To be published in the Gazette of India, Extraordinary, Part 1 Section 1

F. No. 7/8/2018-DGAD
Government of India
Ministry of Commerce & Industry
Department of Commerce
(Directorate General of Trade Remedies)
4th Floor, Jeevan Tara Building, 5, Parliament Street, New Delhi 110001

Dated the 02nd May,2019

NOTIFICATION

FINAL FINDINGS

Subject: **New Shipper Review under Rule 22 of the Anti-Dumping Rules for determination of individual dumping margin for M/s. Shandong Haohua Tire Co., Ltd. (Haohua) (Producer) with Guangzhou Exceed Industrial Technology Co. Ltd., (exporter) and H K Trade Wind Trading Limited (exporter) in the case of anti-dumping duty imposed on New/unused Pneumatic Radial Tyres originating in or exported from China PR**

A. BACKGROUND

1. The Designated Authority (hereinafter referred to as "Authority") initiated anti-dumping duty investigation concerning "New/unused Pneumatic Radial Tyres" (hereinafter referred to as "subject goods") originating in or exported from China vide initiation Notification No F.No.14/14/2015-DGAD dated 3.5.2016. The Authority vide final findings dated 1.8.2017 recommended an anti-dumping duty for all exporters/producers from China at the rates prescribed in the said findings. The recommendation of the Designated Authority was accepted by the Central Government and antidumping duty was levied vide Customs Notification No. 45/2017- Customs (ADD) dated 18.9.2017.

2. M/s. Shandong Haohua Tire Co., Ltd. (Haohua) (Producer) with Guangzhou Exceed Industrial Technology Co. Ltd., (exporter) and H K Trade Wind Trading Limited (exporter) (hereinafter referred to as "New Shippers" or "Applicants") filed a duly substantiated application before the Authority in accordance with Rule 22 of the AD Rules read with the Customs Tariff Act, requesting for a New Shipper Review (NSR) in respect of the definitive anti-dumping duty imposed by the Central Government vide Customs Notification No. 45/2017- Customs (ADD) dated 18.9.2017, concerning imports of the subject goods, originating in or exported from China.

3. The Act and the AD Rules made thereunder require the Authority to undertake a New Shipper Review (NSR) for the purpose of determining individual margin of dumping for any exporter or producer in the exporting country in question who has not exported the subject goods to India during the period of investigation of the original anti-dumping investigation concerning imports of the subject goods from

the subject country and is not related to any of the exporters and producers in the exporting country who are subjected to the antidumping duty. The applicant has claimed that they are not related to any of the exporters/producers in China or other subject countries against whom anti-dumping measures are in force with regard to the product concerned. Furthermore, they have claimed that they have not exported the product concerned during the period of investigation of the original investigation.

4. The Authority prima facie examined the information submitted by the applicant at the stage of initiation of the investigation and found it adequate to justify the initiation of a new shipper review investigation in accordance with the provisions of Rule 22 of the AD Rules. The Authority accordingly initiated the New Shipper Review under Rule 22 of the AD Rules vide Notification F. No. 7/8/2018-DGAD dated 16.5.2018. The period of investigation for the purpose of the present review is 1st July 2018 to 31st December 2018 (6 months). On 7.6.2018, the Authority issued corrigendum correcting the name of exporter from H K Trade Wing Trading Limited to H K Trade Wind Trading Limited.

5. Having initiated the subject NSR investigation, the Authority recommended provisional assessment on all exports of subject goods made by M/s. Shandong Haohua Tire Co., Ltd. (Haohua) (Producer) with Guangzhou Exceed Industrial Technology Co. Ltd., (exporter) and H K Trade Wind Trading Limited (exporter), till this review is completed in accordance with Rule 22 of the Rules supra.

