

**F.No. 14/17/2015 –DGAD**  
**Government of India**  
**Ministry of Commerce & Industry**  
**Department of Commerce**  
**Directorate General of Anti-Dumping and Allied Duties**

**NOTIFICATION**

Dated the 30<sup>th</sup> September, 2016

**Final Findings**

**Subject: Anti-dumping investigation concerning imports of ‘Axle for Trailers’ originating in or exported from China PR**

**No.14/17/2015-DGAD:-** Having regard to the Customs Tariff Act 1975 as amended from time to time [hereinafter also 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 also referred to as the Rules], as amended from time to time, thereof;

**A. Background of the Case**

2. Whereas M/s York Transport Equipment (India) Pvt Ltd., (hereinafter also referred to as the “applicant” or domestic industry) filed an application before the Designated Authority (hereinafter also referred to as the Authority) in accordance with the Act and the Rules supra, for initiation of Anti-dumping investigation concerning imports of “Axle for Trailers” (hereinafter also referred to as the subject goods), originating in or exported from China PR (hereinafter also referred to as the subject country), alleging dumping and consequent injury to the domestic industry and requested levy of anti-dumping duty on the imports of the subject goods from the subject country.

3. And whereas, the Authority on the basis of sufficient evidence submitted by the applicant to justify initiation of the investigation, issued a public notice vide notification No.14/17/2015-DGAD dated 28<sup>th</sup> December, 2015, published in the Gazette of India, Extraordinary, initiating the subject anti-dumping investigation, read with corrigendum dated 1<sup>st</sup> January, 2016 therein, in accordance with the sub Rule 5 of the Rules, to determine the existence, degree and effect of the alleged dumping and to recommend the amount of anti-dumping duty, which, if levied, would be adequate to remove the injury to the domestic industry.

**B. PROCEDURE**

4. The procedure described herein below has been followed;

- i. Preliminary scrutiny of the application showed certain deficiencies, which were subsequently rectified by the Applicant. The application was, therefore, considered as properly documented. The Authority, on the basis of sufficient evidence submitted by the Applicant to justify initiation of the investigation, decided to initiate the investigation against imports of the subject goods from the subject country.
- ii. The Authority notified the embassy of the subject country in India about the receipt of the anti-dumping application before proceeding to initiate the investigation in accordance with sub-rule (5) of rule 5 *supra*.
- iii. Post initiation, the Authority sent a copy of the initiation notification to the embassy of the subject country in India, known producers/exporters from the subject country, known importers/users and the domestic industry as well as other domestic producers as per the addresses made available by the applicant and requested them to make their views known in writing within 40 days of the initiation notification. Necessary extensions wherever warranted was also permitted by the Authority.
- iv. The Authority provided a copy of the non-confidential version of the application to the known producers/exporters and to the embassy of the subject country in India in accordance with Rule 6(3) of the Rules *supra*. The embassy of the subject country in India was also requested to advise the exporters/producers from their countries to respond to the questionnaire within the prescribed time limit. A copy of the letter and questionnaire sent to the producers/exporters was also sent to them along with the names and addresses of the known producers/exporters from China PR.
- v. The Authority sent questionnaires to elicit relevant information to the following known exporters in subject country in accordance with Rule 6(4) of the AD Rules:
  - 1) Shandong Jinsheng Axle Manufacturing Co., Ltd.  
Shandong, China PR
  - 2) Guangdong FUWA Engineering Manufacturing Co., Ltd.  
Guangdong Province, China PR
  - 3) Foshan Yonglitai Axle Co., Ltd.  
Guangdong, China PR
  - 4) Alion Manufacturing & Engineering Ltd  
Henan, China PR

5) Guangzhou TND Axle Co. Ltd.  
Guangdong, China.

vi. In response to the initiation notification and intimation, the following exporters / producers from China PR have responded to the Authority by filing Exporter Questionnaire Response;

1. Guangdong FUWA Engineering Manufacturing Co., Ltd.
2. Guangdong FUWA Heavy Industries Co., Ltd.
3. Shandong Jinsheng Axle Manufacturing Co., Ltd.

vii. Out of the above responding producers/exporters from China PR, Guangdong FUWA Engineering Manufacturing Co., Ltd and Guangdong FUWA Heavy Industries Co., Ltd have also filed the Market Economy Treatment (MET) Questionnaire to rebut the presumption of non-market economy status of China PR as per the anti- dumping rules. However, before onsite verification both Guangdong FUWA Engineering Manufacturing Co. Ltd and Guangdong FUWA Heavy Industries Co. Ltd. withdrew their claim for conferring Market Economy Status.

