

File No. 14/09/2005-DGAD
Ministry of Commerce & Industry
Department of Commerce
Directorate General of Anti Dumping & Allied Duties
Udyog Bhavan, New Delhi.

NOTIFICATION

NEW DELHI, the 29th June 2007

FINAL FINDINGS

Subject: Anti-dumping investigation concerning imports of Bias Tyres originating in or exported from China PR and Thailand – final findings.

NO.14/09/2005-DGAD : - Having regard to the Customs Tariff Act 1975 as amended in 1995 (hereinafter referred to as the Act) and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, (hereinafter referred to as the Rules) thereof:

2. WHEREAS Automotive Tyre Manufacturer Association (herein after referred to as the Applicant) filed an application before the Designated Authority (hereinafter referred to as the Authority), in accordance with the Customs Tariff Act, 1975 as amended in 1995 and Customs Tariff (Identification, Assessment and Collection of Anti Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 (herein after referred to as the Rules), alleging dumping of new/unused pneumatic non radial bias tyres, tubes and flaps of rubber used in buses and lorries/trucks (herein after referred to as subject goods), originating in or exported from China PR and Thailand (herein after referred to as subject countries) and requested for initiation of anti dumping investigations for levy of anti dumping duties on the subject goods. The Authority notified the Embassy of China PR and Thailand about the receipt of dumping allegation in accordance with sub rule 5(5) of Rules.

3. WHEREAS, the Authority on the basis of sufficient evidence submitted by the applicant on behalf of the domestic industry, issued a public notice dated 30th Dec., 2005 published in the Gazette of India, Extraordinary, initiating Anti-Dumping investigations concerning imports of the subject goods originating in or exported from the subject countries in accordance with the sub-Rule 6(1) of the Rules to determine the existence, degree and effect of alleged dumping.

4. And whereas the Designated Authority notified preliminary findings vide notification No. 14/09/2005-DGAD dated 31st July 2006 and recommended imposition of anti-dumping duty concerning imports of subject goods originating in or exported from China PR and Thailand.

A. PROCEDURE:

5. The procedure described below has been followed:

(I) On 30th December 2005, the Designated Authority (hereinafter also referred to as Authority), under the above Rules, issued an initiation notification published in the Gazette of India, initiating an anti dumping investigation with regard to imports of Bias Tyres originating in or exported from China PR and Thailand, (hereinafter referred as subject countries). The Anti dumping proceeding was initiated following an application received from Automotive Tyre Manufacturer Association (ATMA), (hereinafter referred as applicant) on behalf of the domestic industry representing a major proportion of the domestic production of said product. The application contained evidence of dumping of the said product and material injury resulting there from, which was considered sufficient to justify the initiation of the proceedings.

(ii) The Authority notified the Embassy of China PR and Thailand in India about the receipt of fully documented application made by the applicant before proceeding to initiate the investigation in accordance with sub-rule (5) of Rule 5 supra.

(iii) According to sub rule (2) of the rule 6 supra, the Authority forwarded copy of the said initiation notification to the known exporters, importers, industry associations, embassies of the subject countries and to the applicant and gave them an opportunity to make their views known in writing.

(iv) According to sub-rule (3) of Rule 6 supra, the Authority provided a copy of non confidential version the application to all the known exporters in subject countries and Embassy of China PR and Thailand in India. As per Rule 6 supra, the Authority provided a copy of the relevant questionnaire to all the known exporters and Embassy of China PR and Thailand in India. The Embassy of China PR and Thailand in New Delhi were also informed about the initiation of investigation and were requested to advise the exporters/producers from their countries to respond to the questionnaire within the prescribed time. A copy of the letter and questionnaire sent to the exporters and producers were also sent to the respective embassies along with the name and address of the exporters.

(v) The applicant requested the Authority to treat China as a non-market economy country for the purpose of present investigations. For the purpose of initiation, the normal value in China PR was considered based on the price of the subject goods in Sri Lanka after treating Sri Lanka as

an appropriate third market economy country as per the information submitted by applicant. The Authority informed the known exporters from China that it proposed to examine the claim of the applicant in the light of para (7) & (8) of Annexure-I of the Anti-Dumping Rules as amended. The concerned exporters / producers of the subject goods from China PR were therefore advised to furnish necessary information/sufficient evidence, as mentioned in sub-paragraph (3) of paragraph 8 to enable the Designated Authority to consider whether market economy treatment should be granted to cooperating exporters/producers who could demonstrate that they satisfy the criteria stipulated in the said paragraph. A questionnaire for according market economy treatment was forwarded to all the known exporters/producers in China and the Embassy of the Peoples' Republic of China.

(vi) The Authority sent questionnaires, to elicit relevant information, to the following known exporters from China PR and Thailand.

China

1. Yellow Sea Tyres
Dong Hai Road, Qingdao, China
2. Shangdong Hongsheng Rubber Co., Ltd
Dawang Industry Zone, Guangrao,
Shandong, China P.C 257 335
3. Qingdao Doublestar Tire Industrial Co.,
No, 95 Qingdao Road, Jiaonan Development Area,
China
4. Qingdao Tengjiang Tyre co., Ltd
No 425 Building C, Qingdao World Trade Center,
H. K Middle Road, Qingdao, China 266 071
5. Shandong Chengshan Tire Co.,
11, Rong' an Rongcheng City, Shandong Province,
China
6. Chaoyang Long March Tyre Co., Ltd
No 1, Xiangyang Road, Longcheng District,
Chaoyang City, Liaoning Province, China
7. Triangle Tyre Co., Ltd
No 56, Qingdao Middle Road, Weihai, Shangdong,
China
8. Shandong Jinyu Tyre Co., Ltd
1504 Qilimansion, No 2 Nanjing Road, Qingdao,
Shandong, China

9. Qingdao Yellow Sea Rubber Group co.,
Qingdao Rubber Industry Park, Hong Tan,
Cheng Yang Distt, Qingdao, China
10. Shandong Yongtai Chemical Group Co., Ltd
Dawang Rubber Industry Area, Guangrao, Dongying,
Shandong, P.R. China
11. Shandong Linglong Rubber Ltd
No 170 Jincheng Road , Zhaoyuan, City , Shandong,
China- 265400
12. Guangzhou Pearl River Rubber Tyre Ltd
Tanbu, Huadu, Guangzhou 510828, China
13. Henan Tyre Co Ltd
48 Jiaodong South Road, Jiaozuo, Henan,China

Thailand

1. Hihero Co., Ltd.
408/63-64 Phaholyothin Road,
Samsennai, Phayathai, District, BKK 10400
Thailand
2. Thai Bridgestone Co., Ltd.
14/3 Phaholyothin Rd., T. Klongnueng,
A. Klong Luang, Pathumthani
Thailand12120
3. Otani Tire Co.,Ltd.
55 Mu 7, Petchkasem KM.37 Rd.,
T. Klongmai, A. Sampran, Nakornpathom
Thailand

(vii) In response to the above notification, none of the exporters responded to the questionnaire within the prescribed time limits. From China, M/s. Shandong Jinyu Tyre Co. Ltd. (Jinyu) filed its first response on 21st June, 2006, which was grossly deficient. Additional information was provided on 21st July, 2006, which was also incomplete as detailed in the Preliminary Findings. Subsequent to the preliminary findings, they filed response removing the deficiencies to a reasonable extent on the basis of which Authority decided to conduct on the spot verification. Even though the response was significantly after the time limits, the Authority considered it appropriate to examine the same. From Thailand, Thai Bridgestone Co., Ltd, informed that they had not exported subject goods to India during POI. No other exporter responded from Thailand.

(viii) A copy of initiation notification along with the importers questionnaire was also sent to the following known importers and users of

subject goods in India calling for necessary information in accordance with Rule 6(4).

Importers

M/s Chadha Tyre Traders
M/s Kaks & Bills Pvt Ltd
M/s Anirudha Industries
M/s Vikas Road Carriers
M/s International Trader
M/s AAA Impex
M/s Jamnadas and Brothers

Users

M/s Tata Motors Ltd
M/s Volvo India Pvt Ltd
M/s Ashok Leyland Ltd
M/s Eicher Motors Ltd

(ix) In response to the above notification, only M/s Tata Motors, one of the users of subject product, has responded. But the company has not filed any questionnaire response, nor have they imported the subject product from subject countries. In addition to Tata Motors, Automotive Tyre Importers Association (ATIA), All India Tyre Dealers Federation (AITDA), All India Confederation of Goods Vehicle Owner's Association (ACOGOA) have filed their submissions. M/s International Trading Corporation, New Delhi, S. K. International New Delhi, M/s Vikas Road Carriers New Delhi M/s Kaks & Bills Pvt Ltd New Delhi importers have filed the information in the questionnaire format. Neither ATIA, AITDA and ACOGOA nor their members except above importers have filed any information in questionnaire format, but have advanced their argument against imposition of anti dumping duties, which have been addressed in these findings. Petitioner however disputed the standing of these associations to participate in the present investigations on the grounds that these associations have not established their locus as an interested party.

(x) The Authority notified preliminary findings vide Notification dated the 31st July, 2006 and requested the interested parties to make their views known in writing within forty days from the date of its publication. Other than the domestic Industry, following parties also responded to the preliminary findings and offered their comments.

- Shandong Jinyu Tyre Co., Ltd ,China
- Tata Motors,
- Automotive Tyre Importers Association (ATIA),
- All India Tyre Dealers Federation (AITDF),
- All India Confederation of Goods Vehicle Owner's Association (ACOGOA)

- Thai Bridgestone Co., Ltd.Thailand.

(xi) Subsequent to the provisional finding, the Authority issued a corrigendum dated 19th September, 2006. The Central Govt. imposed the provisional duties vide notification no. 106/2006 dated 9th October, 2006.

(xii) The Authority held a public hearing on 26th September 2006 to hear the interested parties orally, which was attended by a number of interested parties. The parties attending the public hearing were requested to file written submissions of views expressed orally. The Authority in this finding has considered the written submissions thus received from interested parties. The parties were also asked to file rejoinder submissions on views expressed by other interested parties.

(xiii) Arguments raised by interested parties before notifying preliminary findings which have been brought out in the Preliminary Findings have not been repeated herein for sake of brevity. However, arguments raised after the preliminary findings have been dealt in the present findings. Further, the comments by the interested parties on the present disclosure statement have been appropriately dealt in the Final Findings.

(xiv) The Authority conducted on-the-spot verification of the information provided by the domestic industry, the Chinese exporter and AITDF to the extent considered necessary.

(xv) Additional details regarding injury were sought from the applicant, which were also received.

(xvi) The Authority kept available non-confidential version of the evidences/ submissions presented by various interested parties in the form of a public file maintained by the Authority and kept open for inspection by the interested parties.

(xvii) **** in this notification represents information furnished by the interested parties on confidential basis and so considered by the Authority under the Rules.

(xviii) In accordance with Rule 16 of the Rules supra, the essential facts/basis considered for these findings have been disclosed to known interested parties on 11th June 2007 and comments received on the same have been considered in the present Final Findings.

(xix) The investigation of dumping covered the period from 1st April 2004 to 30th June 2005 (also called the period of investigation or POI). The examination of trends in the context of injury analysis covered the period from 1st April 2001 to the end of period of investigation (also called Injury period).

(xx) It was considered necessary to request the central government for six month extension of time to complete the investigation and notifying

the final findings under the special circumstances. Six months extension of time to complete the investigations and notify the final findings under the special circumstances was granted by the Central government.

(xxi) The Authority sought and verified all the information it deemed necessary for the purpose of determination of dumping and resulting injury. The Authority conducted on the spot investigation of the domestic industry to the extent considered necessary. The cost of the production of the domestic industry was also analysed to work out the cost of the production and the cost to make and sell the subject goods in India on the basis of Generally Accepted Accounting Principles based on the information furnished by the domestic industry so as to ascertain if anti dumping duty lower than dumping margin would be sufficient to remove injury to the domestic Industry.

(xxii) Requests were made to the Central Board of Excise and Customs (CBEC) and Director General of Commercial Intelligence and Statistics (DGCI&S), Kolkata to arrange details of imports of subject goods in India for the period of investigation and preceding three years. However no response was received from Central Board of Excise and Customs (CBEC).

(xxiii) Wherever an interested party has refused access to, or has otherwise not provided necessary information during the course of the present investigations, or has significantly impeded the investigation, the Authority has recorded findings on the basis of the facts available.

(xxiv) The Authority has considered data relating to cost of production and selling price of all interested parties as confidential as it would give competitive advantage to their competitors. The other information has not been considered as confidential unless the responding party has given sufficient justification for keeping the information as confidential.

B. PRODUCT UNDER CONSIDERATION AND LIKE ARTICLES.

6. The product under consideration is new/unused pneumatic non radial bias tyres, tubes and flaps of rubber used in buses and lorries/trucks originating in or exported from China PR and Thailand. Bias tyres are technically known as diagonal ply or cross ply tyres. Tyre is used along with one tube and one flap in a vehicle. One tyre, one tube and one flap is together sold as a "tyre set". The term "TTF" is prevalent in the industry to denote a "tyre set". Tyre, tube and flap jointly render the function of "tyre" in a vehicle. Air is filled in the tube inside the tyres and a flap is used in between wheel and tube to avoid tube burst due to its cohesion with the wheels. Tyre, tube and flap are produced separately by the producers. Sale of tyre, tube and flap are primarily on "TTF" or "tyre set" basis. However, they are sold individually also. Import of the product is also both on TTF basis and as individual units and can be in any combination. Bias tyre, tube and flap used in bus and lorries/trucks

constitutes the product under consideration irrespective of whether they are in TTF form or individually as tyre, tube and flap.

7. The scope of the product includes only bias tyres, flap, tube used in buses and lorries/ trucks. Tyres are produced for use in vehicles like truck, bus, lorries, light commercial vehicles, passenger car, jeep, tractor, two wheeler, three wheeler, animal pulled vehicles, earthmover, industrial tyres, air crafts etc. However, the product under consideration is the type that is used only in buses & lorries/trucks. All other types of tyres including radial tyres are beyond the scope of the product under consideration and present investigations.