6. Ministry of Finance notified the provisional assessment on all exports of the subject goods made by applicants till completion of the subject NSR investigation vide Notification No. 34/2018- Customs (ADD) dated 25.6.2018. In the said notification the customs have not amended the name of the exporter despite the corrigendum having been issued by the Designated Authority prior to the issuance of the Custom Notification. The Ministry of Finance did not even issue corrigendum of notification 34/2018-customs subsequently.

B. PROCEDURE

7. The procedure described below has been followed with regard to the present investigation:

    a. The Authority issued a public notice dated 16.5.2018, published in the Gazette of India, Extraordinary, initiating the subject NSR anti-dumping investigation.

    b. The Authority forwarded a copy of the initiation notification to the NSR applicant along with a copy of the questionnaire and gave them opportunity to make their views known in writing.

    c. The Authority also forwarded a copy of the initiation notification to the Chinese Embassy at New Delhi.

    d. The Authority forwarded a copy of the initiation notification to the known domestic producers in India and gave them opportunity to make their views known in writing.

e. In response to the initiation notification, response in the form of Exporters Questionnaire was filed by applicants.

f. Arguments raised and submitted by various interested parties during the course of the investigation, to the extent considered relevant have been appropriately considered by the Authority in this final findings.

g. The Authority made available non-confidential version of the evidence presented by various interested parties in the form of a public file kept open for inspection by the interested parties.

h. The Authority held Oral Hearings on 13.2.2019 to provide an opportunity to the interested parties to present information orally in accordance with Rule 6(6). The interested parties were asked to furnish written submission as well and were also allowed to submit rejoinders on the views/information presented by other interested parties. The Authority has considered submissions received from are interested parties appropriately.

i. Further information was sought from the applicant and other interested parties to the extent deemed necessary. The data submitted by the Applicant was examined and back-up documents were called for, wherever required.

j. In accordance with Rule 18 of the Rules supra, the Authority disclosed the essential facts of the present investigation to all interested parties vide a disclosure statement issued on 5th April , 2019, and advised them to file the comments on the disclosure statement by 15th April, 2019. The comments received from the applicant and the original petitioner, have been addressed in the present findings to the extent considered relevant.

k. *** in the statement represents information furnished by interested parties on confidential basis and so considered by Authority under the AD Rules.

l. The confidentiality claims of various interested parties in respect of the data submitted by them have been examined. The information, which is by nature confidential or which has been provided on a confidential basis by the interested parties, along with non-confidential summary thereof, has been treated confidential.

C. Views of the Domestic Producers

8. The submissions made by the Domestic Industry and considered relevant by the Authority are as follows:

a. That the Authority cannot consider prospective period for the purpose of review. This is contrary to the law upheld by CESTAT in H& R Johnson case.
b. The initiation of the present New Shipper Review is bad in law. The mandatory requirements and pre-conditions of Rule 22 have not been satisfied prior to initiation of new shipper review. The application filed by the exporter and the producer for the initiation of new shipper review is grossly inadequate and unsubstantiated.
c. Application format does not adhere to the trade notice. Applicant should have filed application as per updated proforma even though petition was filed before the issuance of the trade notice. There are certain documents/ information that the exporter should have filed as per the new format.
d. The Applicant has claimed excessive confidentiality and failed to provide reasons for claims of confidentiality on certain documents and no reasons have also been provided as why the same is not susceptible to summarization.
e. Under Rule 22, the Applicant was required to show that it is not related to *any* exporter or producer 'for all the countries for which duty on the product was applicable'.
f. The Applicant did not fulfill the pre-conditions of Rule 22 of the AD Rules. Appropriate and sufficient materials were not placed before the Designated Authority as a pre-condition for initiation under Rule 22 to initiate new shipper review. It is necessary under Rule 22 that the Applicant in the exporting country must not have exported the subject goods to India during the period of investigation and should not be related to any of the exporters or producers in the exporting country who are subject to the anti-dumping duties on the product.
g. That the landed value of the imports from China is below the selling price of the Domestic Industry since original period under investigation. Therefore, Domestic Industry continued to suffer injury.
h. That the Domestic Industry has provided procedures of different countries to establish the practice of other authorities.
i. That the applicants should have exported commercial quantities to establish export price.
j. That none of the importers have filed any importers questionnaire response.
k. That Weifang Huadong Rubber Co. Ltd, related party to the applicant, had claimed in its NSR filed in 2010 that it was involved in the production of PUC and had not made any export sales to India and the rest of the world. It is not possible that they have not exported PUC to India till date.
l. That the Applicant may be granted the weighted average duties given to cooperating companies not included in the sample in the original