viii. Questionnaires were sent to the following known importers / users of subject goods in India calling for necessary information;

1. Transtar Handling Warehousing Private Limited
2. King Kaveri Trading Company
3. H.D. Trailers Pvt. Ltd.
4. Tata International DLT Pvt. Ltd.
5. Seamless Autotech Pvt Ltd.
6. Black Diamond Motors Pvt. Ltd.
7. Deccan Vehicles PVt. Ltd.
8. ArihantAutotrends,
9. Shivam Motors Pvt. Ltd.
10. Transport Solutions India Pvt Ltd
11. Vandana Trailors & Body MFG (P) Ltd
12. Satrac Engineering Private Limited
13. Shree Durga Fabrication
14. Sheetal Motors
15. V.S. Trailers
16. Lohr India Automotive Pvt. Ltd.
17. Tippers & Trailers India Pvt. Ltd
18. Jagatjit Automotive Co. Pvt. Ltd.

- ix. In response, following importers/users have responded by filing Importer Questionnaire responses and submissions;
  - 1. King Kaveri Trading Company
  - 2. H.D. Trailers Pvt. Ltd.
- x. Also, following importers/users responded to the Authority by making submissions/writing letters but did not file any Importer Questionnaire Responses as applicable;
  - 1. Satrac Engineering Private Limited
  - 2. Safetech Trailer Parts LLP
  - 3. Synergic Trailer and Auto Solutions Pvt. Ltd
  - 4. Shivam Motors Pvt. Ltd.
  - 5. Black Diamond Motors Pvt. Ltd.
  - 6. Vandana Trailors & Body MFG (P) Ltd
  - 7. MS Trailer Parts LLP
- xi. The Authority made available non-confidential version of the evidences presented by various interested parties in the form of a public file kept open for inspection by the interested parties.
- xii. Fair cost of production and cost to make & sell the subject goods in India based on the information furnished by the applicant on the basis of Generally Accepted Accounting Principles (GAAP) was worked out so as to ascertain if anti-dumping duty lower than the dumping margin would be sufficient to remove injury to domestic industry or not.
- xiii. Information provided by 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 was directed to provide sufficient non confidential version of the information filed on confidential basis.
- xiv. On site verification of the information provided by the domestic industry and exporters to the extent necessary were conducted at the premises of such parties who have provided the information. Only such verified information with necessary rectification, wherever applicable, is relied upon for the final findings.

xv. The Authority has considered 1<sup>st</sup> April, 2014 to 30<sup>th</sup> June 2015 (15 months) as the POI so as to undertake analysis on the most recent data. Thus, investigation was carried out for the period starting from 1st April 2014 to 30th June 2015 (POI). The examination of trends, in the context of injury analysis, however, covered the periods Apr'11-Mar'12 Apr'12-Mar'13, Apr'13-Mar'14 and the period of investigation.

xvi. Import information as per secondary sources (IBIS) has been provided in the application by the applicant. Imports as per IBIS to gauge the country wise volume and value of imports of given PUC into India in various AD investigations have been relied upon by the Authority in many past investigations also. The Authority has relied upon the import data as per IBIS provided by the applicant for this final findings. However, the data was appropriately correlated with the DGCI&S data and it was noted that there was no trend deviation.

xvii. The Authority held a public hearing on 5<sup>th</sup> May, 2016 to hear the interested parties orally, which was attended by the interested parties/representatives. The interested parties were asked to file written submissions and rejoinders, if any.

xviii. The arguments made in the written submissions/rejoinders received from interested parties have been considered, wherever found relevant, in this final findings.

xix. In accordance with the Rule 16 of the AD Rules, the essential facts considered by the Authority were disclosed to the known interested parties and comments received on the same have been duly considered, wherever found relevant, in this final findings.

xx. Wherever an interested party has refused access to, or has otherwise not provided necessary information during the course of the present investigation, or has significantly impeded the investigation, the Authority has considered such parties as non-cooperative and recorded the present final findings on the basis of the facts available.

xxi. \*\*\*In this final findings represents information furnished by an interested party on confidential basis, and so considered by the Authority under the Rules.

xxii. Exchange rate for conversion of US\$ to Rupees considered for the POI is Rs 62.13 per 1 US\$ as per customs data.