8. There are two categories of tyres, namely radial and non-radial. The non-radial category is known as bias or diagonal ply tyres. The categorization is based on the load-inflation pressure relationship prescribed by Indian standards. The scope of the product includes only non-radial or bias tyres used in buses and lorries/ trucks.

9. Tyres, Tubes and Flaps are produced separately. However, they are invariably used together in automotive applications. Tyres are classified in Chapter 40 under customs subheading no. 40112090 and tubes and flaps are under 40131020 and 40129049 respectively. However, customs classifications are indicative only and in no way binding on the scope of investigation.

10. Interested parties have filed their comments in respect of product under consideration. It has been argued that

- (a) The product scope has been left very wide as the same includes very distinct sizes. The description of the product is not in conformity with the product being imported. The product includes different types like lug, semi rib, rib etc. and tyres are normally identifiable in terms of its size.
- (b) The information provided by domestic industry does not distinguish between Heavy Commercial Vehicles (HCV) and Light Commercial Vehicles (LCV) though truck and bus tyres include both HCVs and LCVs.
- (c) The imported tyres are inferior in quality and primarily substitute the retreaded tyres.
- (d) The imported tyres are produced using more of clay and retreaded rubber.
- (e) The description of product needs to be modified according to sizes.
- (f) There is significant difference between tyres catered to the OEMs and that to the retail market. The segmentation is required to be done while examining the injury to the domestic industry.

11. Domestic Industry has argued as follows: –

- a) The scope of the product under consideration is well defined in the petition and notice of initiation and there can be no confusion in this regard.
- b) While it is true that there are different types of tyres, the same is at best relevant for the purpose of price comparison. In so far as the scope of the product under consideration is concerned, all these different types of tyres are very much within the scope of the product under consideration.
- c) There is no basis for the argument that the scope could be read so as to include even LCV tyres. However, considering the arguments of these parties, the Authority can also specify the size of the tyre along with other parameters in order to ensure that unintended product does not get covered within the scope of the duties.
- d) There is no significant difference between the subject product produced by the domestic producers and the products imported from subject countries. They are comparable in terms of characteristics such as physical & chemical characteristics, manufacturing process & technology, functions & uses, quality, product specifications, pricing, distribution & marketing and tariff classification of the goods.
- e) The imported and domestic products are technically and commercially substitutable. The consumers are using the two interchangeably.
- f) Tyres meant for bus & lorries and tyres meant for other applications are classified under different customs sub-heading. Such being the case, it is a factually incorrect statement that the imported product was not tyres meant for bus & lorries application.
- g) Production of tyres has certain minimum technical requirements. It is not possible to produce the subject goods with any quantum of retreated tyre or clay.
- h) Test reports of the Chinese tyres clearly show that the claim of the interested parties with regard to composition of tyres is not true.
- i) The Chinese exporter, Shandong Jinyu is exporting tyres to a large number of countries, which includes a number of developed countries such as USA. Their export price to these countries are as high as US\$ 120 per tyre as against US\$ 30-40 at which goods have been exported to India during this period.
- j) The claim of poor quality is not justified.
- k) Domestic industry caters to two market segments i.e. domestic after market and domestic original equipment manufacturers. Applicants submitted that the imports are taking place in the domestic after market which holds almost 77% of tyre sale. Hence, there is a direct competition between imported material and domestic product. Indian Producers either directly or through its dealers compete with these traders/resellers for the same general category of consumers. Significant volume of sales by the applicant companies is also through resellers (almost 77%). All resellers, whether dealing in the domestic or import product are supplying the product to the same general category of customers. There is no difference in the quality of tyres supplied to OEMs or after market.

BIS Certification of tyres is voluntary in nature and hence tyres with or without BIS Certification are being supplied to both OEMs and after markets.

- l) Even though the scope of product under consideration is tyres, tubes & flaps, there is a possibility of some confusion because of the operative para in the preliminary findings. The Authority should therefore clarify the product scope in the final findings.
- m) Product under consideration is defined in the Preliminary Findings as:-

“New/unused pneumatic non radial bias tyres with or without tubes and/or flap of rubber, having nominal rim dia code above 16” used in buses and lorries/trucks.”

This gives impression as if the scope of the product under consideration is only tyres and therefore requires correction

Examination by Authority

12. As regards scope of the product under consideration, the Authority notes that the petition and notice of initiation very clearly specify the scope of the product under consideration. The product under consideration includes different types of Bias Tyres, known as lugs, semi rib, rib, etc. However, these are merely different types of the product under consideration. It is clarified that tyres for LCV are beyond the scope of the product under consideration. Having regard to the arguments of the interested parties, it however appears relevant and necessary to specify the size of tyres also for the purpose of defining scope of the product under consideration. The Authority notes in this regard that tyres of specified size only can be used for a particular application. For instance, nominal rim dia code of 16" tyre can not be used in HCVs and similarly nominal rim dia code of 20" tyre can not be used in LCV.

13. Having regard to the arguments by the interested parties, the Authority in preliminary findings considered it appropriate to include size of the tyres also within the scope of the product under consideration. Accordingly, the product under consideration is defined as "*new/unused pneumatic non radial bias tyres, tubes & flaps with or without tubes and/or flap of rubber, having nominal rim dia code above 16” used in buses and lorries/trucks*". The scope of investigation includes tyres, tubes and flaps whether imported individually and/or in any combination thereof. In the Preliminary Findings the duties were also recommended accordingly. As regards the argument that the product meant for OEM and replacement market is different, the Authority notes that there is no evidence provided in support of this claim. Verification at the premises of the domestic industry on the contrary showed that the product meant for OEM and after market is the same.

Like Article

14. Rule 2(d) of AD Rules defines Like Article as:

“an article which is identical or alike in all respects to the article under investigation for being dumped in India or in the absence of such article, another article which although not alike in all respects, has characteristics closely resembling those of the articles under investigation.”

15. Arguments of Domestic Industry-

- a) The applicants have claimed that goods produced by them are like article to the goods originating or exported from China PR and Thailand.
- b) Extensive submissions were made, in quite a confusing manner, with regard to quality of the imported tyres. The parties were not able to even explain to the Designated Authority what they indeed meant by poor quality, nor could these parties demonstrate how the alleged difference in quality could be relevant to the present investigations.
- c) There is no dispute on like articles. Chinese exporter confirmed that there was no dispute on like article. None of the parties have disputed the position. The only argument was made that imported products are of inferior quality and are used in the lower end market.
- d) Tyres meant for bus & lorries and tyres meant for other applications are classified under different customs sub-heading. Such being the case, it is a factually incorrect statement that the imported product was not tyres meant for bus & lorries application

16. Arguments of exporter and other interested parties.

a) Tyres produced by the domestic industry and tyre imported from China are significantly different from each other and the two do not compete. The tyres produced by the domestic industry are used by the Indian trucks (Tata and Ashok Leyland) which are registered for higher load and tyres exported by Shandong Jinyu Tyre Co. Ltd are smaller in dimension and suitable for lower end application i.e. tractor, trolley application/four wheelers, army disposal trucks and also replacement for retraded tyres. Tyres produced by domestic industry are bigger in dimension than the international tyres and are over engineered to carry over load upto 30 tones against prescribed 8 tones. Accordingly these two tyres are not competing as both are used by different types of consumers/users.

b) The quality of tyres exported by the Shandong Jinyu Tyre Co. Ltd. in particular and other Chinese producers in general is of much lower quality than the tyres produced by domestic industry, product weight is lesser as compared to Indian product and is used by the poor villagers for tractor trailers where the performance of tyre is not very critical. The goods produced by the domestic industry are of far more superior quality and commands much higher prices than the goods being exported from China PR. Since the quality of Chinese tyres is inferior, the Authority should make

adjustment as per Article 2.4 of the Anti Dumping agreement and provisions made under para 6(i) of Annexure-1. The adjustment needs to be made on account of tread wear and tyre life expectancy, load carrying capacity, tyre durability, unconditional warranty and guarantee, terms of sales, retradability, and price comparison. If necessary Chinese tyre needs to be tested in Government laboratory. The tyres imported from China are used for tractor trolleys and also replacement for retreaded or repaired tyres and are totally placed into different market where domestic producers are neither positioned nor have any stakes.

- c) Tyres produced by the domestic industry in India are highly engineered tyres developed and produced after lot of research and design to perform at a very high speed and to deliver high performance and load carrying capacity. While the tyres imported from China are of poor quality and are designed for usages where performance is not a critical factor such as tractor trailers, or bullock carts or as a replacement of retreaded tyres.
- d) The subject goods are produced by the domestic industry in India by employing special specification using high grade rubber recipe and carcass construction. As the tyres produced by the Domestic industry are designed for carrying extra heavy overloads and perform at a high speed, they primarily uses expensive Natural Rubber in their compound formulations to combat the effect of heat generated due to heavy overloads and high speed. The tyres imported in India from China are produced with value line recipes and carcass construction using low grade cheaper raw material. It uses less amount of natural rubber for cutting its cost to meet demand of above said market where situation are not much demanding and performance is not critical.
- e) The domestic industry for production of tyres uses only high grade natural rubber for its construction while the Chinese producers are using cheaper raw material such as reclaimed rubber, calcium carbonate, reclaimed carbon black and clay fillers to make it cheaper and affordable according to its usage.
- f) Domestic industry spends a lot of money in building their brands and market presence for promoting their products and setting sales and distribution system which further adds to the cost of the subject goods. Moreover all the tyres being manufactured by the domestic industry comes with warranty and replacement guarantees in case it develops any snag which further adds to the cost of subject goods and makes it more expensive. The Chinese companies on the other hand do not incur any such expenses and offers no warranties or replacement guarantees which further enables them to reduce their cost.
- g) The Designated Authority should look into the issue of quality and must make due adjustment for the quality differences for which necessary

information has already made available on record with the Designated Authority.

- h) The Product under consideration is available in market in different weights and models. The price of the domestic industry within same size group differs significantly in the range of 32-50 per cent. Since the imported tyres are of low grades, their comparison with high grade tyres will result in incorrect comparison. The increase in inventory is due to excessive production and over supplied.
- i) The importers' association in their submissions have also claimed that goods imported are of inferior quality.
- j) The import of cross ply trucks/tubes tyres has given option to small transport operators on short hauls and legal loads. This category is of lower end users who have migrated from using used/reteraded tyres. The domestic tyre measures mainly produce tyres for over-loading in excess of prescribed axel weight limit.
- k) The imported tyre is sold on cash and carry basis without any warranty for manufacturing defect unlike domestic industry tyre which is over engineered and larger dimension as higher selling distribution and marketing expenses in built in the price and hence costlier in comparison to imported tyres. Lug pattern varies to the extent 20% to 25%. The imported tyres by raw material, manufacturing process and other conversion cost are difference. Even two tyres of same size can vary in cost and price.
- l) AITDF claimed that domestic companies are sourcing tyres from Chinese manufacturers and are exporting to many other countries under their name except India on the plea that outsourcing from China give them significant price advantage.
- m) The Chinese and Indian tyres are two independent products having regard to their features of construction, engineering, dia, width and other technical parameters for the purpose of determining injury to the domestic industry. The law of natural justice and equity should prevail rather than single minded bureaucratic process.
- n) The arguments of the domestic industry are baseless and misleading as regards category of tyres. The tyres imported from China are bus and Lorries tyres and used for lower end application for transportation of under loaded vehicles.
- o) While Indian tyres are bigger dimensions /heavier/over engineered and meant for 200-400%, overloading Chinese tyres are not so.
- p) There is a news article published in Economic Times dated 25.4.2007 where in the honourable finance minister himself is concerned about the cartelisation in tyre industry.

Examination by the Authority

- 17. The Authority is required to first identify the “product under consideration”, which is specified above. After defining the product under consideration, the Authority is required to identify the like article being produced in India. The Authority notes that the domestic and imported product contains the same basic physical and chemical characteristics. The two have the same functions and uses. The Authority also notes that Chinese tyres per se can not be stated of the inferior quality as the Chinese exporters have

themselves claimed that they are exporting high grade quality tyres to some countries like USA. The Authority also notes that the quality of the tyres depends on the raw material mix which is admitted by all interested parties. Therefore to justify any claim that particular tyre is of inferior quality it should be demonstrated through raw material consumption mix which ultimately results into production of lower quality tyre. This raw material consumption mix can be verified from the plant records and books of account maintained by the producers. This can also be verified from the catalogue of the company which may show various uses and the quality parameters / features of the product.

