imports being reported under 40118000. In the present POI, there are large number of transactions with description similar to the description used at the time of original investigation while reporting imports under 40118000. This further establishes that the products of the similar description are now being reported under 40118000 which were earlier being reported under 40112010.
- xiii. As regards the contention that inclusion of HS code 40118000 in the duty table will create a situation where genuine imports of mining tyres under HS code 40118000 will also be subject to countervailing duty. The Authority has adequately addressed this concern of the interested parties by appropriately clarifying the scope of the product under consideration in the duty table. Further, the scope is being appropriately clarified along with the duty table in order to ensure that imports of the product which do not conform to the description of the product under consideration of the present case are not subjected to duty.
- xiv. The Authority further notes that the balance of convenience in this regard is clearly in favour of inclusion of this HS code under duty table. If customs authorities demand duty on a product that should not be subjected to countervailing duty, the party can seek appropriate remedy. However, imports of the product under consideration under 40118000 are defeating the very purpose for which the present measure was recommended.
- xv. With regard to the argument suggesting that should the Authority opt to incorporate HS Code 40118000 into the duty table, it must expressly stipulate that tyres of a nature employed in construction, mining, or industrial handling vehicles and machinery imported under HS Code 40118000 fall beyond the ambit of the Product under Consideration (PUC), the Authority acknowledges that the delineation of the product's scope is confined to the tyres as specifically defined in the original investigation. Tyres other than those explicitly outlined within the parameters of the original investigation are deemed to be outside the scope of the Product under Consideration.

- xvi. As regards the fact that the Authority had extended the same quantum of duty in the matter of grinding media ball after holding exporter as non-cooperative and therefore Authority should recommend existing duty for the participating exporter, the Authority considers that reference to that case is misplaced. The Authority notes that in the matter of grinding media ball, the exporter was treated non-cooperative only on one account, i.e., failure to provide information with regard to export to third countries. However, in the instant case, the exporters have not only preferred not to provide information with regard to export to third countries, but also, the exporters have preferred not to provide complete information with regard to exports made under 40118000.
- xvii. The exporters have now contended having supplied goods under 40117000 and 40119000 as well. It is however noted that sufficient information was not provided by the exporters at the time of filing questionnaire response. Thus, the exporters have preferred not to provide relevant information with regard to exports to India. This information was far more important, relevant and necessary in the present case in view of the fact that the present case is the case of continued imports as opposed to grinding media balls case, which was the case of no imports during the POI.
- xviii. As regards the contention that ROCE of 22% should not be considered for determination of injury margin, the Authority considers that no justification has been given why the Authority should disregard its own long-standing practice to consider a return of 22% for determining the NIP. Principles of equity demand that the same is applied to all situations. The Authority cannot pick and choose circumstances in which it can digress from its established practice.

**S. Need for continuation of CVD**

169. The Authority notes the following with respect to need for the continuation of countervailing duties through the present sunset review investigation:

**a) Benefit to various stakeholders**

i. Domestic Producers

170. The installed capacity of the producers has grown from 6,17,916 MT to 7,60,902 MT. The production has increased from 4,21,435 MT in 2019-20 to 6,30,880 MT in the POI. The Indian industry has become *atma nirbhar* (self-reliance). It has combined capacity which is more than sufficient to cater to the entire Indian demand. Indian Tyre Industry is also one of the consistent and leading exporters, supplying tyres to more than 100 markets worldwide. The domestic industry can focus on the export market only when it is ensured of fair competition in the domestic market.

171. The applicant companies itself contributes Rs. 5,777.83 crores in foreign exchange earnings. Despite slowdown in the overall economy, the employment in the tyre industry has increased by 20% since 2019 and the salary and wages have increased by 81%. The domestic producers have invested significant amounts. In the last three years, tyre industry in India has invested close to Rs. \*\*\* crores in new capacity creation and debottlenecking

for existing capacities. Further, domestic producers undertake several CSR initiatives which exporters are unlikely to do for India.

ii. Upstream Producers

172. The Indian industry sources its raw materials primarily from the domestic market. 70% of the natural rubber produced in India is consumed by Indian tyre manufacturers. Significant investments have been made in the domestic market in raw materials such as natural rubber, synthetic rubber (PBR, SBR, butyl rubber), carbon black on the back of tyre industry. The domestic industry has undertaken several initiatives towards import substitution of raw materials. It has initiated several joint development programs with domestic suppliers of raw materials such as natural rubber, sulphur, resource-formaldehyde resin, accelerators, antioxidants, butyl rubber, halo butyl rubber, microcrystalline wax, super tackifier resin, etc. The Indian industry and the National Bank for Agriculture and Rural Development (NABARD) have invested in a \*\*\* crore project to increase rubber production in the northeast regions. This collaboration directly in line with the 'Make in India' scheme, is a big step in making India self-sufficient in rubber production

iii. Consumers of the product

173. The Authority notes that existence of domestic industry assures consumers of competitive pricing. Presence of multiple domestic producers of the product in the country provides consumers the possibility of an alternate source of supply. The production facilities of the Indian tyre industry are spread throughout the northern, western and southern parts of the country, and are therefore capable of sufficiently meeting the supply requirements of downstream users located in any part of the country. Procuring from the Indian industry ensures fair prices, un-interrupted supply, proficient after sales services and allow users to reduce inventory holdings. Domestic suppliers are subjected to various statutory and regulatory requirements in the country, which further protects the bonafide interests of the consumers.