investigation. Further, Rule 22, does not imply that the Designated Authority is obliged to give individual dumping margin to these exporters on the basis of their own normal value and own export price.

D. Views of the Applicants / New Shipper (Producer cum Exporter)

9. The views of the Applicant have been summarized below:

a. The Applicant did not export the PUC to India during the period of investigation of the original investigation, i.e., 1.7.2014 to 31.12.2015.

b. The Applicants has submitted that the BIS license was issued to them in December 2016, and therefore, before that period they could not have exported the subject goods to India.

c. The Applicant Company has not exported PUC to India during the period of investigation of the original investigation and is not related to any other entity that had exported PUC to India during the period of investigation of the original investigation. The Applicant also certified that it is not related to any entity in any country on which anti-dumping duty on the subject goods is applicable. Thus, the Applicant satisfied both the requirements of Rule 22 of the AD Rules and was eligible for the initiation of the New Shipper Review and the determination of an individual rate of duty.

d. The Applicant did not claim excessive confidentiality. All the documents upon which confidentiality was claimed contain business confidential information and are not available in the public domain and did not impact or prejudice the Domestic Producers.

e. That the concerned trade notice (Trade Notice No. 08/2018) was issued on 25.04.2018, while the present application was filed by the applicant prior to that date. In this regard, the trade notice specifically mentions that it is applicable on the applications filed 'after' the issuance of said trade notice. Therefore, there is no merit in the issue raised by the Domestic Industry.

f. That the excerpt from case cited by the domestic industry refers to an observation of the Hon'ble CESTAT which was struck down by the Hon'ble High Court of Delhi in H and R Johnson (India) Limited v. Union of India & Ors. [2008 (232) E.L.T. 390]. The High Court expressed its disapproval on observation of the CESTAT in the paragraph cited by the domestic industry and noted that in the case of a first-time shipper, a retrospective period cannot be taken. Based on this, the High Court agreed that, with respect to New Shipper Review, a prospective period of investigation must be allowed and cannot be ruled out. In view thereof, the contention of the Domestic Industry in this regard holds no merit in terms of their reasonability or legality, and therefore, should be rejected.

g. The pre-condition that exports should be in commercial quantum is contrary to the requirement under Rule 22 of the Anti-dumping Rules and Article 9.5 of the Anti-dumping Agreement. Rule 22 of the Anti-dumping Rules states that the Authority shall carry out new shipper review to determine individual margin of dumping if (i) the producer or

exporter has not exported the product to India during the period of investigation and (ii) this producer or exporter is not related to any of the exporters or producers in the exporting country who are subject to the anti-dumping duties on the product.

h. That the requirement of "commercial quantities" as proposed by the Domestic Industry shall encourage the concerned exporters to artificially lower down their prices to absorb the anti-dumping duties. In fact, it would be untenable for the respondent to export the subject goods at unfavourable prices in order to maximize quantity of exports even when they are competing against the prices offered by the Domestic Industry and other Chinese producers on whose goods there is no or lesser anti-dumping duties applicable. The respondent did not deviate from its standard practice and exported to India during the POI only when it was able to obtain suitable price in accordance with market demand. Further, to compare total exports from China to exports made by one producer would be unreasonable and contrary to law.

i. That M/s Weifang Huadong Rubber Co., Ltd did not make export sales during the original POI. This non-export of subject goods by Weifang Huadong proves the point of the respondent, that if they will not get the fair prices, they will not sell to any market. Moreover, it does not have any business dealings with the applicants.