- a) During spot verification, at the premises of the Chinese exporter namely Shandong Jinyu Tyre Co. Ltd the issue of inferior quality as claimed was examined with reference to whether the exported goods are different from the goods being produced by the exporter for sale in its own market or third countries and whether these are of inferior quality. To substantiate that the goods produced by the Chinese exporters are of inferior quality / grades, the responding exporter was requested to provide plant records showing the consumption of raw materials mix for the grades exported to India and the grades sold in the domestic market, but no such records were made available. The Chinese exporter therefore could not provide any evidence from the books of accounts or plant records to show that the goods exported to India were of inferior quality. The Chinese exporter has claimed that they are exporting superior quality (Grade-1) tyres to some of the countries like USA and inferior quality tyres (Grade-3) to Asian countries including India. However, the export invoices of exports to India do not show any such grading. During on the spot verification the exporter was requested to show the purchase order from Indian importers to show that the tyres required by Indian importers are of inferior quality, but the company could not provide any such purchase order and stated that entire orders are placed over telephone. These issues were communicated to the exporter after verification and they were requested to comment on the same. However, no specific comments on non production of plant records/ books of accounts were given. It was, however reiterated that the Chinese tyres are of inferior quality. After on the spot verification they have submitted a cost of production statement for tyres sold in domestic market, USA and India which however, could not be verified from the plant records/ books of accounts as these were not made available during the on spot verification. The consumption of raw material and other claims in Appendix 5 to 9 of the exporter's questioner could not be verified during on the spot verification because neither basic records nor backup papers for arriving those figures could be shown. In the absence of these basic records, backup papers / working sheets, it was not possible by the Authority to verify the claims on cost from the books of accounts. The product brochures also do not distinguish between high quality tyres and so claimed inferior quality tyres. On the contrary, the product broacher of M/s Jinyu inter alia states " *the company has advanced manufacturing equipment. They select the best materials combined with latest technology to make JINYU, GOLDEN ROAD JOYKIN brand tires in totally 8 series, 107 sizes, 256 ply ratings &*

patterns. Regarding quality as life of enterprise, in the last ten years the company has purchased advanced machines from overseas and domestic suppliers, and established complemented quality warranty system. The products have been certified by CCC, quality management system certification ISO 9001:2000 standard, DOT, INMETRO, ECE and other applicable standards. Shandong Jinyu Tyre Co. Ltd has developed on to a modern company which is synchronised with tyre manufacturing, tech R&D and trading. Products have been distributed widely throughout People's republic of China, as well as in overseas market such as South Korea, USA, India, Brazil etc. encompassing more than 60 countries and regions”

- b) Therefore, the claim of the exporter that the tyres exported to India are of inferior Quality could not be substantiated from evidence/ plant records/ books of accounts/ invoices. The claim of inferior quality/no warrantee/ no R&D also could not supported by the product broucher of Jinyu Tyre. No other exporter from China has cooperated in the investigation and provided any evidence on quality front. No other importer/ user organisation has provided evidence in this regard, although it is argued that Chinese Tyres are of inferior quality. During the visit to AITDF, the association claimed that tyres imported from China are of inferior quality, but it could not be substantiated with any documentary evidence. Therefore the Authority is not in a position to conclude that the Chinese tyres are of inferior quality. Regarding the arguments on overloading capacity the Authority notes that the load carrying capacity depends on the raw material consumption mix which could not be substantiated during the on spot verification. During the visit to AITDF, the association claimed that tyres imported from China are of inferior quality, but it could not be substantiated with any documentary evidence.
- c) There is no response from Thailand on like articles. None of the interested parties have advanced any argument/evidence on the quality of imported product from Thailand.
18. After examining the claims, the Authority holds that there is no difference in the subject product imported from China and Thailand and produced by the domestic industry. The imported product is also used by same category of consumers. The same are technically and commercially interchangeable. The product contains the same basic physical and technical characteristics and has the same functions and uses. Accordingly the Authority holds that the subject product produced by the domestic industry and those imported from China PR and Thailand are like articles within Rule 2(d) of AD Rules.

C. DOMESTIC INDUSTRY

19. Rule 2(b) defines domestic industry as under:

“domestic industry” means the domestic producers as a whole engaged in the manufacture of the like article and any activity connected therewith

or those whose collective output of the said article constitutes a major proportion of the total domestic production of that article except when such producers are related to the exporters or importers of the alleged dumped article or are themselves importers thereof in which case such producers shall be deemed not to form part of domestic industry”

20. The application was filed by Automotive Tyre Manufacturers Association (ATMA) on behalf of the domestic industry using the information provided by M/s Apollo Tyres Ltd and M/s Ceat Ltd. Application was supported by M/s JK Tyres (JK Industries Ltd.), M/s Birla Tyres (Kesoram Industries Ltd) and M/s MRF Ltd. Following the initiation, the Authority sought injury information from supporting companies also. In response to the same, JK Tyres and Birla Tyres showed their willingness to participate in the investigations and provided information required by the Authority in the form and manner prescribed. In the preliminary finding, the Authority, after examining, determined that the Apollo Tyres, Birla Tyres, Ceat Tyres and JK Tyres constituted domestic Industry within the meaning of the Rule 2(b).

21. After the preliminary findings the Authority requested, following other Indian Producers namely :-

- a) M/s. MRF Ltd. Chennai.
- b) M/s. Goodyear India Ltd.
- c) M/s. Balakrishna Industries Ltd. Mumbai.
- d) M/s. Wear Well, Madhya Pradesh.
- e) M/s. Malhotra Rubbers Ltd. New Delhi.
- f) M/s. Tyre Corporation of India Ltd. (TCIL), Kolkata.

to provide relevant costing & injury information for the subject goods during POI. Attention of these Indian Producers was also drawn to the directions of the Hon'ble Supreme Court in the Reliance Industries case. Their attention was also drawn that in the absence of non filing of complete response the authority shall proceed on the basis of facts available. In response, cost audit report was filed by M/s. MRF Ltd. for the year 03-04 and 04-05. In respect of Goodyear, cost audit reports were collected from the Department of Company Affairs for the year 2004 and 2005. It is however noted that the information provided is grossly insufficient to include these companies as part of domestic industry for the purpose of determination of non injurious price and injury analysis. These companies have provided cost audit report, showing production, sales volumes, cost of production, selling price, profit/loss, etc. However, the Authority is unable to use this information for a number of reasons, which includes the followings-

- a) The cost audit reports contain information for the financial year and the information is not available for the investigation period considered by the Authority and previous years.
- b) The information is not available separately for the product under consideration.

- c) All relevant information including the weight of product under consideration for the purpose of non injurious price is not available.
22. The Authority is therefore unable to use the information provided/collected in respect of Goodyear and MRF. Since the information provided is not complete in all respects, the Authority has not used the same.
23. The other Indian producers replied as under:-

M/s. Tyre Corporation of India Ltd. (TCIL), Kolkata replied that they are doing 100% job work for other tyre companies which supply the basic raw material. They further requested that in the light of this their name should be excluded for submission of data required for this anti-dumping investigation.

M/s. Malhotra Rubber Limited, Gautam Budh Nagar (UP) replied that they do not produce new/unused pneumatic non radial bias tyres with or without tubes and/or flap of rubber, having nominal rim dia code above 16" used in buses and lorries/trucks. They further stated that they are engaged in production of light commercial vehicle tyres, passenger car tyres and two/three wheeler tyres.

M/s. Wearwell Tyre & Tube Industries Pvt. Ltd. Bhopal replied that their company is closed and they are no more in business.

M/S Balakrishna Tyres did not respond to the Authority. However, the domestic industry have submitted a copy of internet information from the company's website which shows that M/s. Balakrishna Tyres are not producing Bias Tyres for truck and bus application, which is the product under consideration. In view of above position, the production of bias truck/bus tyres during POI is as under:-

Name of the company	Production in nos.	Percentage to Indian Production.
Domestic Industry		
Apollo Tyres Ltd.	35,53,599	26.24
J K Industries Ltd.	31,20,654	23.04
Ceat Ltd.	22,47,243	16.59
Birla Tyres	12,54,596	9.26
Total Domestic Industry	101,76,092	75.14
Supporters		
MRF Ltd	28,28,846	20.89
Domestic Industry & Supporters	130,04,938	96.02
Others		
Goodyear India Ltd.	5,38,649	3.98
Total Indian Production	135,43,587	100.00

The Authority notes that (a) production of the four manufacturers i.e. Apollo Tyres Ltd, Ceat Ltd. JK Tyres (JK Industries Ltd.) and

Birla Tyres (Kesoram Industries Ltd) constitute a major proportion in Indian production (b) domestic producers expressly supporting the application accounted for more than 50 per cent of the production of the like product produced by the domestic industry, (c) the application was made by or on behalf of the domestic industry,

24. The associations who responded to the Authority have not disputed the fact that the application was filed on behalf of the domestic industry representing a major proportion of domestic producers nor have they disputed that the participating companies constitute domestic industry. Other interested parties however, claimed that

- a) Petitioners are related to the producers/exporter of subject goods from China and this has been concealed by the domestic industry to misguide Designated Authority.
- b) The domestic Industry on the one hand crying foul due to cheap and low price imports from China-PR while on the other hand drawing business strategy to gain advantage of this lower production cost being mastered by Chinese by servicing the subject goods from Chinese producers and also by entering into collaboration with these manufacturers. The website of the domestic industry shows the relationship with the Chinese producers and servicing subject goods and entering into strategic collaboration. The relationship is also noticeable in their annual reports. The domestic industry is enjoying advantage of low cost production for their own benefit to the exclusion of number of users and consumers in India. The logic behind such relationship is lower cost of production in China. The producers in China are cost effective.
- c) The domestic industries have imported the subject goods from China PR. The domestic industry has misdirected the Authority by stating that they have not imported the tyres into India. The Manufacturers are facing problems due to huge over supply situation in the Indian market. At para 70 of the Preliminary finding the Authority has observed that even if the tyre companies has purchased some goods from the market it is not established that these purchases are of imported goods. The annual report of J. K. Industries and Apollo Tyres speaks about business appliances, outsourcing, etc., which clearly implied that these companies purchased Chinese tyres. Attention of the Authority is also drawn to some of the news items wherein the companies which are forming part of domestic industry have spoken about outsourcing of the subject goods and about their alliances/ future alliances with the Chinese companies. The attention was also drawn to the website of M/s Apollo International Ltd. It mentions that Tyre Tech Global has initiated sourcing of tyres from China. It is also shown that

Apollo International Ltd and Jinyu tyre company, Shandong have signed a MOU regarding supplies.

25. Before the preliminary findings, the Authority sought clarifications in this respect from the applicants, who certified that none of the participating companies are related to any parties in the exporting countries. M/s. Apollo International Ltd. also certified that the Company has no business alliance with any manufacturer/ exporter of the product under consideration in China or Thailand for export or import of the product under consideration to the Indian market and that the Company has not imported/ exported the product under consideration either from China or from Thailand to India under any such possible business alliance during the investigation period. Moreover, declarations in this respect were also provided by applicants in respective part of the application itself. It has not been established that those declarations are incorrect.

26. Subsequent to the preliminary findings, the Authority requested the domestic industry to provide detailed factual information on the relationship and imports of goods from China. The domestic industry has clarified the matter as under:-

- i) Ceat Ltd inter alia replied that :-
 - (a) *We are exploring the possibilities of outsourcing radial tyres from China. This is still at a nascent stage. We further confirm that we have not imported tyres from China. We also confirm that we have not made any financial investments in China.*
 - (b) *The company is exploring the possibilities of setting up a Greenfield project in India to produce radial tyres for truck/bus segment. However, the size and cost of the project has not yet been finalised. We also clarify here that the company neither has made nor has any plans to make any investments in China for Bias Tyres.*
 - (c) *We once again reiterate that the company has not imported Bias/ radial tyres from China hitherto.*
- ii) Apollo Tyres Ltd inter alia replied :-
 - (a) *Apollo tyres had earlier in nov-2003 entered in to strategic alliance with Michelin, France for setting up a joint venture for production of radial tyres in India. Entire operations relating to this joint venture were not for production of bus & truck bias tyres.*
 - (b) *Pending implementation of the project for production of the radial tyres, Michelin Apollo Tyres Pvt. Ltd. has undertaken import of radial tyres for sale in India. Please note that these imports were of radial tyres.*
 - (c) *The news item that appeared in Business Line about acquisition in China refers to efforts of the company to buy tyre manufacturing facility in China- either existing or fresh facilities being set up. It is clarified that neither Apollo tyres Ltd nor Apollo International Ltd. nor any company related to these two companies have purchased any tyre manufacturing facilities in China so far.*

Apollo International Ltd. purchases various kinds of tyres from Chinese market and sells the same in third country markets. None of these Chinese tyres have been imported into India by Apollo Tyres Ltd.

iii) Apollo International Ltd. inter alia replied :-

- (a) The website at “products” refers to “sourcing” of tyres from Apollo Tyres Ltd. and China. None of the goods purchased from China have been imported into India. Various kinds of tyres purchased by the company are sold outside India during period of investigation i.e. April-2004 to June-2005.*
- (b) As stated in the website concerning profile of Tyre Tech Global, this is the tyre export division of Apollo International Limited.*
- (c) The news item that appeared in Business Line about acquisition in China refers to efforts of the company to buy tyre manufacturing facility in China- either existing or fresh facilities being set up. It is clarified that neither Apollo Tyres Ltd nor Apollo International Ltd. nor any company related to these two companies have purchased any tyre manufacturing facilities in China so far. Apollo International purchases various kinds of tyres from Chinese market and sells the same in third country markets. None of these Chinese tyres have been imported into India during POI.*
- (d) A minutes of the meeting was earlier signed with ***** the same was for tyres business to export Chinese tyres in third country market. The said minutes refers to (a) purchase of ***** for export of tyres to USA (b) truck and bus radials (c) bias truck tyre exports to third countries.*

iv) J K Industries Ltd. inter alia replied :-

- (a) The news item that appeared in business line about tie ups in China refers to efforts of our company or our associates company to buy tyres from Chinese manufacturers. It is clarified that our company/ associates of our company has not made any financial investments in China so far. An associate of our company purchases various kinds of tyres from Chinese manufacturers and sells them in third countries; none of these tyres are brought in to India.*
- (b) In order to increase group’s export business, our associate company ***** purchased tyres from Chinese manufacturer, which have been sold in international market. This arrangement is in the form of outsourcing arrangement for sale in third country and not for sale in India.*
- (c) It is clarified that we have not sold tyres in Chinese domestic market.*
- (d) No outsourcing contracts exist from countries other than China.*
- (e) Plans to acquire plants to expand capacity-This is a continuous exercise in the normal course of expanding business.*
- (f) Investment of Rs.150 crores was planned to expand plants at its existing locations for truck and passenger line radial tyres.*

(g) The statements appearing in the balance sheet are more towards expectations of future events likely to take place in the world tyre market. The factual position is thus different from the forward looking statements. The factual position is that there are no imports by J K Industries Ltd or its associates into Indian domestic market. Only six nos bias tyres were imported from China for testing purposes.

- v) Regarding Birla tyres, none of the interested parties have raised any arguments as regards relationship and import issues.