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

### **C.1 Submissions made by the domestic industry**

5. The product under consideration in the present investigation is 'Axe for Trailers' originating in or exported from China PR.
6. An 'Axe for Trailer' is essentially an assemblage of a beam/bar and other components such as brake drum, brake shoes, bearings etc which connects two wheels of a Trailer and renders the functions as an axle for the Trailer.
7. The subject goods are manufactured and sold in different variants. However, the basic product characteristics and end use of all these variants remains the same and all such types of Trailer Axles is covered in the scope of the PUC since these variants constitute a homogenous PUC with comparable basic characteristics and similar functions/uses.
8. Product under consideration is a vehicle (Trailer) part and accessory, falling under Chapter 87 of the Customs Tariff Act, 1975 and further classified under custom sub-heading no. 87169010. Since the subheading is not a dedicated classification, the applicant has submitted that the customs classification is indicative only and in no way, binding upon the product scope. However, Axles for vehicles other than the Trailers are excluded from the scope of PUC. It has also been submitted by the applicant that the Axles can be broadly categorised into Drive or Live Axles and Dead or Dummy Axles. PUC falls under the Dead or Dummy Axles category and Drive or Live Axles are outside the purview of the present investigation.
9. The subject goods, which are being dumped into India, are identical to the domestic like product produced by the domestic industry. There is no known difference in applicant's product and subject goods exported from the subject country and are comparable in terms of characteristics such as physical & chemical characteristics, manufacturing process & technology, functions & uses, product specifications, pricing, distribution & marketing and tariff classification of the goods and there is no significant difference in the subject goods produced by the applicant and those exported from the subject country and both are technically and commercially substitutable.

### **C.2Submissions made by Exporters, Importers, Users and other Interested Parties**

10. The Respondent submits that there are material differences in quality of the axles sold by the Respondents and the one produced by the domestic producers. In particular, the axle of the Respondent is a unique one-piece produced by FUWA Engineering Group Ltd. (which has 80% market share in China PR as per Market intelligence) using One-Piece Beam with Hot Forming Spindles Technology as opposed the welding of four (4) individual parts by the domestic industry. The latter is weak/ not stable and market intelligence suggests that it has succumbed to daily usage. Besides this, the axles sold by the Respondents also have advantages in relation to suspension functions and maintenance costs. Market intelligence suggests that there is huge customer dissatisfaction in relation to the Axles produced by the domestic industry.
11. One of the responding interested parties disputed the scope and description of the product under consideration saying there are two types of Axles i.e. live or drive axles and dead or dummy axles and PUC is only dead or dummy axles and to this extent the initiation notification has exceeded the powers conferred and is void to that extent. It has been submitted by KKTC also in its rejoinder submission that the scope of PUC and like article may be decided by the Authority based on the merits of the case.

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

12. The Authority notes that the product under consideration in the present investigation is 'Axe for Trailers' originating in or exported from China PR. The Authority also noted that the subject goods are manufactured and sold in different variants. However, the basic product characteristics and end use of all these variants remains the same and all such types of Trailer Axles are covered in the scope of the PUC. It has been observed that all such variants essentially constitute a homogenous product under consideration with comparable basic characteristics and similar functions/uses.
13. The Authority also notes that the product under consideration is a vehicle part and accessory, falling under Chapter 87 of the Customs Tariff Act, 1975 and further classified under custom sub-heading no. 87169010. However, since the subheading is not a dedicated classification, the customs classification is indicative only and not binding on the product scope determined for this investigation.
14. With regard to objection on the scope and description of the product under consideration the Authority notes that the initiation notification defined the PUC unambiguously as 'Axe for Trailers' and Axles for vehicles other than trailers

are excluded from the scope of PUC and all other submission made by the applicant and other interested parties have also been examined.

15. Rule 2(d) of the AD Rules defines like article as follows:

*"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 the characteristics closely resembling those of the articles under investigation".*

16. The Authority has examined the claims and notes that there is no known difference in subject goods produced by the domestic industry and exported from subject country. The subject goods produced by the domestic industry and that imported from subject country are comparable in terms of characteristics such as physical & chemical characteristics, manufacturing process & technology, functions & uses, product specifications, pricing, distribution & marketing and tariff classification of the goods. The two are technically and commercially substitutable. The consumers are using the two interchangeably. In view of the above, the subject goods produced by the applicant are being treated as domestic like article to the product under consideration imported from subject country in accordance with Rule 2 (d) *supra* of the anti-dumping Rules.

#### **D. SCOPE OF DOMESTIC INDUSTRY AND STANDING**

##### **D.1 Submissions made by Exporters, Importers, Users and other Interested Parties**

Various submissions made by the exporters/importers/users/other interested parties with regard to domestic industry and standing considered relevant by the Authority are examined and addressed as follows:

- i. The claim of total Indian production of subject goods by the applicant does not appear to be correct.
- ii. There is substantial replacement market even exceeding the new vehicle segment for the product and there are small scale producers operating from places like Ludhiana and production for such market and producers is not been considered.