j. That the Authority may determine the normal value for the respondent on the basis of the cost of production of the subject goods produced in India, as followed in all the cases in India.

k. That the submission of the Domestic Industry that dumping margin for non-sampled exporters should be awarded to applicants is without any merit and contrary to the Article 9.5 of the Anti-dumping Agreement which provides for determination of individual rate of duty for a new shipper. The WTO panel in Mexico –Rice, in para 7.159 of its report noted that Article 9.4 of the Anti-Dumping Agreement, which provides for non-sampled anti-dumping duty rate does not apply to new shipper. In view thereof, it is submitted that in terms of the provision under Rule 22 of the Anti-dumping Rules and Article 9.5 of the Anti-dumping Agreement, the respondent ought to be given an individual dumping margin on the basis of the exports made by them. Therefore, the submission of the Domestic Industry in this regard is liable to be rejected.

E. Examination by the Authority

10. The Authority initiated the New Shipper Review keeping in view the provisions of Rule 22 of the AD Rules, which reads as follows:

> *"Rule 22*
>
> *(1) If a product is subject to anti-dumping duties, the designated authority shall carry out a periodical review for the purpose of determining individual margins of dumping for any exporters or producers in the exporting country in question who have not exported the product to India during the period of investigation, provided that these exporters or producers show that they are not related to any of the exporters or producers in the exporting country who are subject to the anti-dumping duties on the product.*
>
> *(2) The Central Government shall not levy anti-dumping duties under sub-section (1) of section 9A of the Act, on imports from such exporters or producers during the period of review as referred to in sub-rule (1) of this rule:*
>
> *Provided that the Central Government may resort to provisional assessment and may ask a guarantee form the importer if the designated authority so recommends and if such a review results in a determination of dumping in respect of such products or exporters, it may levy duty in such cases retrospectively from the date of initiation of the review".*

11. Rule 22 specifies the circumstances under which a New Shipper Review investigation is to be carried out for the purpose of determining individual dumping margin. Individual dumping margin in respect of any exporter or producer from the exporting country in question can be determined provided the following two conditions are satisfied:

> (a) that the exporter or producer has not exported the product under consideration during the period of investigation, and
> (b) that the exporter or producer shows that it is not related to any of the exporters or producers in the exporting country who are subject to the anti-dumping duties on the product concerned.

12. It is evident from the above that the intention under Rule 22 is to determine individual dumping margin in respect of an exporter or producer who did not export the subject goods during the period of investigation of the original investigation. Since such producer/exporter did not export subject goods to India during the period of investigation of the original investigation, the Authority could not have determined individual dumping margin in respect of its exports at the time of original investigation. The purpose of new shipper review provision is, therefore, to provide an opportunity to such producer/exporter to claim individual dumping

margin considering that these exporters have been granted residual dumping margin during the original investigation.

13. In the instant case, applicants filed an application before the Authority seeking individual dumping margin and requested for initiation of the new shipper review. The basic requirements for initiating the New Shipper Review under Rule 22 are that (a) anti-dumping duty is applicable on the subject goods and (b) the exporters or producers who are seeking determination of individual margin of dumping must not have exported the subject goods to India during the period of investigation of the original investigation and they must show that they are not related to any of the exporters or producers in the exporting country who are subject to the anti-dumping duties on the subject goods.

14. The Authority notes that this review was initiated much before the issuance of trade notice 1/2019 dated 29.01.2019 issued for streamlining the procedure for NSR investigations. It was clearly mentioned in the referred trade notice that it was applicable to NSR applications filed after the date of issue of the said trade notice. Therefore, it is noted that the guidelines/procedure specified in the said trade notice need not be enforced on NSR applications filed prior to the trade notice 1/2019. The Authority however notes that the Applicant though had begun its production of PUC prior to the filing of the new shipper review application.