27. Examinations by the Authority

a) The import statement of DGCI&S was examined transaction by transaction. It was found that there were no imports of the product under consideration by domestic industry. However, on the basis of information provided by the domestic industry, it is found that associates of J K Industries and Apollo Tyres are buying Chinese tyres and selling the same in third countries. It is thus important to determine whether imported goods are entering into the commerce of country. Since only imports into India are relevant for the present purpose, the Authority notes that purchase of Chinese tyres for exports to other countries are not relevant for the present purpose as it is not entering into the commerce of country. In the earlier investigations also wherever the domestic industries have imported subject goods under duty free license under obligation to exports, the Authority has not excluded such companies from the purview of domestic industry purpose as imports are not entering into the commerce of country. Therefore a situation where the goods are procured from a country and directly exported to third countries without importing the same into India can be compared with a situation where the duty free imports are brought into India with an export obligation. In both the situation the goods are not entering into the commerce of the Country.

- b) None of the news items brought to the notice of the Authority establish that any of these companies have been importing Chinese bias tyres in the Indian market. There is no evidence that the Indian Producers have made investments in production facilities in China.
- c) The Authority also notes that the Rules do not provide for automatic exclusion of a company who has itself imported the product or who is related to such a producer. None of the interested parties have established why any of the domestic industry should be excluded from the scope of the domestic industry, assuming that they have imported Chinese tyres.

28. The authority notes that for the purpose of clause 2 (b)

(i) Producers shall be deemed to be related to exporters or importers only if,-

- (a) One of them directly or indirectly controls the other, or

- (b) Both of them are directly or indirectly controlled by a third person, or
- (c) together they directly or indirectly control a third person subject to the condition that are grounds for believing or suspecting that the effects of the relationship is such as to cause the producers to behave differently from non-related producers.

(ii) a producer shall be deemed to control another producer when the former is legally or operationally in a position to exercise restraint or direction over the latter.

29. None of the interested parties has placed any material on record whereby the relationship is established within the above definition. Therefore it could not be established that the Indian producers are related to Chinese or Thailand exporter so as to exclude them from the scope of the domestic industries.

30. In view of the above, the Authority holds that it has not been established that any of the constituents of the domestic industry are required to be excluded on the ground of imports or/ and relationship. The Authority holds that Apollo Tyres, JK Tyres, Ceat Ltd, and Birla tyres constitutes domestic industry within the meaning of the Rule 2(b).

D. DUMPING MARGIN- NORMAL VALUE

Thailand

Claim of the Applicant

31. Applicant claimed that producers from Thailand are dumping subject goods in India. Efforts were made to obtain information about the prices of subject product prevailing in the domestic market in Thailand. However, no reasonable, authentic and accurate information could be obtained about the actual transaction-selling price of subject product (between a producer and wholesaler dealer/distributor) in their domestic market. In view of the same, applicants used estimates of cost of production to determine normal value in Thailand

Response of Exporters/producers

32. Till the time of issuance of preliminary findings, none of the producers/exporters responded. Subsequent to preliminary finding M/s. Thai Bridgestone Co., Ltd., Bangkok inter alia replied that:

It has been alleged that we have exported the said bias tyres to India which is not the case for our company. In response to such allegation, we would like to advise that we have never exported bias tyres for buses and lorries/trucks to India as claimed in the Preliminary Findings. Anyhow, in order to clear the allegation, we are willing to cooperate with you to complete your findings. So, we would appreciate it if you could provide us the evidence of shipping documents and the photos of the goods for our further comments on the captioned matter.

33. The domestic industry was requested to provide evidence showing the export by Thai Bridgestone Co., Ltd. However they showed their inability to provide the same stating that they are not in possession of the relevant information.

34. No other producer/exporter has responded from Thailand.

Examination by Authority

35. Under section 9A (1) (c) normal value in relation to an article means:

- (i) The comparable price, in the ordinary course of trade, for the like article, when meant for consumption in the exporting country or territory as determined in accordance with the rules made under sub-section (6), or
- (ii) when there are no sales of the like article in the ordinary course of trade in the domestic market of the exporting country or territory, or when because of the particular market situation or low volume of the sales in the domestic market of the exporting country or territory, such sales do not permit a proper comparison, the normal value shall be either
 - (a) comparable representative price of the like article when exported from the exporting country or territory or an appropriate third country as determined in accordance with the rules made under sub-section (6); or
 - (b) the cost of production of the said article in the country of origin along with reasonable addition for administrative, selling and general costs, and for profits, as determined in accordance with the rules made under sub-section (6);

36. Applicants claimed that efforts were made to obtain information about the prices of subject product prevailing in the domestic market in Thailand. However, no reasonable, authentic and accurate information could be obtained about the actual transaction-selling price of subject product (between a producer and wholesaler dealer/distributor) in their domestic market. None of the producers in Thailand except aforesaid have responded to the

Authority, or any other information is made available to the Authority with regard to costs or prices in Thailand

37. Designated Authority notes that none of the producer and exporters from Thailand has cooperated in the present investigation. Under such circumstances, Designated Authority can not determine normal value in accordance to Section 9A(1)(c)(i), which requires sufficient information with regard to price of the product in the domestic market in the ordinary course of trade. Also the Authority cannot determine normal value in accordance with section 9A(1)(c)(ii)(a) which requires sufficient information on exports to third country. Under the circumstances, the Authority has determined normal value in Thailand on the basis of estimates of constructed cost of production, duly adjusted to include a profit margin.

CHINA PR

Claims of Applicants

38. Applicants claimed China should be treated as a non-market economy. Applicants suggested consideration of Sri Lanka as a surrogate country. After preliminary findings, petitioners pointed out that

- (a) they found that Sri Lankan company produced and sold different types of product, the calculation were not based upon all types/size of tyre produced and sold.
- (b) The calculation provided was only in respect of tyres and did not include tubes & flaps.
- (c) The information was based on conservative provisional accounts and the accounts were not audited till that point of time.
- (d) The information was based only on 2004-05, whereas the POI is April2004-June2005.

In view of the above the petitioner revised their claim of normal value on the basis of Sri Lanka to US\$135.58 compared to US\$94.20 claimed earlier.

39. The domestic industry made following arguments also -

- (a) There is no timely response from China. The exporter from China has taken 4-5 months delay in filing grossly and deficient information. The delayed response should be rejected.
- (b) Normal value determined at the time of Preliminary findings contains errors and need rectification.
- (c) Prices of natural rubber have steeply increased after POI and Indian producers had no option but to increase their price. Now the earlier benchmark recommended is acting as a major deterrent in the price increases by Indian producers.

- (d) Due to delayed response by M/s. Shandong Jinyu Tyre Co. Ltd. China, the Authority should not accept their response. In any event they cannot be granted market economy status on the grounds of ownership and state interference by the Government of China in the prices of inputs as also the product itself.
- (e) There was an error in calculating the normal value on the basis of cost or price in Sri Lanka and therefore Designated Authority should review the normal value appropriately. The normal value assessed is grossly on lower side.

The claim of the exporter and other interested parties

40. a) Shandong Jinyu Tyre Co. Ltd. (SJTCL) submitted that the delay on account of filing their submission was due to the reason that they came to know about the initiation at quite a later stage. The company made the option for stating the same and to save itself from the stigma and for contributing in the investigation. However once they decided to participate in the investigation, they have provided full information and were willing to on the spot verification. In view of this, they claimed that they should be granted market economic treatment and individual treatment in terms of para 1-6 of the Annexure of Anti-dumping Rules.
- b) SJTCL further requested that since they have furnished all information, the Designated Authority should fix positive or negative dumping margin for them. The Designated Authority should look into the issue of quality and must make due adjustment for the quality differences for which necessary information has already made available on record with the Designated Authority
- c) It is submitted SJTCL once again reiterates it averments and submissions as true. It is also submitted that the exporter (SJTCL) company is a private limited company free from any state control or interference and operates on the basis of market economy principles.
- d) It has been argued by the petitioners that the cost on account of raw material constitute a major portion of cost of production of tyres. It is submitted that while the same could be true in the case of domestic industry, as they are producing specialty tyres which are over engineered and are beefed up with extra natural rubber to make them more endurable and performance oriented. But the same is not true in the case of China where producer/exporter are producing and exporting tyres made up of lower grade material in order to cut the cost down. The tyres exported by the Chinese producers in general and SJTCL in particular is comparable to old used or retreaded tyre and are used for tractor trolleys etc where performance is not a critical factor.
- e) Indian tyre companies do not use reclaimed rubber in their production of tyres while Chinese heavily uses the same in production of its tyres which further allows them to reduce their prices.

- f) Allegations that Chinese producers are not free to produce rubber are totally baseless, false and devoid of any merits.
- g) The petitioners have alleged that the determination of normal value at the time of preliminary findings was erroneous as it contains some errors but have chosen to conceal what kind of errors they have been referring to.
- h) Data concerning Normal Value as submitted by the petitioner have been interpolated in order to inflate dumping margin of imports from China PR and Thailand. It is submitted that as per the Indian practices duty can be imposed either on dumping margin or injury margin which ever is lower. In view of above it is submitted that the cost of production of the petitioners is much higher due to difference of tyres composition and manufacturing process. Further they incur huge expenses on overheads like administrative, selling and general expenses which further increases their production cost. However, the same is not true for China as they operate on the basis of least cost and do not incur such establishment of distribution network which decreases their cost for the product under consideration.

Comments by associations of users and importers

41. Responding associations have advanced arguments disputing treatment of Sri Lanka as an appropriate surrogate country for the purpose of normal value. They have not provided any material evidence against the applicant's request to accord Non Market Economy treatment to China. It is claimed by the Association that Sri Lanka cannot be treated as appropriate surrogate country for the reasons that there is absence of enough competition in Sri Lankan market and Sri Lankan producer is related to one of the Indian producers. There is a difference in tyres supplied by the domestic industry to OEMs and retail segments. The tyres supplied to OEMs are not comparable to tyres imported from China. It is further claimed that cost of domestic industry in OEM segment need to be taken out while using the data for construction of normal value in case of Thailand.

42. The Authority notes that except Shandong Jinyu Tyre Co. Ltd.,(here in after also referred as Jinyu Tyre) none of the Chinese producers have responded to the Authority. Except Jinyu Tyre, none of the Chinese producers have claimed that they should not be granted market economy status, nor filed their responses in the prescribed questionnaires. Jinyu Tyre claimed that the Company should be granted market economy status. Jinyu Tyre filed its first response on 21st June, 2006, which was grossly deficient. Further, it was found that the response filed was without any appendices forming part of the questionnaire and it was stated that the same were being filed separately. Additional information was provided on 21st July, 2006, which was also incomplete. Even though the response was significantly after the time limits, the Authority considered it appropriate to examine the same. Examination of

the response showed that the same is inadequate and insufficient to allow market economy treatment. Subsequent to the notification of the preliminary finding Jinyu Tyres filed the response claiming that Market economy status may be granted to them. The Authority decided to carry on the spot verification of Jinyu Tyres including their claim the granting of market economy status.

VERIFICATION OF JINYU TYRES

Market economy treatment (MET) questionnaire

43. a) It was explained by the exporter that Shandong Jinyu Tyre Factory was established on ****. At the time of starting of Factory the name was Dong Ying Jinyu Tyre Factory.

b) During the verification visit in order to ascertain the nature of Exporter Company, the Authority called for various records such as source of paid up capital, how the machines were acquired and evidence thereof and evidence of change in structure of the company, if any from time since its incorporation. The company was also asked to provide fixed assets register and other financial documents. No documentary evidence showing the receipt of the money in the accounts of the company on account of capital contribution could be furnished. On the source of capital contribution, no evidence showing the terms and conditions and actual flow of money could be provided. The exporter was asked to clarify how the machines etc. were acquired by them along with documentary evidence. However, no documentary evidence about the acquisition of machines, the procedure followed for acquisition and whether they were acquired at the fair market price could be furnished by them. The company admitted that the name of the company was changed from Dong Ying Jinyu Tyre Factory to Shandong Jinyu Tyre Co. Ltd. and also the company type from collective enterprise to Limited Liability Company. They were asked to clarify the difference between the collective enterprise and Limited Liability Company which neither they could clarify conceptually nor any documentary evidence could be provided. It was also not clarified under what circumstances the type of company was changed and the purpose of changing the company type.

c) The company was also asked to submit books of accounts, financial accounts, balance sheet etc from **** onwards on which they showed their inability to provide the same and therefore the acquisition of fixed assets and procedure followed could not be verified.

d) The year **** capital structure shows that Shandong Jinyu Tyre Co. Ltd. workers union held a paid up capital of **** million RMB which is **** of the paid up capital of **** million RMB. As per the exporter questionnaire it was claimed to be a private limited company whereas during verification the company provided a list of **** shareholders which are all individual shareholders. However, no documentary

evidence and procedure followed including the valuation of shares could be provided by the company. The sources of funds also could not be disclosed. The company was also asked to provide any other government record such as income tax assessment record, VAT return record or any other approval sought from the government which could show the capital structure, type of company, shareholding pattern etc but the company could not provide the same to the satisfaction of the Authority. The company was also asked to furnish its company ID number with Chinese Custom Authorities, which was not furnished. The domestic industry has provided a statement showing export of product under consideration from China to India according to which M/s. Shandong Jinyu Tyre Co. Ltd. continues to be collective owned enterprise even in ****. To verify this custom ID number was called from the company which they could not provide. However they denied that they are now collective owned enterprise and stated that as per the business license they are company with limited liability.

e) The Authority notes that the structure of the company, the shareholding pattern, sources of funds of the shareholders, the acquisition of assets by the company, the procedure followed thereupon, whether the acquisition price reflect the market price etc could not be substantiated with documentary evidence during verification visit.

Related party transactions

f.) During the verification visit it was also observed by the Authority that the exporter company has some undisclosed related party transaction with regard to procurement of raw materials. Since, the related party transaction could not be disclosed in the exporters response the reasonableness of the transaction could not be verified. The company was also asked to give the transaction details with such related parties and also the ledger accounts of such related parties, which was not provided.