**b) Looming Threat of Price and Volume Injury from Exports from China**

174. China has significant excessive capacity which far exceeds the Indian demand. Europe and USA authorities have countervailed subsidised tyre exports from China. In addition, USA, Europe, Egypt, Eurasian Economic Union and South Africa currently have in force anti-dumping duty against the subject goods from China. Significant third country exports from China are priced below the NIP and selling price in India. Landed price of imports from China is below the variable costs of the PUC. Should the Indian industry sell the product matching the Chinese prices, it shall not recover even variable costs.

175. Therefore, if the duty is not continued, the imports from China are likely to intensify and cause significant volume injury. Further, the current landed value from China undercuts price and cost of the domestic industry. The profitability of the domestic industry is such

that should the domestic industry reduce the price even to some extent, it would start suffering financial losses and the imports shall still remain cheaper than the Indian industry product. This in itself shows threat of price injury in the event duty is ceased.

## **T. Conclusions**

176. Having regard to the contentions raised, information provided and submissions made by the interested parties and facts available before the Authority, as recorded in the above findings, and on the basis of above analysis of the likelihood of continuation or recurrence of subsidisation and injury to the domestic industry, the Authority concludes as follows:

- i. The scope of the product under consideration is same as was notified in the original investigation, i.e., “*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, classified under customs sub-heading 40112010, 40131020 and 40129049.*” While defining the scope of the product under consideration and recommending countervailing duty at the time of the original investigation, the Authority had not restricted the scope of the product under consideration based on the application of the buses and lorries/trucks.
- ii. The scope of the product under consideration was based on description of the product, i.e., *New/Unused pneumatic radial tyres having nominal rim dia code above 16” used in buses and lorries/trucks.* Such busses and lorries/trucks may find application on the road or off the road.
- iii. The customs classification serves as an indication and does not impose a definitive constraint on the delineation of the product in question. The delineation of the product under consideration remains consistent with that established in the original investigation. It is noteworthy that the incorporation of HS Code 40118000 does not extend the ambit of the PUC and has been included solely subsequent to an analysis of import data revealing the presence of the product in question within the specified HS Code. As previously articulated, the Authority affirms the primacy of the product description in determining its scope, while regarding customs classification as merely indicative. Hence, until such time that the product description undergoes expansion, assertions implying an enlargement of the PUC's scope by the inclusion of any particular HS Code lack substantive merit.
- iv. It is however expressly clarified that the Authority has not extended scope of the product under consideration and has not recommended countervailing duties on all imports reported under 40118000. Imports reported under 40118000 should be subjected to countervailing duties only if the imported product falls within the definition of the product under consideration of the present case.
- v. Inclusion of goods imported under HS code 40118000 does not amount to extension of the product scope as the Authority has considered the same product description and size as was considered during the original investigation.
- vi. Import of the subject goods has increased substantially during the POI, particularly under HS code 4011800. It is seen that both the participating exporters, Zhongce and Shandong Yinbao have exported under HS code 40118000. However, these

exporters have not provided complete details of exports made under this classification and have not established how these do not constitute exports of the product under consideration, particularly when customs classification is not dispositive. Import data relating to the POI of the original investigation provided by the domestic industry for 40118000 does not show those descriptions as are now largely seen in the import data of 40118000 in the POI of the present investigations.

- vii. The exporters have however merely contended without providing relevant information. It is also noted that the exporters have provided no information with regard to the exports of the product under consideration made to third countries. Since the exporters have exported significant volume of the product under consideration to third countries, information with regard to these tyres was relevant not only for likelihood determination, but also for establishing the description of the product exported to India and to rest of the world. The Authority has therefore not accepted questionnaire response filed by these exporters and have treated the exporters as non-cooperative.
- viii. The Authority notes that a number of Chinese producers had participated at the time of original investigation. These exporters have however preferred non-cooperation and have not even participated in the present investigation. Analysis of import data for both the HS codes however shows exports having been made by some of the exporters attracting specific duty. The Authority therefore considers that it would not be appropriate to recommend the continuation of the same quantum of countervailing duty as was determined in the original investigation for these exporters.
- ix. The product produced by the domestic industry is like article to the product imported from China.
- x. The applicants constitute domestic industry within the meaning of Rule 2(b).
- xi. The application contained all the information relevant for the purpose of initiation of the sunset review and the application contained sufficient evidence to justify initiation of the present sunset review. Further, the applicants provided all information considered relevant and necessary by the Authority for the purpose of the present investigation.
- xii. Producers in the subject country continue to avail benefits of subsidies that were held to be countervailable in the original investigation.
- xiii. Principles of judicial economy demand that a determination of countervailability of a program is relevant and appropriate only if information with regard to quantification of benefit is available and is on record. The Authority cannot on its own collect evidence for quantification of evidence. In any case, the Authority has considered that the Chinese producers have not fully cooperated in the present

investigation and has appropriately considered the same while recommending the quantum of countervailing duty.