15. Prior to initiation of new shipper review, the Authority is required to prima *facie* satisfy itself that the conditions of Rule 22 are fulfilled. Unless there is material adverse evidence to contradict the statements made in the application, the initiation of the new shipper review cannot be refused. In the present case, on the date of initiation of new shipper review, there was no material on record to show that the statements made by NSR applicant were not correct. Therefore, it cannot be said that there was no prima facie satisfaction on the part of Authority before initiating the new shipper review.

16. In order to examine the eligibility of the applicant as new shipper, the applicant was asked whether (a) the company had, directly or indirectly, exported the product to India during the period of investigation of the original investigation and (b) the applicant or any of its related company had exported the product concerned to India in the period of investigation of the original investigation.

The Applicant provided certification stating that:

a. The Applicant did not export the subject goods to India during the period of investigation of the original investigation. Moreover, they got the BIS license to export in December 2016, only i.e. much after the original POI was over;
b. The Applicant is not related to any exporter or producer in China who had exported the subject goods to India during the period of investigation of the original investigation;
c. The related companies of the Applicant did not engage in the manufacture of the subject goods;

d. The related companies of the Applicant are not related to any exporter or producer in China who had exported the subject goods to India during the period of investigation of the original investigation;

17. The Authority considered the submissions of the Domestic Producers in this regard but did not find any adverse material against the Applicant's claim of being a new shipper.

18. During the investigation, the Authority neither found any evidence regarding relationship of the Applicant with any of the exporters or producers in China, who are subjected to anti-dumping duty nor any material evidence in this regard was brought before the Authority by any of the interested parties. The Authority, therefore, notes that the New Shipper Review investigation was initiated as per provisions laid down in Rule 22 of the AD rules which is in conformity with article 9.5 of the WTO AD Agreement.

19. As regards the period of investigation, the Authority is well within its rights to determine a period shorter than 12 months, but longer than 6 months. In the case of a New Shipper, it is not uncommon for a shorter period of time to be considered as the period of investigation. Thus, the selection of the period of investigation is justified.

20. The authority takes note of the fact that the applicant's effort to export PUC during the POI was impeded on account of non-publication of the corrigendum with regard to the correction of the exporter's name in the notification by the Department of Revenue.

21. With regard to confidentiality of information, Rule 7 of AD Rules provides as follows:-

> *Confidential information: (1) Notwithstanding anything contained in sub-rules and (7) of rule 6, sub-rule (2), (3) (2) of rule 12, sub-rule (4) of rule 15 and sub-rule (4) of rule 17, the copies of applications received under sub-rule (1) of rule 5, or any other information provided to the designated authority on a confidential basis by any party in the course of investigation, shall, upon the designated authority being satisfied as to its confidentiality, be treated as such by it and no such information shall be disclosed to any other party without specific authorization of the party providing such information.*
>
> *(2) The designated authority may require the parties providing information on confidential basis to furnish non-confidential summary thereof and if, in the opinion of a party providing such information, such information is not susceptible of summary, such party may submit to the designated authority a statement of reasons why summarization is not possible.*
> *(3) Notwithstanding anything contained in sub-rule (2), if the designated authority is satisfied that the request for confidentiality is not warranted or the supplier of the information is either unwilling to make the information public or to authorize its disclosure in a generalized or summary form, it may disregard such information*.

22. Information provided by the interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has accepted the confidentiality claims, wherever warranted and such information has been considered confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non-confidential version of the information filed on confidential basis. The Authority made available the non-confidential version of the evidences submitted by various interested parties in the form of a public file.