Sales

g) The company has claimed that they are exporting bias tyres of grade-3 to India and other Asian countries whereas their domestic sales and export to USA is of grade-1. However on perusal of the domestic invoices as well as the export invoices to India and other Asian countries, it was found that the grade is not mentioned and therefore the claim of the exporter with regard to different grade exported to India vis-à-vis domestic market and exports to USA could not be established. This claim of the exporter is therefore not supported with evidence. The company has claimed that quality of product exported to India is of inferior grade. The company was requested to provide the plant records showing the consumption of raw material for the grades exported to India and the

grades sold in the domestic market but no such record were made available. Therefore, it could not be established that grade-1 and grade-3 as claimed by the company are different products. It was also observed that during the POI the prices of the product have almost remained constant whereas according to the exporter's questionnaire response, the prices are charged according to the fluctuation in the cost of production. However, nothing could be substantiated in the regard whereas there were fluctuations in the raw material prices. This shows that the prices charged are not in accordance with the cost production and may not reflect the cost. The only explanation given by the company was whenever there is a change in the raw material price they change raw material mix in such a way that they always make profit. Catalogue of the company shows that these are standard products and therefore in the common parlance there cannot be a variation in the raw material consumption pattern. However, the company maintained that they are doing it but could not substantiate this with documents. The company was also asked to provide the copies of shipping bills of exports which the company claimed that they do not have. However, they provided the copy of invoices of exports to India and to other Asian countries.

Accounting issues

h) Company was asked to provide the complete set of their annual accounts showing the Directors' Report and various schedules to the annual accounts along with cash flow statement. However, the company maintained that whatever was available with them they had already provided in the exporters response. On perusal of the annual accounts, it was pointed out that it shows the total business receipts, total business expenses and profits without any break-up of the expenses into its various components such as raw material consumption, labours, utility, factory overheads selling expenses etc. The company could not provide any detail. Therefore the allocation of expenses of various activities could not be verified in the absence of such break-up and revealing of new activities which were not disclosed prior to the verification visit. Up to date fixed assets register was also not provided. The company was asked to clarify about the appointment of auditors and they stated that they are appointed by the management. However, they could not provide any minutes of the board meeting in the record. On perusal of the Chinese company law it was pointed out that the auditors need to be appointed by the shareholders. However, it was replied that they are not aware of any such provision and it could be appointed by the shareholders as well. No satisfactory answer along with documentary evidence was given in this regard. The exporter's questionnaire specifically requires that the position of the managerial persons prior to their current position need to be disclosed. However the same is not provided in the response and was also not provided during the verification. Even the list of Directors was not provided during the verification. The company was asked to elaborate this transaction which they could not. The terms and amount appearing under the heads indivisible assets, land utilisation rights appearing in the balance sheet were not explained.

i) The company was asked to clarify whether the exchange rate is fixed or varies according to the market situation. The company clarified that throughout the POI it was equal to 1 US to 8.28 RMB and was not subject to fluctuation indicating the market signals.

VERIFICATION OF COSTING INFORMATION APPENDIX-5 to 9

j) The company could not furnish basic financial records. Even the back up paper to arrive at the figures shown in the appendix could not be provided. In the absence of these back up papers /working sheets, it was not possible to verify the claims made in the appendix. When asked whether the information given in the appendix flows from the books of accounts, it was clarified that they have estimated the per unit amount and shown in the appendix.

44. Subsequent to the verification the verification report was sent to the exporter for their comments. They submitted some additional information on their domestic sales, quotation of freight, statement of cost of tyres sold in domestic market, USA and India. However none of this information submitted by them could be verified, as they did not submit these before and during the verification visit.

Examination by the Authority

45. The exporter was given advanced notice about conducting the on the spot verification. The exporter was advised to keep ready and made available the books of accounts, documents working sheets etc during verification. As provided in the Rules, the main purpose of on the spot verification is to verify information provided or to obtain further details. As detailed above, although the exporter has made claims on granting of Market economy status, quality, sales price in the domestic market, reflection of market price of inputs etc. But none of the claim could be substantiated during the verification visit. It was specifically observed that the structure of the company, the shareholding pattern, sources of funds of the shareholders, acquisition of assets by the company, the procedure followed thereupon, whether the acquisition price reflect the market price etc could not be substantiated with documentary evidence and therefore the Authority is not in a position to grant market economy status. Accordingly the Authority has proceeded treating the exporter operating under non market economy condition. Under the circumstances, the Authority is not in a position to apply para 8 of Annexure 1 to the Rules to any of the Chinese companies and has to proceed in accordance with para 7 of Annexure-I to the Rules

46. According to these Rules, the normal value in China can be determined on any of the following basis: -

- a) on the basis of the price in a market economy third country, or
- b) the constructed value in a market economy third country, or
- c) the price from such a third country to other countries, including India.

d) If the normal value cannot be determined on the basis of the alternatives mentioned above, the Designated Authority may determine the normal value on any other reasonable basis including the price actually paid or payable in India for the like product duly adjusted to include reasonable profit margin.

47. At the time of notifying the preliminary findings applicant's proposal for consideration of Sri Lanka as an appropriate surrogate country for determination of normal value in China was examined by the Authority. It was found that there was not sufficient evidence to reject the claim of applicants that Sri Lanka is an appropriate third country to determine the normal value in case of China. In fact, it was noted that the consideration of price payable in India, duly adjusted to include a profit margin would have resulted in determination of higher normal value. Having considered the evidence on record, the Authority considered it appropriate to determine normal value for the purpose of preliminary findings on the basis of constructed value in Sri Lanka as submitted by applicant (which was lowest among the alternatives given). Subsequent to the preliminary findings the applicant revised their normal value claim as earlier explained.

48. The reason for adopting Sri Lanka as a surrogate country in the preliminary findings was that the normal value claimed was lower when compared to Indian prices/ cost. In view of the upward revision of the normal value based on Sri Lanka as surrogate country and non availability of sufficient substantiated information during the verification visit at the exporter's premises, the Authority examined the selection of appropriate surrogate country. On the basis of further information submitted by the applicant on Sri Lanka, Sri Lanka was not considered an appropriate surrogate country due to the following reasons.

- (a) The Sri Lankan company (Ceat Kelani) has very low level of domestic sales. Production and sale volume of the company is about 71000 no of tyres in POI.
- (b) Petitioner has significantly revised their claim of normal value to about \$ **** as against about \$ **** determined by Authority (against \$ **** claimed by Domestic Industry) earlier per TTF i.e. set of tyre, tube and flap. Even if the claim of the petitioner is justified, it would be seen that selection of Sri Lanka would be more disadvantageous to the Chinese producers as compared to India.
- (c) The interested parties have objected to consideration of Sri Lanka as an appropriate market economy third country as Ceat Kelani who has provided data from Sri Lanka is related to petitioner i.e. Ceat Limited..
- (d) There is only one producer in Sri Lanka. Scale of that company is also quite small (71000 no) as compared to Indian Producers and is below 1% of Indian Production. This may also be small in

comparison to Chinese producers (the exact production is not known, but it should be substantial as the single producer who responded has capacity to produce 1 million tyre).

49. Thailand does not appear appropriate for the following reasons:–
- (a) Thai producers have not responded to the Authority. Thus, Normal value in case of Thailand in any case is based on constructed cost of production.
 - (b) Imports from Thailand are significantly lower than imports from China.

50. Accordingly the Authority sent a letter dated 19th January, 2007 to all the interested parties and expressed his opinion that the cost of production in India duly adjusted would be most appropriate basis for determination of normal value of subject goods in China. In terms of para 7 of Annexure 1 to the ADD Rules all interested parties were requested to make their comments for the consideration of the Authority.

51. In response to the letter the interested parties have replied as under :

- a) Cost/pricing of tyres by the Indian manufactures is attributed to opportunistic pricing and not based on the actual increases in the input or other manufacturing cost. Therefore the normal value based on prices payable in India is not correct. Since duty for tyre, tube and flap was separate in provisional finding how the applicant can claim that cost of tube and flap was left out.
- b) The claim of revision of normal value at the fag end of the investigation is not justified and the same is to mislead the Authority to achieve its objective by wrongful means. Since the data relating to 2004-05 must have been audited before submitting it to the Authority it raises serious doubt on the reliability of data.
- c) Ceat Kelani is a related company of one of the domestic Industry, since domestic industry had provided data on the basis of tyre, tube and flap it cannot be believed that Ceat Kelani has left cost of tube and flap. It is highly improper on the part of the Authority that they have not pointed out such discrepancy during the provisional finding and the case was initiated on the basis of unauthentic and unverified information without having a copy of certification.

Examination by the Authority

52. In the preliminary finding, the reason for adopting normal value on the basis of Sri Lanka as a surrogate country was that it was lower than the Indian price/ cost. The petitioner has revised the value admitting that there was an error. As aforesaid, in case the normal value is adopted on the revised claim normal value it shall be to the disadvantage of the Chinese producers and shall result into higher dumping margin. While

disputing the claims of the domestic industry, none of the interested parties have, however, suggested an appropriate surrogate third country. The Authority considers it appropriate to determine normal value in China PR on the basis of Cost of production in India duly adjusted to include a profit margin.

E. EXPORT PRICE

53. Association of users and importers argued that the Authority should not have accepted the import information as per IBIS for the quarter April 05-June 05. It was claimed that the imports under the heading 40112090 include certain other tyres also which should also be excluded.

54. The applicants in their application stated that the transaction wise imports information provided by DGCI&S was not available for the period April 05 to June 05 at the time of application and therefore, the applicants had relied upon IBIS data for this period. Applicants further argued that the Authority had in a number of investigations considered information provided by IBIS for the purpose of determination of volume and value of imported material, nor any reason have been advanced by the responding parties why the information provided by IBIS may be incorrect and unreliable. The Authority notes that when DGCI&S data is not available for the complete period, it does not appear inappropriate to use IBIS information.

55. Subsequent to initiation, imports information on transaction by transaction basis was made available by the DGCI&S for the complete period of investigation. Accordingly, the import volumes and export prices have been determined on this basis. The Authority notes that barring response by Shandong Jinyu Tyre Co. Ltd., there is no cooperation from any of the subject exporters, nor any other information has been filed before the Authority in this regard. In response to disclosure statement, the domestic industry has argued that the export prices taken into account by the Authority is different from the transaction wise data gathered by them and information culled out by them from market intelligence. The comments have been examined and it is noted that the DGCI&S data does not give information with regards to exporters name in their transaction wise information. It is further confirmed that export price of the cooperating exporter has been taken into account after verifying their export details by the Authority.

CIF export price in respect of co-operating exporter Shangdong Jinyu Tyre company is determined on the basis of export data submitted by them. Export price in case of non-cooperating exporters from China PR has been determined by deducting volume and value of exports made by the cooperating exporter from the transaction wise data for the POI received from DGCI&S. The export prices so determined are proposed to be adjusted for ocean freight and marine insurance to determine ex-factory export price of cooperating exporter. For non cooperating

exporters, net export price has been arrived after deducting the expenses on account of ocean freight, marine insurance, commission, inland freight, port expenses, bank charges, indirect taxes and credit cost as claimed by the petitioner. After adjustments, the net export price is determined at US\$**** per TTF in respect of co-operating exporter and at US\$**** per TTF in respect of non co-operating exporter from China PR.

F. DUMPING MARGIN

56. Authority notes that the comparison of normal value and export price made must be a fair comparison at the same level of trade. Authority has determined both the normal value and export price at ex-factory level. It is noted that the product is imported as set of tyre, tube & flap (TTF), or as a set of tyre & tube (TT), or only as tyre. The Authority has determined separate normal value and export price in respect of different product combinations in which imports have been made and compared the same. Both the normal value and export price pertains to the same period. There are no known differences in the conditions and terms of sale. Both the prices are free of taxes. Thus, the Authority considers that the comparison made constitutes a fair comparison. Considering the normal value and export price determined as detailed above, dumping margin has been determined, which comes as under:-

	Dumping margin %
China	
Jinyu	233%
Others	294%
Thailand	291%

G . INJURY TO THE DOMESTIC INDUSTRY

Cumulative Assessment

57. Annexure II (iii) to the Anti Dumping Rules provides that in case imports of a product from more than one country are being simultaneously subjected to anti dumping investigations, the Designated Authority will cumulatively assess the effect of such imports, in case it determines that (a) the margin of dumping established in relation to the imports from each country is more than two percent expressed as percentage of export price and the volume of the imports from each country is more than three percent of the imports of the like article or where the export of the individual countries less than three percent, the imports cumulatively accounts for more than seven percent of the imports of like article, and (b) cumulative assessment of the effect of imports is appropriate in light of the conditions of competition between the imported article and the like domestic articles.

58. The Authority considered whether it would be appropriate to cumulatively assess injury to the domestic industry. Authority, in view of the reasons mentioned below, holds that it would be appropriate to assess injury to the domestic industry cumulatively from China and Thailand:-

- i) The margins of dumping from each of the subject countries are more than the limits prescribed,
- ii) The volume of imports from each of the subject countries is more than the limits prescribed,
- iii) Cumulative assessment is appropriate in view of the following factors :-
 - a) The goods involved are like articles and are competing in the same market;
 - b) The imported products are being sold through the comparable channel of distribution and to comparable category of customers;
 - c) Products from both the countries are undercutting the prices of the domestic industry in the market.
 - d) Imports from both the countries are increasing.

Assessment of demand

59. Authority has defined, for the purpose of the present investigation, demand or consumption of the product in the Country as the sum of domestic sales of the Indian Producers and imports from all sources. The demand so assessed is given in the table below:-

Source	In Numbers				
	2001-02	2002-03	2003-04	POI Actual	POI Annualized
Imports					
Imports (Subject Countries)	3,589	16,755	77,538	216,851	173,481
Imports (Other countries)	8	14,378	8,697	12,570	10,056
Sales of Domestic Industry	4,582,954	5,757,989	6,250,818	7,903,699	6,322,959
Sales of other Domestic producers	1,916,719	1,671,535	1,991,419	2,651,725	2,121,380
Total Demand	6,503,270	7,460,657	8,328,472	10,784,845	8,627,876
Trend	100.00	114.72	128.07	132.67	132.67

The Authority holds that the demand for the product shows an increasing positive trend.

60. In terms of Rule 11(2) and annexure referred therein a determination of injury shall involve an objective examination of both (a) the volume of the dumped imports and the affect of the dumped imports on prices in the domestic market for like article and (b) the consequent impact of these imports on domestic producers of such products.