- xiv. The domestic industry has not suffered continued injury during the present period of investigation in as much as it has not suffered deterioration in its performance with regard to various economic parameters.
- xv. There is a likelihood of injury to the domestic industry in the event of cessation of present countervailing duty, as established by the following factors:
  - i. The landed price of Chinese imports is materially below selling price, cost of production and non-injurious price of the domestic industry. In fact, the CIF import price is below the costs on account of raw materials for the domestic industry. This clearly demonstrates that the price from China is likely to remain materially below costs and close to material costs of the Indian industry.
  - ii. Thus, if the domestic industry were to match the Chinese prices, the domestic industry cannot remain viable and shall suffer significant financial losses. Plant closures are imminent in case the Indian industry was to match the Chinese subsidised prices.
  - iii. The subject imports have increased in absolute terms during the POI, showing likelihood of increase in subsidised imports once the duty ceases.
  - iv. The volume of exports from China to the rest of the world at prices below the Indian costs is much higher than the demand for the product in the country. Further, Chinese producers are saddled with significant unutilised production capacities. Thus, Chinese producers have the capability to sell volumes to the extent of Indian demand at prices comparable to the present CIF import price for a long period.
  - v. The evidence on record clearly demonstrates that the Chinese industry can take over significant part of Indian demand in nearly foreseeable future, in the absence of countervailing duty measures.
  - vi. The producers in the subject country continue to avail benefits of subsidy programs countervailed in the original investigation.
  - vii. Third country exports from China are at a price materially below non injurious price for the Indian industry. Further, almost entirety of these third country exports is at a price materially below the selling price of the domestic industry.
  - viii. The surplus unutilised production capacities with the Chinese producers far exceeds the gross Indian demand. Thus, the Chinese producers hold unutilised capacities to take over Indian demand.

- ix. Despite existing surplus capacities, the Chinese producers have undertaken further significant capacity additions in recent years.
  - x. A number of countries have invoked trade remedial measures against Chinese imports of subject goods, thereby limiting their markets.
  - xi. India is a lucrative market given its present and potential demand due to radicalisation and large replacement market.
- xvi. The investigation had not brought to light any considerations demonstrating that such continuation of countervailing duty would not be in the public interest.

## **U. Recommendations**

177. The Authority notes that the investigation was initiated and notified to all the interested parties and adequate opportunity was given to them to provide information on the aspect of subsidies, injury, causal link, likelihood of continuation/recurrence of subsidisation and injury and impact of recommended measures. Having initiated and conducted the investigation in terms of provisions of sunset review investigation as laid down under the countervailing Duty Rules, the Authority has reached a conclusion that the duty imposed on subject goods is required to be extended further, the Authority recommends extension of countervailing duties on imports of the product under consideration.
178. Further, having regard to the conclusion reached with regard to imports of the product under consideration under HS code 40118000, the Authority recommends collection of Countervailing duties on imports of the product under consideration, if reported under 40118000. It is however clarified that the said duty would be collected under this HS code only if the description of the product falls within the scope of the product under consideration.
179. As per information available on record significant imports of the product under consideration have been found under ITC HS code i.e., 40118000 which also includes exports made by participating exporters. However, these exporters have not provided complete details of exports made under this classification and have not established how these do not constitute exports of the product under consideration. Further, the participating exporters have also failed to provide information regarding likelihood parameters.
180. In view of the above, the Authority recommend same quantum of Countervailing duties on all Chinese producers, as were recommended for “any other Chinese producer” at the time of original investigation. Accordingly, the Authority recommends extension of definitive countervailing duties on the import of the subject goods originating in or exported from China PR as indicated in Col 7 of the duty table below, for a period of 5 years from the date of notification to be issued in this regard by the Central Government.

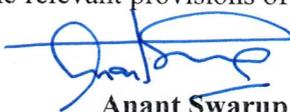
**Duty Table**

<b>SN</b>	<b>Heading/ Subheading</b>	<b>Description of goods</b>	<b>Country of origin</b>	<b>Country of export</b>	<b>Producer</b>	<b>Duty amount as % of CIF value</b>
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	40112010 and 40118000*	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	China PR	Any country including China PR	Any	17.57%
2	- do -	- do -	Any country other than China PR	China PR	Any	17.57%

\*The duty shall be payable on imports reported under 40118000 only if the description of the product confirms to the description given above. No countervailing duty shall be charged in the respect of other imports reported under 40118000.

**V. Further Procedure**

181. An appeal against the recommendation of the Authority shall lie before the Customs Excise and Service Tax Appellate Tribunal in accordance with the relevant provisions of the Act.

  
**Anant Swarup**  
**(Designated Authority)**