F. Methodology for determination of Normal Value, Export Price and Dumping Margin

Submission relating to Normal Value and Export Price

Submissions made by the Domestic Industry

23. The Domestic Industry has made the following submissions:

(i) That Normal value for China PR has to be determined in terms of the provisions for non-market economy countries.
(ii) That since the applicants have not filed additional questionnaire and therefore, they are not entitled for normal value based on their own data.
(iii) Determination of normal value should be done as per methodology adopted in prescribed format, it is not clear whether the applicant wants the DA to determine normal value ignoring procedure that is followed by the DA.
(iv) Normal value basis determined by the DA as follows:
    1. On basis of price or constructed value in the market economy third country
    2. Price from such third country to other countries including India
    3. Any other reasonable basis, including the price actually paid or payable in India for the like product, duly adjusted, if necessary, to include a reasonable profit margin.
(v) Further, the Rule 22, does not imply that the DA is obliged to give individual dumping margin to these exporters on the basis of their own normal value and own export price.

Submissions by NSR Applicant

24. That the Authority should construct the normal value for them as per their standard practice.

25. That the Authority should use the export price based on the export quantities of the producer and exporter. It is further submitted that since the name of one of the exporters was not amended in the custom notification no adverse inference can

be drawn against applicants because of lack of understanding between two departments of the government.

Examination by the Authority

26. The Authority also notes that Article 15 of China's Accession Protocol provides as follows:

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

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

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

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

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

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

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

27. Article 15 implies that provisions of subparagraph (a) (ii) shall expire in 15 years from the date of China's Accession. The provisions of this paragraph expired on 11th December 2016.

28. With regard to the submissions made by the petitioner, it is noted that the commitments under para 15(a) (i) of the Accession Protocol signed by China with WTO requires that the producers under investigation should clearly show that market economy conditions prevail in the industry producing the like product with regard to the manufacture, production and sale of that product. In event of this being substantiated, the importing WTO member shall use Chinese prices or costs for the industry under investigation in determining price comparability. Further Article 2.2.1.1 of WTO and AD Rules of India requires that the financial records of producer/exporter reasonably reflect the production costs. Therefore, information and supportive evidence thereof in respect of the following is required to be provided.

a. Decisions in regard to price, cost, input including raw material, cost of technology and labor, output, sales and investment, are made in response to market signal reflecting supply and demand and without significant State interference and whether cost of major inputs substantially reflect market value.
b. Production costs and financial situation does not suffer from any distortion.
c. The producer/exporter are subject to bankruptcy and property law which guarantees legal certainty and stability for the operation of the firms.
d. Exchange rate conversions are carried out at the market rate.

29. As a part of the proceedings in this investigation, the Authority had sent supplementary questionnaire to the applicant seeking the above information. In the absence of any response from the applicant to the said supplementary questionnaire, the Authority has constructed the normal value on the basis of facts available.

30. The constructed normal value is determined as *** USD per MT.

EXPORT PRICE

31. As per the Exporter's Questionnaire, during the POI, the Applicant exported *** MT (*** tyres) of subject goods to India for the net invoice value of *** USD directly to independent customers in India. The Applicant has claimed adjustments for inland freight, port handling expenses, credit cost and bank charges. The Authority has allowed the adjustments as claimed and determined the export price at ex-factory level in respect of the Applicant. Details of the same are mentioned in the dumping margin table appended below.

DUMPING MARGIN

32. Comparing the aforesaid normal value and export price as determined, the individual dumping margin determined for the Applicant during the POI is as follows:

Normal Value	USD/MT	***
Export Price	USD/MT	***
Dumping Margin	USD/MT	***
Dumping Margin	%	***
Dumping Margin	Range	0-10

G. POST-DISCLOSURE COMMENTS BY INTERESTED PARTIES

Submissions made by the domestic industry

i. Authority has issued supplementary questionnaire and in view of non-co-operation thereof the Authority has determined normal value based on facts available. It is surprising that the exporter has also claimed that normal value may be calculated as per facts available. It is not disclosed as to what facts available have been considered. The dumping margin determined for the exporter is 0-10%, which is quite low and thus is likely to cause significant prejudice to the domestic industry in case the same is considered for fixation of ADD. Nor the methodology adopted has been disclosed. The domestic industry is thus handicapped in offering comments on the normal value.