While examining the volume of dumped imports, the Authority shall consider whether there has been a significant increase in the dumped imports, either in absolute terms or relative to production or consumption in India. With regards to the effect of the dumped imports on prices, the Authority considered whether there has been a significant price undercutting by the dumped imports as compared with the price of like products in India, or whether the effect of such imports was otherwise to depress prices to a significant degree or prevent price increase which otherwise would have occurred to a significant degree.

Import volumes and market share

61. The volume of dumped imports of subject product from subject countries and the share of the same in relation to market sales in India is given in the table below.

Source	Unit	2001-02	2002-03	2003-04	POI	POI Annualized
Imports						
From Subject Countries	Nos	3,589	16,755	77,538	216,851	173,481
From Other countries		8	14,378	8,697	12,570	10,056
Total Imports	Nos	3,597	31,133	86,235	229,421	183,537
Share of Imports from Subject Country in Total Imports	%	99.78	53.82	89.91	94.52	94.52
Total Demand In Domestic Market	Nos	6,503,270	7,460,657	8,328,472	10,784,845	8,627,876
Share in imports						
• Subject countries	%	99.78	53.82	89.91	94.52	94.52
• Other countries	%	0.22	46.18	10.09	5.48	5.48
Market Share in demand						
• Domestic Industry	%	70.47	77.18	75.05	73.29	73.29

• Other Indian Industry	%	29.47	22.40	23.91	24.59	24.59
• Total for Indian Industry	%	99.94	99.58	98.96	97.87	97.87
• Import from Subject Country	%	0.06	0.22	0.93	2.01	2.01
• Imports from other countries	%	0.00	0.19	0.10	0.12	0.12
Total	%	100.00	100.00	100.00	100.00	100.00

The Authority notes that

- (a) imports from subject countries increased in absolute terms over the injury period
- (b) imports from subject countries increased in relation to imports into India
- (c) imports from subject countries increased in relation to total demand in India.

The Authority holds that the imports have shown significant increase during the injury period. The increase in absolute volume of imports resulted in increase in market share of dumped imports and decline in the market share of the domestic industry over the injury period.

The Authority concludes that the dumped imports show adverse volume effect.

Price effect of imports

62. Net sales realization of the domestic industry has been arrived at by considering selling price, excluding taxes & duties. Landed price of imports has been determined considering weighted average CIF import price, with 1% landing charges and applicable basic customs duty. The trend of various prices is as given in the table below:-

	Unit	2001-02	2002-03	2003-04	POI
CIF export price-Subject Countries	Rs./Set	2,414	1,758	1,720	1,990
Landed price of imports-Subject country	Rs./Set	3,145	2,291	2,067	2,366
Net Sales Realization	Rs./Set	****	****	****	****
Indexed	Trend	100.00	101.23	104.79	111.10
Price undercutting Subject Countries	Rs./Set	****	****	****	****
Undercutting	Range %				55 to 60
Non Injurious price	Rs./Set				****
Underselling	Rs./Set				****

Underselling	Range %				60 to 65
--------------	---------	--	--	--	----------

It is noted that

- a) CIF export price from subject countries showed declines over the base year i.e. 2001-02. Even though there was an increase in price during the POI as compared to preceding two years, the prices were below the levels of 2001-02. It is noted that the increase in prices in investigation period as compared to previous year is in line with the increase in prices by the domestic industry over the same period and is reflective of the increase in input costs. Further, throughout the injury period, the import prices were at very low levels.
- b) Landed price of imports from subject countries were significantly below the selling price and non injurious price of domestic industry, resulting in significant price undercutting and price underselling.
- c) Even though there was an increase in price during the POI as compared to preceding years, which is partially reflective of increases in the input prices, price undercutting continued to be significant.

The Authority holds that imports are preventing the price increases that would have otherwise occurred in the absence of imports.

Considering the above, the Authority concludes that the effect of dumped imports on the prices in the domestic market has been adverse.

Economic Parameters relating to the Domestic Industry

63. The applicants have claimed that dumping of subject product from subject countries became significant in the year 2003-04 and during the POI and comparison of different parameters with the base year alone i.e. 2001-02 with the POI would neither be appropriate nor would reflect the actual impact of dumped imports on the domestic industry. Given significant surge in automobile production and consequent positive impact on the domestic industry, applicants claimed that certain parameters relating to the performance of the domestic industry showed improvements over this period. It is pointed out that increase in automobile production by one unit increases sales of the subject goods between 7 to 23 units. It was added by the domestic industry that it would be necessary to examine the performance of the domestic industry on year to year basis, having regard to the significant surge in demand of the product and low level of imports in the first two years.

64. The Authority has examined the contentions of all interested parties. Evaluation of all relevant economic factors to assess the situation of the industry in terms of actual and potential decline in sales, profits, output market share, productivity, return on investments or utilization of capacity, factors affecting domestic prices, the magnitude of the margin of dumping, actual and potential negative effects on cash flow, inventories,

employment, wages, growth, ability to raise capital investments are discussed herein below.

Production, capacity and capacity utilization

65. Actual production, capacity and capacity utilization of the domestic industry over the years is shown in the table below. The Authority notes that the capacity for production of the subject goods can be utilized to produce other types of tyres also. Therefore, it would not be appropriate to determine capacity and capacity utilization considering only the product under consideration. The Authority has determined capacity and capacity utilization considering different types of tyres produced and sold by the domestic industry for which the capacity has been interchangeably used, having regard to the provisions of Annexure-II to the Rules.

	2001-02	2002-03	2003-04	POI	POI Annualized
Plant Capacity (Nos)	13,713,639	15,255,648	16,988,208	23,967,866	19,174,293
Indexed	100.00	111.24	123.88	139.82	139.82
Production of all types of tyres (Nos)	10,710,055	13,405,333	14,867,149	20,497,771	16,398,217
Indexed	100.00	125.17	138.81	153.11	153.11
Plant utilization (%)	78.10	87.87	87.51	85.52	85.52
Indexed	100.00	112.51	112.06	109.51	109.51
Production of subject goods (Nos)	5,462,164	7,196,124	7,968,892	10,176,092	8,140,874
Indexed	100.00	131.74	145.89	149.04	149.04
Domestic Sales (Nos)	4,582,954	5,757,989	6,250,818	7,903,699	6,322,959
Indexed	100.00	125.64	136.39	137.97	137.97
Inventories	213,310	203,029	318,700	343,584	343,584
Index	100.00	95.18	149.41	161.07	161.07

The Authority note that;

- a) Plant Capacity, production of all goods, production of subject goods sale of subject goods in domestic market and plant utilization showed a growth of 39.82%, 53.11%, 49.04%, 37.97% and 9.51% respectively over the period.
- b) Production and sale of domestic industry increased over the injury period. However, capacity utilization declined after increasing.
- c) Even though production and sales in POI shows increase as compared to preceding year, but inventories increased and capacity

utilization declined. It is also noted that the domestic industry lost market share in the investigation period.

d) Increase in production of other types of tyres is more than increase in production of the subject goods. This shows that the domestic industry utilized the capacities more for non subject goods.

Profits and return on investment

66. Profits and return on investment of the domestic industry over the years are given below.

	Unit	2001-02	2002-03	2003-04	POI	POI Annualized
Selling Price	Rs./Set	****	****	****	****	****
Indexed	Trend	100.00	101.19	105.15	110.96	110.96
Cost of Production	Rs./Set	****	****	****	****	****
Indexed	Trend	100.00	99.53	105.63	111.33	111.33
Profit/loss per unit	Rs./Set	****	****	****	****	****
Indexed	Trend	100.00	140.88	93.78	102.13	102.13
Return on capital employed	%	****	****	****	****	****
Indexed	Index	100	99	70	75	75

It is observed that:-

- a) Selling price and cost of production of the domestic industry increased over the injury period. Whereas the domestic industry was able to increase its prices in 2002-03 and increase its profits by reducing its conversion & fixed costs, the domestic industry was faced with a situation where the cost increases were significantly more than the price increases thereafter.
- b) Whereas profitability of the domestic industry improved between 2001-02 and 2002-03, the same declined thereafter. Profitability per unit of the domestic industry in the investigation period were significantly below 2002-03 levels, in spite of significant increase in the sales volumes.
- c) Return on capital employed declined in POI as compared to the base year and 2002-03. Thus, in spite of higher production and sales volumes there was a declining trend in returns to the domestic industry.

d) The domestic industry has been able to increase its profits by reducing its conversion and fixed costs per unit of tyres. It is noted that the increase in selling prices throughout the injury period were less than increase in input costs. It is also noted that had the domestic industry not succeeded in reducing its conversion and fixed cost incidence per unit of tyres, it would have been forced in a situation of financial losses in the investigation period.

e) In their comments to disclosure statement, the domestic industry pointed out that the Authority has not disclosed the fact that the contribution margin of the domestic industry continually declined. The Authority examined the information provided by the domestic industry and noted that while raw material costs increased on account of raw materials prices increasing, the domestic industry was able to substantially curtail the incidence of conversion costs per unit of production, as would be seen from the table below. It has been noted that the contribution margin, (difference between selling price and costs (raw material and utilities)) declined significantly.

Figures are in Rs/Set

Domestic Industry	Unit	2001-02	2002-03	2003-04	POI
Selling price	Rs./set	****	****	****	****
<i>Trend</i>	<i>Index</i>	100	101	105	111
Raw materials	Rs./set	****	****	****	****
<i>Trend</i>	<i>Index</i>	100	106	118	129
Utility	Rs./set	****	****	****	****
<i>Trend</i>	<i>Index</i>	100	109	112	110
Contribution	Rs./set	****	****	****	****
<i>Trend</i>	<i>Index</i>	100	93	85	84
Increase over Base year	Rs./set		-152	-312	-322

There is a continued decline in the contribution of domestic industry over the injury period. The decline in the contribution per set has been Rs **** over base year. From the above table, it is noted that profit of the domestic industry has marginally improved over the base year mainly due to higher sales volumes and ability of the domestic industry to restrict the incidence of conversion and fixed costs incidence per unit of tyres.

Changes in market share of Indian Industry

67. Market share of Indian industry and in that of imports is given in the table below:

	Unit	2001-02	2002-03	2003-04	POI
Domestic Industry	%	70.47	77.18	75.05	73.29
Other Indian Industry	%	29.47	22.40	23.91	24.59
Indian producers	%	99.94	99.58	98.96	97.87
Subject Countries	%	0.06	0.22	0.93	2.01
Other Countries	%	0.00	0.19	0.10	0.12
Total	%	100.00	100.00	100.00	100.00

It is observed from the above that:

- a) The share of domestic industry after marginal improvement declined steadily during the rest of injury period. The share of Indian industry declined.
- b) The market share of dumped imports which was negligible at 0.06% during the period 2001-02 reached to a significant level of 2.03% by the POI.
- c) There is a co-relation between increase in share of dumped imports and loss of market share by domestic industry.

Employment

68. Employment situation of the domestic industry is given in the table given below:

	Unit	2001-02	2002-03	2003-04	POI	POI Annualized
No. of employees	Nos	15,521	17,839	18,232	18,274	18,274
Indexed	Indexed	100	115	117	118	118

It is observed that:

- a) The number of employees with the domestic industry showed increases over the injury period.
- b) The increase in number of employees is the result of increase in capacity and production.

Wages

69. Wages and impact of the same on cost of production are given in the table below. Even when wage paid per unit of production has declined, profits have declined. Further, wages paid per employee have declined after increasing upto 2003-04

	Unit	2001-02	2002-03	2003-04	POI	POI Annualized
Wages	Rs. Lacs	8,915.88	12,946.30	14,125.69	17,097.31	13,677.85
Indexed	Index	100	145	158	153	153
Wages Per unit of Production	Rs./Set	170	187	184	177	177
Indexed	Index	100	110	109	104	104

It is observed that wages increased over the injury period.

The above shows that faced with increasing costs and declining profits, the domestic industry is making efforts to restrain all increases. Whereas the wages paid per employee should have increased, the same has declined in the POI.

Productivity

70. Productivity of the domestic industry over the periods is given in the table below.

	Unit	2001-02	2002-03	2003-04	POI	POI Annualized
No. of employees	Nos	15,521	17,839	18,232	18,274	18,274
Indexed	Index	100	115	117	118	118
Production	Nos	5,462,164	7,196,124	7,968,892	10,176,092	8,140,874
Indexed	Index	100.00	131.74	145.89	149.04	149.04
Production per employee	Nos	352	403	437	445	445
Indexed	Index	100	115	124	127	127

The Authority notes that productivity of the domestic industry shows improvements. However, in spite of increase in productivity, the profits of the domestic industry have declined after showing improvements.

71. Factors affecting domestic prices

The imports from subject countries are resulting in significant price undercutting and price underselling in the Indian market. The landed price of imports is significantly below the selling price of the

domestic industry. The situation in this respect is given in the table below:

Source	Unit	2001-02	2002-03	2003-04	POI
Price Undercutting					
• China	Range %	35 to 45	50 to 60	55 to 65	55 to 65
• Thailand	Range %		50 to 60	55 to 65	55 to 65
• Subject Countries	Range %	35 to 45	50 to 60	55 to 65	55 to 65

- 72 The Authority determined the extent of price underselling by comparing the non injurious price with the landed price of imports. The comparison shows as follows:-

Range during POI	
China	55 to 65%
Thailand	55 to 65%
Subject Countries	55 to 65%

It is noted that

- a) Landed price of imports from China and Thailand has been significantly below the selling price of the domestic industry, resulting in significant price undercutting.
- b) Landed price of imports from China and Thailand has been significantly below the non injurious price of the domestic industry, resulting in significant price underselling.

The Authority notes that the domestic industry has not been able to increase its prices in proportion to the increase in the input prices, as would be seen from the table below:

	2001-02	2002-03	2003-04	POI
Raw materials cost	****	****	****	****
Index	100	106	118	129
Selling price	****	****	****	****
Index	100	101	105	111
Increase over base year				
Raw materials cost		192	559	890
Selling price		64	279	594

Figures are Rs/Set

With regard to the effect of the dumped imports on prices as referred to in sub-rule (2) of rule 18, the Rules provide that the Authority shall consider whether there has been a significant price

undercutting by the dumped imports as compared with the price of like product in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increase which otherwise would have occurred, to a significant degree. The Authority notes that in the present case, imports are preventing price increases as would have occurred because of increase in input prices.

Inventories

73 Inventories of finished goods with the domestic industry have shown the following trend.

	2001-02	2002-03	2003-04	POI
Inventories (Nos)	213,309	203,028	318,699	343,584
Indexed	100	95	149	161

It is noted that Inventories with the domestic industry increased over the period. This increase in inventories is in spite of decline in capacity utilization. It is also seen that increase in inventories started in 2003-04 with increase in imports. It is seen that the increase in inventories is indeed less than increase in imports. Whereas the inventories increased by 130275 nos. over the injury period, the imports increased by 169892 nos. over the same period. In other words, in the absence of imports, the domestic industry would have been able to rather reduce the inventories. It should also be noted that substantial production is sold through dealers. Therefore, production can not be against orders. Substantial part of the production has to be against anticipated sales.

Ability to raise investments

74 The domestic industry claimed that should the dumping continue persistently, they would have difficulty in raising capital, which is quite important particularly in a situation where the constituents of the domestic industry are planning significant investments.

Cash flow

75 Cash flow and cash profit situation of the domestic industry showed the following trend:

	Unit	2001-02	2002-03	2003-04	POI	POI Annualized
Cash Profit	Rs.Lacs	*****	*****	*****	*****	*****
Index	Trend	100.00	164.29	131.12	135.38	135.38
Cash profit per unit of sales	Rs./Set	*****	*****	*****	*****	*****

Indexed	Trend	100.00	130.76	96.14	98.13	98.13
---------	-------	--------	--------	-------	-------	-------

Cash profits per unit of sales increased upto 2002-03 and thereafter declined even below the levels achieved in 2001-02. Resultantly, total cash profits increased in 2002-03 and declined thereafter.

Growth

76 Growth over the year of domestic industry considering various parameters were analyzed and the trends were found as under:

Source	Unit	2002-03	2003-04	POI Annualized
Growth in Sales	%	25.64	8.56	1.15
Growth in Production	%	31.74	10.74	2.16
Growth in capacity Utilisation	%	9.77	(0.36)	(4.08)
Growth in Selling Price	%	1.19	3.92	5.52
Growth in Cost of Production	%	(0.47)	6.12	5.40
Growth in Production	%	31.74	10.74	2.16
Growth in Profit (PBT)	%	40.88	(33.43)	8.90
Growth in cash Profit	%	64.29	(20.19)	3.25
Growth in Return on capital employed	%	(0.23)	(4.68)	0.83

Even though volume parameters such as production & sales volumes show positive growth, it is found that the rate of growth is declining.

Arguments against injury to the domestic industry

77 Following arguments have been advanced by the responding associations of users, Chinese exporter and importers stating that the domestic industry has not suffered injury

- a) It has been submitted that the domestic industry has not suffered any material injury. The domestic industry showed improvements in almost all the parameters. The imports from subject countries remained very insignificant over the years. There is no injury to the domestic industry as their production, capacity utilization, sales, return on investment, selling price, market share, employment, wages and profit have increased.

- b) Applicant deliberately took 15 months POI in which two peak seasons are involved. It was submitted by the domestic industry itself that the period between February and June marks maximum consumption of the product. Situation during such season are factored in and then annualized to give totally incorrect projections.
- c) Differentiation needs to be done for products for OEM segment and after market as the product for OEM segment is totally different from that to the after market.
- d) Tyre imported from subject countries cannot be compared to domestic products in terms of quality as the imported products are inferior in quality and they are in no way competing with the domestic product. Hence, there is no causal link between injury suffered by the industry, if any, and imports from subject countries. The product under consideration is available in market in different weights and models. The price of the domestic industry within same size group differs significantly in the range of 32-50 percent. Since the imported tyres are of low grades, their comparison with high grade tyres will result in misleading comparison.
- e) There is cut throat competition between domestic producers.
- f) Radialization in other countries provided good export opportunities for the domestic producers of bias tyres. The growth in the output of the Tyre industry has not kept pace with the growth in the bus and truck segment. The growth rate of tyre export has been sustained in 2004-05 and is increasing. Growth in exports is reducing the availability of tyres for domestic OEM and replacement markets.
- g) Tyre manufacturers have resorted to five price increases with Tata Motors in the last two years. Large portion of the increase can be attributed to opportunistic pricing. Further M/s TATA Motors faced erratic supplies by domestic industry. Although the domestic industry has claimed significant price undercutting, yet the same has not affected the selling price of the domestic industry. In spite of price undercutting, the domestic industry has been able to raise its price.
- h) Truck tyre price has an impact on the movement of goods in the Country. As truck transport is the major transport system, it is important to keep it cheaper to keep the price of the goods affordable. After diesel, cost of tyres constitutes the major cost for transporters.
- i) The applicants claimed confidentiality to all the information without any reasoning. Applicant has not provided the indexed version of costing information. Certain critical questions like purchase policy, sales policy, store accountings, quality control and testing conveniently neglected by domestic industry in their application.
- j) No threat of material injury visible to the Indian producers.

- k) There is no discriminatory price for India as Foreign Producers are exporting at the same price to other third countries.
- l) Segment results of Apollo is in clear contradiction with the proforma IV-A. The Apollo annual report for 2004-05 mentioned decline in demand for the product whereas proforma showed increase in demand.
- m) There is no price suppression for Apollo. Cost increases are passed on to the customers by the domestic industry.
- n) The domestic industry has not provided their injury information in respect of companies who have provided their data after their initiation.
- o) Annual reports /Directors Reports of the companies are being considered to be the authentic evidences and material on record regarding the operations of the companies before the Authority for the purposes of the investigation. Final findings of the Authority, without considering or selectively considering the contents of the authentic material on record (Annual Reports) have been considered as erroneous by the Honorable CESTAT its judgment. Andhra Petrochemicals Ltd. Vs. Designated Authority, 2006 (201) E.L.T. 481 (Tri. Del.). Important facts emanating from the extracts of the annual reports cannot be overlooked and the impact of such facts is required to be comprehended by the Authority in its Findings. Apollo Tyres Ltd. JK Tyres, Ceat Tyres, and Birla Tyres in their respective annual reports have shown excellent results in the segment (Truck/Bus Tyres).
- p) The domestic industry has suffered no injury, leave alone material injury and there is no need for imposition of anti-dumping duty and the present investigation should be terminated with immediate effect.
- q) The Authority should take in to account the data of total industry for calculating non injurious price.
- r) It is admitted by the domestic industry that loss in revenue on account of sales to the OEM is compensated by replacement market only. Lower realization from OEM is considered by them as investment or advertisement cost. Therefore it is clear by their self admission that the overall lower profitability of the domestic industry is primarily on account of the fact that the prices charged from OEM are lower than the prices charged from replacement market sales. On the other hand, Authority notes that domestic industry has argued that the OEM and replacement market need not be segmented and quoted WTO panel report in this regard. Domestic Industry has also stated that no separate accounting records/cost records are maintained for replacement market and OEM separately and therefore the domestic industry has stated that they are not in a position to prepare separate information with regards to cost of production, selling price and profit/loss with regards to OEM and replacement market.

- s) The imports are just 2% of the total production of the subject goods of domestic industry and around 1% of the production of the Indian producers. This minuscule imports cannot cause material injury to the domestic industry in a situation where domestic and imported tyres have different customer base altogether.
- t) The selling price of the domestic industry is similar to the non-injurious price determined by the Designated Authority for the period of investigation. If the Domestic industry is able to realize the non-injurious price how it can be concluded that the domestic industry is injured by the alleged dumped imports during the period of investigation.
- u) The behavior of the landed value of the imports from the subject countries and selling price of the domestic industry does not show any correlation. Hence, it cannot be concluded that the imports of the subject goods from subject countries are dictating the prices of the domestic industry. The two prices are behaving independently.
- v) The domestic industry has provided incorrect production data with regard to the production of all types of tyres produced by them. In fact the capacity utilization has improved significantly during POI.
- w) The excellent growth during post investigation period of the Indian producers including the domestic industry would not have been possible without the increase in the prices by them and this clearly establish that there exists no impact of imports on the domestic prices. Both are moving independently. Moreover, there has been a significant change since the beginning of first quarter of F.Y. (05-06) (part of POI).

Examination by the Authority

78 The Authority examined these submissions of the interested parties and notes that :-

- a) The petition was examined for accuracy and adequacy prior to initiation. The investigations were initiated only after such an examination which showed that the domestic industry has prima facie suffered injury.
- b) It is true that the imports are primarily taking place in the after market segment. However, this has not distorted the injury analysis. On the contrary, if the sales volumes of the domestic industry in the after market are considered, it, at best shows higher extent of injury suffered by domestic industry in terms of volume. The Authority determined price undercutting considering weighted average selling price in OEM and replacement market. If the price undercutting be determined considering replacement market only, the extent of price undercutting may increase.
- c) It has not been established that the quality of imported product and that of the domestic product are significantly different that the domestic product

is not a like product to the imported product. Evidence shows that whereas sales of the domestic industry in the replacement market have declined, imports have increased. After preliminary findings, the Designated Authority examined in particular whether the quality of tyres sold by the responding Chinese exporter was inferior. The exporter could not substantiate from plant records that the product is of inferior quality. This has already been dealt with elsewhere.

- d) The POI considered is not inconsistent with the practices adopted by the Directorate to keep the POI as close to the date of initiation. In any case, inclusion of two seasons at best has shown lower extent of injury to the domestic industry.
- e) There is no significant difference either in the product or in the factory cost of production for OEM segment and after market segment as the product for OEM and replacement market is not different and is produced in the same production line.
- f) It is noted that existence of competition amongst the Indian producers does not mean no injury from dumped imports. It was found that in spite of internal competition, the domestic industry was able to improve between 2001-02 and 2002-03. Situation started deteriorating from 2003-04, when imports started hitting the market. The operational profitability deteriorated further in the POI when dumped imports increased.
- g) It is found that export volumes of the domestic industry have shown an increase. However, given that the capacity utilization of the domestic industry declined, in the absence of any evidence, it could not be established that domestic industry was not able to increase its production in spite of increase in demand (in fact, it is found that the imports are primarily in after market and entire OEM demand was met by the Indian Producers) or availability of the product in the market got reduced (inventories with the domestic industry have in fact increased).
- h) It is found that the domestic industry has increased its prices during the period of investigation. However, it is found that the profits of the domestic industry have declined in spite of increase in selling prices. The increase in the cost of production has been far higher than increase in selling prices. In other words, the domestic industry has not been able to increase its prices proportionate to the increase in materials costs on account of increase in input prices.
- i) The argument of erratic supplies has not been established with evidence. It is also found that the inventories increased over the injury period.
- j) The applicant have given justification for claiming confidentiality, which was examined by the Authority and it was found that the applicant has claimed confidentiality in accordance with the Rules.

- k) Even if the tyre companies have purchased the goods from the market, it is not established that these purchases were of the imported goods. The investigation has not shown that any of the constituents of the domestic industry have imported the subject goods during the investigation period.
- l) Injury to the domestic industry is required to be seen "for domestic industry as a whole" and not for individual companies. Analysis of data of domestic industry as a whole shows that the domestic industry has suffered injury from dumped imports. As provided under the rules and held by Hon'ble Supreme Court, injury to the domestic industry cannot be seen in isolation for individual companies forming part of the domestic industry. It is also noted that none of the interested parties have established that Apollo Tyres has not suffered injury.
- m) On the argument that the authority should take into account the data of total industry for calculating non injurious price, the Authority has already dealt the matter in detail under the heading "Domestic Industry". In view of insufficient co-operation from MRF Ltd. and Goodyear India Ltd, the Authority has used best available information and used the weighted average data of Apollo Tyres Ltd, J K Industries Ltd., Birla Tyres and Ceat Ltd for calculating non injurious price.
- n) No evidence is placed on record by any interested parties that imports are taking place in OEM market, which implies that imports are taking place in replacement market only. It is also admitted by the domestic industry that sales price to OEM is lower than the replacement market. However, cost of sales in replacement market is higher which is one of the reason for higher price in replacement market. However, in an anti dumping investigations, the Authority is required to examine the injury for the "product under consideration" and to the "domestic industry as a whole". Accordingly the present investigation is for the subject goods and for the domestic industry as a whole and not for one part, sector, or segment of the domestic industry. It is also not demonstrated by any interested party that imported goods cannot be used in OEM sector. In view of this the Authority has not segregated OEM and replacement market. The authority also notes that in the preliminary finding the OEM and replacement market was segregated for showing volume effect of imports as the argument of interested parties was that the imports are taking place in replacement market only.
- o) Investigation has shown that the imports have increased significantly in absolute terms as also relative to production/ consumption in India. Further, the rate of increase of import has also been significant not only over the injury period, but also within the investigation period. The import volumes are therefore not insignificant.
- p) The Authority notes that there is a difference between non-injurious price and net sales realization of the domestic industry.

- q) It would not be appropriate to see the landed value and selling price in isolation. Volume of import, landed price, selling price and cost of production are seen together. The investigation has shown that the landed price of imports declined in 2002-03 and 2003-04, leading to increase in import volumes. The decline in landed price of imports and already low landed price of imports were preventing the domestic industry from raising their prices to the extent of increase in the cost of production and the domestic industry was underselling the subject goods.
- r) Regarding incorrect data of production and capacity utilisation in preliminary findings, the Authority has now used verified data/capacity data from the annual accounts and other evidence of the domestic industry. The discrepancy in preliminary findings in this regard is now corrected which shows that capacity utilisation has declined after improvement.
- s) The Authority notes that post period of investigation developments are not relevant to the present investigations. The domestic industry argued that the volume of import in the post investigation period was significantly higher. The Authority, however, notes that consideration of any development in relation to post investigation period would require complete information with regard to various parameters, which would in itself lead to full investigation.