ii. With regard to existence of related party, despite specific submissions in the oral hearing and written submission thereafter, same have not been considered and not even been recorded in the Disclosure Statement. When the domestic industry has specifically identified some entities, the disclosure statement does not state whether those entities are related to the applicant. Authority is requested to look into the submission made by the domestic industry in this regard and thereafter issue and intimate the interested parties on the essential

fact of whether or not there are other related parties and whether or not they exported goods to India.

iii. It is not clear whether the Authority proposes to consider granting HK Trade Wind Limited trade channel separate duties, if levied.

iv. During the oral hearing it was argued that the normal value be determined on the basis of the cost of the exporter. Supplementary questionnaire was issued. However, the exporter refrained itself from replying to the same. The exporter must thus be held as a non-cooperative exporter and the investigation should be immediately terminated.

v. Domestic industry's response to the rejoinder submissions made by the NSR applicant, as noted in the disclosure statement, is as under -

a. Applicants had submitted that the BIS license was issued to them in December 2016, and therefore, before that period they could not have exported the subject goods to India. The domestic industry is unable to understand the relevance, importance and significance of such a statement to an anti-dumping proceeding. The applicant however, has not exported even after getting the said BIS license.

b. The Applicant stated it did not claim excessive confidentiality. The domestic industry has provided an exhaustive list of the documents claimed confidential by the applicant which are available in public domain. It has prevented the domestic industry from defending its interests.

c. As regards the contention by the applicant that Trade Notice No. 08/2018, was issued after the present application and is thus not applicable, the domestic industry states that even if application was filed earlier there was sufficient time to update application and even if trade notice was subsequent to application, the principles of the trade notice still apply.

d. The domestic industry claims that the NSR applicant has been trying to misguide the authority by submitting incomplete facts in regard to observation of the Hon'ble High Court of Delhi in H and R Johnson (India) Limited v. Union of India & Ors. [2008 (232) E.L.T. 390].The High Court order being referred is an interim relief order wherein the Court did not go into the merits of the Tribunal's order. The Madras High Court in Saint Gobain vs. Union Of India, Writ Appeal Nos.412 to 414 of 2018 (the most recent case), stated that the findings of Tribunal holds good in H & R Johnson case as the writ petition before the High Court in that case was withdrawn.

e. The applicant exporter had started production prior to the filing of present investigation. Thus, it is all the more relevant to consider a retrospective POI. Further, even if it is accepted that a prospective period of investigation is allowed for first-time shipper, it becomes more important to examine the bonafide of the transactions made. In this case after availing the prospective period of investigation the applicant has made just one export consignment throughout the period of investigation, which shows the mala-fide of the applicant.

f. The applicant has failed to show that how the requirement of commercial quantity is in violation of Anti-dumping agreement and Rule 22 of the ADD Rules. The requirement of commercial quantities has been embraced by so many WTO members. The DGTR has also incorporated commercial quantities as part of new shipper reviews through Trade Notice No. 08/2018 dated 25th April, 2018. Indian past practice and jurisprudence in NSR applications by other jurisdictions also shows the export transactions by a new shipper ought to be "commercial/ significant quantity".

g. The NSR applicant has argued that the requirement of "commercial quantities" as proposed by the Domestic Industry shall encourage the concerned exporters to artificially lower down their prices to absorb the anti-dumping duties. This presumption of the NSR applicant is devoid of any basis in reality. As can be seen in the present case the prices of the applicant is artificially higher than at the prices at which other producers attracting the same duty are able to realize. Secondly, the argument in itself implies that the Designated Authority cannot conduct new shipper review, as the exporter cannot undertake exports in commercial quantities and the Designated Authority cannot determine export price without exports in commercial quantities. Commercial quantities have to be seen in the light of the nature of the product. It is a moot point whether or not only 260 pieces constitute commercial volumes in a product having a demand in the region of 60-80 lacs pieces and whether Designated Authority can determine dumping margin for such miniscule imports. Thirdly, when so many exporters have exported so significant volumes with duty (including many of them attracting residual duty), can exporter claim existence of duty as a hindrance in undertaking exports. Fourthly, when ADD paid prices are still lower than selling price of the domestic industry, what is preventing the exporter in selling reasonable volumes even after ADD. Thus, it has remained unexplained why and how the NSR applicant has undertaken ceremonial exports at a price higher than other Chinese prices and why a customer in India purchased at such higher price instead of buying from other Chinese suppliers.

h. The NSR applicant while pleading for grant of individual rate of duty instead of adopting the rate applicable to non-sampled cooperative exporters has quoted WTO panel report in Mexico-Rice case. The argument of the applicant on the basis of WTO Panel report In Mexico –Rice is misplaced since in that panel

report the investigation didn't even undertake sampling. The report only provides that absence of any cross-referencing in Article 9.5 of the Agreement

shows there is no obligation on Authority to calculate a residual duty margin by giving neutral margin as per Article 9.4. The WTO Panel observation was with regard to obligation on the Authority under a law and that too in an original investigation.

Submissions made by the NSR applicant

33. Applicant has submitted that that since the Authority has initiated the investigation for chain of M/s. Shandong Haohua Tire Co., Ltd. (Haohua) (Producer) with Guangzhou Exceed Industrial Technology Co. Ltd., (exporter) and H K Trade Wind Trading Limited (exporter), and Customs have provisionally exempted the payment of anti-dumping duties for said chain only, it is necessary to mention the same chain in the notification so that the provisional assessments are also finalized accordingly. The applicant submits that the same chain should therefore be mentioned in the final findings also.

H. Examination of the Authority

34. The Authority notes that most of the submissions by parties are repetitive in nature and have been examined and addressed in the foregoing parts of the present findings and at the time of issue of the disclosure statement. The findings above deal with all such arguments of the domestic industry and the NSR applicant. However, the Authority has examined these submissions herein below to the extent relevant and not addressed elsewhere:

a) The authority notes that despite non-issue of corrigendum by the Department of Revenue the producer M/s. Shandong Haohua Tire Co., Ltd. have always had the option of exporting the subject goods in reasonable quantity through other exporter M/s Guangzhou Exceed Industrial Technology Co. Ltd. The authority notes that the very fact they have chosen to export only miniscule quantity of *** MT through this trader raises the question about the bona-fide.

b) The authority notes that the Applicant has exported only a meagre quantity of subject goods to India during the entire period of investigation. Such a miniscule quantum of exports cannot be treated as the reasonable quantity and such export transactions are not representative enough to be taken into account for the purpose of determination of individual margins.

I. Conclusion and Recommendation

35. Accordingly, the Authority does not recommend any individual dumping margin for the NSR applicants namely M/s. Shandong Haohua Tire Co., Ltd. (Haohua) (Producer), Guangzhou Exceed Industrial Technology Co. Ltd., (exporter) and H K Trade Wind Trading Limited (exporter).

36. The Authority holds that NSR applicants are not entitled to individual dumping margin. The Authority, therefore, recommends that the exports of the subject goods made by M/s. Shandong Haohua Tire Co., Ltd. (Haohua) (producer), M/s Guangzhou Exceed Industrial Technology Co. Ltd (exporter) and M/s H K Trade Wind Trading (exporter) from the date of initiation of the present NSR investigation may be subjected to levy of Anti-Dumping Duty as imposed earlier on the imports of the subject goods, originating in or exported from China PR vide Customs Notification No. 45/2017- Customs (ADD) dated 18.9.2017.

J. Further Procedure

37. An appeal against this notification shall lie before the Customs, Excise and Service Tax Appellate Tribunal in accordance with the Customs Tariff Act, 1975 and the decision of the Hon'ble High Court of Delhi in M/s Jindal Poly Film Ltd. v. Designated Authority, W.P. (Civil) No. 8202/2017.

(Sunil Kumar)
Additional Secretary and Director General