Conclusions on Injury

79 In view of the foregoing it is considered that there has been significant increase in the volume of dumped imports from the subject countries in absolute terms as also in relation to total imports and demand of the subject goods in India. It is also determined that the quantum of dumped imports of subject goods from the subject country have also increased in relation to domestic production in India. Landed price of imports from subject countries were significantly below the selling price and non-injurious price of domestic industry, resulting in significant price undercutting and price underselling. The landed prices of the dumped subject goods from the subject countries have shown a consistent decline (except during POI) in spite of the increase in the cost of production of the domestic industry and has caused price suppression. The effect of the significant increase in the volume of the subject goods along with significant price under cutting and price underselling has impacted the domestic industry adversely. It is noted that the domestic industry's market share has declined steadily after improving from base year to 2002-03. Even the market share of Indian industry has shown consistent decline during the injury investigation period. Even though parameters such as sales and production have not shown any decline, the capacity utilization has shown a decline after improvement. The dumping margin as determined from the subject countries is considered significant. Further, in spite of increase in production and sales, profits of the domestic industry per unit of sales declined in the POI after increasing in 2002-03. . As a result of deterioration in profits, cash profits and return on

capital employed declined. On the basis of above, it is determined that the domestic industry has suffered material injury on account of dumped imports from subject countries.

H. CAUSAL LINK AND ANALYSIS OF OTHER FACTORS

Arguments of interested parties on absence of causal link.

80. The following factors suggest absence of causal link.

- a) Imports are not competing with the tyres produced by the domestic industry. The imports from subject countries have neither affected sales nor market share of the domestic industry. It has also not effected any reduction in the selling price which on the contrary has gone up intermittently. The tyres imported from China are used for tractors trailers and substitute for retraded tyres while the tyres produced and sold by the domestic industry are used by OEM and replacement of old tyres.
- b) The fact that domestic industry has been able to increase its sales and market share without dropping or cutting its prices clearly shows that there is no nexus between the alleged injury claimed by the domestic industry and tyres imported from China PR. The same is also further corroborated by the fact that domestic industry has not only able to sustain it dominant position in Indian market but also intermittently kept increasing price of subject goods.
- c) The sales of the domestic industry increased despite increased importation of subject goods compared to previous year.
- d) Though the volume of imports increased as compared to previous year, however, it continues to remain insignificant as compared to total production and total demand in India.
- e) The state of the balance sheet of companies in the domestic market shows that the alleged injury is due to competition, non availability of raw material and rapid increase in its price, export of natural rubber by domestic producers and imposition of anti dumping duties on the major raw material imported by the domestic industry. There was an oversupply in the market which might have caused alleged injury. There is an absence of dumping/injury & causal link.
- f) The Indian consumers have been shifting to radial tyres as they are best suited for highways and express ways. Indian producers have also identified the huge opportunities which radial tyres offer in Indian market and are also switching over to production of radial tyres. The consumers are switching over to radial tyres and demand of the same has been increasing. Indian producers are also shifting their production to the radial tyres and expanding their capacities for the production of radial

tyres. Thus there is a switch over from bias tyre to radial tyre which may be a cause of injury to domestic industry.

Examination by the authority.

81. a) The authority notes that used or retreaded pneumatic tyres of rubber fall under customs classification 4012, whereas new pneumatic tyres of rubber fall under customs classification 4011. The goods were reported for clearance under 4011 and not under 4012. The investigation has not shown that the imported product was meant for tractor trailer application or as a substitute for retreaded tyres. It is noted that the imported tyres were reported under classification meant for “new pneumatic tyres of rubber of a kind used in buses or lorries”.

b) As earlier analysed, it is incorrect to state that the domestic industry has been able to increase its market share. On the contrary, it is found that the market share of the domestic industry declined, whereas that of imports increased. The investigation has shown that the imports were significantly undercutting the prices of the domestic industry, which led to decline in their market share, increase in inventories, imports preventing price increases, decline in profit/loss, return on investment and cash profits.

c) Increase in the prices does not mean “no injury due to imports”. On the contrary, the Rules clearly require the Authority to examine whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increase which otherwise would have occurred, to a significant degree.

d) Increase in sales despite dumping does not mean “no injury or no causal link”. On the contrary, the Rules require the Authority to consider whether there has been a significant increase in the dumped imports, either in absolute terms or relative to production or consumption in India. Further, the Authority is required to examine whether the actual or potential sales or market share of the domestic industry declined. Thus, decline in market share in a situation where total sales are increasing implies injury being caused to the domestic industry.

e) Though it is true that that the volume of dumped imports were not very high as compared to production or consumption in India. It should be noted in this regard that rate of increase in imports was quite significant.

f) Whether the injury has been caused by other factors or dumped imports, the Authority notes that there is no substantive evidence provided by interested parties to establish that other factors other than dumping have caused injury to the domestic industry. As regards the increase in the prices of inputs is

concerned, it is noted from available information that these input price increases were universal. As regards internal competition, it is noted that with the similar internal competition, the domestic industry was able to increase its profits earlier.

g) The Authority notes that the demand and sales of bias tyres over the period is increasing. Therefore even if the demand of radial tyre might have increased, it has not been established that radial tyres have affected the demand/sales of bias tyre.

82 Authority examined whether other parameters could have contributed to injury to the domestic industry. Following parameters were analyzed.

a) Imports from Third Countries:- Imports of subject goods from other countries are either negligible (de minimis) or the export price is significantly high. Imports from other countries do not appear to have caused injury to the domestic industry.

b) Contraction in Demand:- The demand for the subject goods has increased. Possible contraction in demand does not appear to have caused injury to the domestic industry.

c) Pattern of consumption:- No significant change in the pattern of consumption has been noticed. The product supplied by the domestic industry is directly competing with that of imported material from subject countries. Demand for the product under consideration has shown an increase and it does not appear that the pattern of consumption has caused injury to the domestic industry.

d) Conditions of competition:- No evidence of conditions of competition or trade restrictive practices having caused injury to the domestic industry has been brought to the knowledge of the Authority.

e) Developments in technology:- There appears to be no significant change in technology over the injury period which could have caused injury to the domestic industry, nor any evidence of developments in technology having caused injury to the domestic industry have been brought to the notice of the Authority.

f) Export performance of the domestic industry:- Export performance of the applicant has not deteriorated. In fact, export volumes of the domestic industry shows an increase. With regards to profits, export performance of the domestic industry has been segregated and only domestic performance considered while assessing injury for product concerned in the domestic market.

g) Productivity: - Productivity of the domestic industry has increased as a result of increase in production. Possible deterioration in productivity is therefore not a possible reason for injury to the domestic industry.

Conclusions on the Causal Link

83 Analysis of the performance of the domestic industry over the injury period shows that the performance of the domestic industry has deteriorated due to dumped imports from subject countries. This is established by the following:-

a) Landed price of imports from the subject countries were significantly below the selling price and cost of production of domestic industry causing significant price undercutting. As a direct consequence, the domestic industry was unable to achieve sales realization to the extent of necessary to reflect cost increases.

b) The positive price undercutting and consequent price suppression faced by the domestic industry resulted in deterioration in profits, cash flow and return on investments.

c) Significant positive price undercutting resulted in increase in market share of imports from the subject countries. As a direct consequence, while the market share of dumped imports in demand in India increased, that of domestic industry declined.

d) Existence of significant price undercutting and consequent decline in market share of the domestic industry resulted in a situation where the domestic industry was unable to increase its sales and production volumes in spite of higher market demand.

84 Given the above analysis which has properly distinguished and separated the effects of all known factors on the situation of the domestic industry from the injurious effects of the dumped imports, it is concluded that these other factors as such did not reverse the fact that the material injury found may be attributed to the dumped imports.

85 It is, therefore, concluded that the dumped imports originating in the subject countries have caused material injury to the domestic industry within the meaning of Rule 11 of Anti Dumping rules and article 3.5 of the Agreement of Anti Dumping.

I. Indian Industry's interest & Other Issues

86 The purpose of anti dumping duties in general is to eliminate dumping which is causing injury to the domestic industry and to re-establish a situation of open and fair competition in the Indian market which is in the general interest of the country.

87 The Authority recognizes that the imposition of anti dumping duties might affect the price levels of the subject goods or the products manufactured using subject goods and consequently might have some influence on relative competitiveness of these products. However, fair competition on the Indian market will not be reduced by the anti dumping measures. On the contrary, imposition of anti dumping measures would remove the unfair advantages gained by dumping practices, would prevent the decline of the domestic industry and help maintain availability of wider choice to the consumers of subject goods. With a view to minimize the impact on the downstream industry, the Authority has considered it appropriate to recommend anti dumping duty based on the lower of the dumping and injury margins. The Authority notes that the imposition of anti dumping measures would not restrict imports from subject country in any way, and therefore, would not affect the availability of the product to the consumers.

J. Conclusions

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

- a) The subject goods have been exported to India from the subject countries below its normal value;
- b) The domestic industry has suffered material injury;
- c) The injury has been caused cumulatively by the dumped imports from subject countries.

K. Recommendations

89 The Authority notes that the investigation was initiated and notified to all interested parties and adequate opportunity was given to the exporters, importers and other interested parties to provide positive information on the aspect of dumping, injury and causal link. Having initiated and conducted a final investigation into dumping, injury and causal link between dumping and injury to the domestic industry in terms of the Rules laid down and having definitively established positive dumping margin against the subject country, as well as material injury to the domestic industry caused by such dumped imports, the Authority is of the view that imposition of definitive duty is required to offset dumping and injury.

90. Therefore, Authority considers it necessary to recommend definitive anti-dumping duty on imports of subject goods from the subject country in the form and manner described hereunder.

91. Having regard to the lesser duty rule followed by the Authority, the Authority recommends imposition of definitive anti-dumping duty equal to the lesser of margin of dumping and margin of injury, so as to remove the injury to the domestic industry. Landed value of imports for the purpose shall be the assessable value as determined by the Customs under the Customs Act, 1962 and all duties of customs except duties under sections 3, 3A, 8B, 9 and 9A of the Customs Tariff Act, 1975. Accordingly, definitive antidumping duty equal to the difference between the amount mentioned in Col. 9 of the table below and landed value of imports is recommended from the date of imposition of provisional duty, on all imports of subject goods falling under chapter 40 of Custom Tariff Classification Act 1975, originating in or exported from the subject countries.

S. No	Tariff Item	Des- cription of goods	Spe- cifica- tion	Country of origin	Country of export	Prod- ucer	Expo- rter	Refer- ence price	Unit of mea- sure- ment	Curren- cy
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
1	40131020	Inner tubes of rubber for buses and lorries	Any	China PR	Any	Shandong Jinyu Tyre Co Ltd.	Any	10.06	Per piece	US\$
2	40129049	Tyre flaps of rubber for buses and lorries	Any	China PR	Any	Shandong Jinyu Tyre Co Ltd.	Any	3.92	Per piece	US\$
3	40112090	New/unused pneumatic non radial bias tyres of rubber, having nominal rim dia code above 16"	Any	China PR	Any	Shandong Jinyu Tyre Co Ltd.	Any	121.67	Per piece	US\$
4	40131020	Inner tubes of rubber for buses and lorries	Any	China PR	Any	Any other than Shandong Jinyu Tyre Co Ltd.	Any	10.06	Per piece	US\$
5	40129049	Tyre flaps of rubber	Any	China PR	Any	Any other than	Any	3.92	Per piece	US\$

		for buses and lorries				Shandong Jinyu Tyre Co Ltd.				
6	40112090	New/unused pneumatic non radial bias tyres of rubber, having nominal rim dia code above 16"	Any	China PR	Any	Any other than Shandong Jinyu Tyre Co Ltd.	Any	121.67	Per piece	US\$
7	40131020	Inner tubes of rubber for buses and lorries	Any	Any excluding Thailand	China PR	Any	Any	10.06	Per piece	US\$
8	40129049	Tyre flaps of rubber for buses and lorries	Any	Any excluding Thailand	China PR	Any	Any	3.92	Per piece	US\$
9	40112090	New/unused pneumatic non radial bias tyres of rubber, having nominal rim dia code above 16"	Any	Any excluding Thailand	China PR	Any	Any	121.67	Per piece	US\$
10	40131020	Inner tubes of rubber for buses and lorries	Any	Thailand	Any	Any	Any	10.06	Per piece	US\$
11	40129049	Tyre flaps of rubber for buses and lorries	Any	Thailand	Any	Any	Any	3.92	Per piece	US\$
12	40112090	New/unused pneumatic non radial bias tyres of rubber, having nominal rim dia code above 16"	Any	Thailand	Any	Any	Any	121.67	Per piece	US\$
13	40131020	Inner tubes of rubber for buses and lorries	Any	Any excluding China PR	Thailand	Any	Any	10.06	Per piece	US\$
14	40129049	Tyre flaps of rubber for buses and lorries	Any	Any excluding China PR	Thailand	Any	Any	3.92	Per piece	US\$
15	40112090	New/unused	Any	Any	Thailand	Any	Any	121.67	Per	US\$

		pneumatic non radial bias tyres of rubber, having nominal rim dia code above 16"		excluding China PR					piece	
--	--	----------------------------------------------------------------------------------	--	--------------------	--	--	--	--	-------	--

For imports made in a combination of tyres, tubes and flaps, the reference price shall be the sum of the reference price of the parts of the combination.

92 Subject to the above, the Authority confirms preliminary findings vide Notification dated the 31st July 2006 vide 14/9/2005-DGAD.

93 An appeal against the orders of the Central Government that may arise out of this recommendation shall lie before the Customs, Excise and Service tax Appellate Tribunal in accordance with the relevant provisions of the Act.

94 The Authority may review the need for continuation, modification or termination of the definitive measure as recommended herein from time to time as per the relevant provisions of the Act and public notices issued in this respect from time to time. No request for such a review shall be entertained by the Authority unless the same is filed by an interested party as per the time limit stipulated for this purpose.

(R.Gopalan)

Designated Authority