- iii. TATA Group has imported and also indigenously procured raw materials which are nothing but third party imports under TATA brand. The Authority may check whether such indigenous procurement is actually made in India or not.
- iv. The group company of the applicant i.e TATA Motors must have participated in the application.
- v. The estimated figures of Indian production have not been provided.
- vi. The Petitioner has not explained how the Petitioner has arrived at the estimates and it is not possible to understand how the Petitioner has arrived at estimates of Indian production (Estimated production by other Indian producers) based on the requirement of sales of axles as provided in their written submission.
- vii. The demand in India is incorrectly shown in the Petition. As per the data obtained by “SIAM”, the number of axles and their quantity (in MT) required in India has been calculated for the financial years 2012-2013, 2013-2014 and 2014-2015 which is as follows;

| Particulars                          | Unit | 2012-13 | 2013-14 | POI<br>Annualised |
|--------------------------------------|------|---------|---------|-------------------|
| Demand – as stated in the Petition   | MT   | 13,892  | 8,762   | 16,639            |
| Demand - Calculated as per SIAM Data | MT   | 18,593  | 13,109  | 27,644            |

- viii. There is gross discrepancy in the demand and the figures provided by the Petitioner are incorrect and without any evidentiary support. It must also be noted that there are producers of trucks who are not part of SIAM and their data is not included. This suggests that the demand is much higher than what is represented.
- ix. In light of the under-reporting of the total production figures, the share of the Petitioner in the domestic produce becomes further suspicious. This is highlighted by the fact that the share of production is merely 47

% in the POI even if one assumes that sales of prime movers can be used to calculate the production of axles. The same can be verified from the Table below:

| Particulars  | Unit |         |
|--|------|---------|
| Demand of axles<br>(determined based on the sales of the prime movers) | MT   | 27, 644 |
| Imports  | MT   | 6,600   |
| Production in India<br>(Demand – Imports)                              | MT   | 21,044  |
| Production of the Domestic Industry (as given in the Petition)         | MT   | 9,959   |
| Share in the domestic production (Production of DI/                    | MT   | 47.3%   |

- x. The Petition is supported by Automotive Axles Ltd. However, it must be noted that the supporting company is not a regular producer of Axles and produces axles only when a demand is raised.
- xi. Support by Automotive Axles Ltd is suspicious.
- xii. It is suspected that the Petitioner's output may not be a major proportion of the total domestic production.
- xiii. The Statutory Order relied on by the Petitioner is not helpful – it does not provide the number of axles required in trailers but specifies Maximum Safe Axle Weight based on the kind of vehicles that existed in 1996. The market realities were different 5 years ago where single axle trailers were popular and double axle trailers were predominantly used in all trailers.
- xiv. It must be noted that single axle trailers are being rarely used; and, if used, are not being used on public roads at all. Even if one is to assume that 10% of trailers attached to prime movers have a single axle, the estimate that 80% use 2 axles is completely contrary to market realities.

- xv. The estimate of the Petitioner that 10% of prime movers use 1 axle in the trailer, 80% use 2 and the remaining 10% use 3 is incorrect. Consequently, the total axle requirement i.e. 57,472 which has been arrived at by the Petitioner is incorrect.
- xvi. The assumption that the sales of the prime movers can be used to estimate the production will lead to a severe under-representation of the production figures as it does not account for Un-sold axles are not taken into account, Axles produced for replacement market are not taken into account, and SIAM does not include many producers of prime movers.

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

- 17. Various submissions made by the domestic industry with regard to domestic industry and standing and considered relevant by the Authority are examined and addressed as follows:
  - i. The application has been filed by M/s YORK Transport Equipment (India) Pvt. Ltd on behalf of domestic industry. M/s York Transport Equipment (India) Pvt. Ltd. is the largest Indian manufacturer of the subject goods. The application has been supported by Automotive Axles Ltd. The production of the applicant companies constitutes “a major proportion” in the domestic production. The Authority, therefore, may treat applicant companies constitute eligible domestic industry within the meaning of Rule 2 (b) of the Anti-Dumping Rules.
  - ii. Apart from the applicant and the supporting company, following companies are also involved in the production of subject goods, either for market or for captive consumption. The other producers have neither supported nor opposed the present investigation as per our knowledge;
    - a) TATA Motors Ltd
    - b) Ashok Leyland Ltd
    - c) JOST India Auto Component Pvt. Ltd.
    - d) G.S. Auto International Ltd.
  - iii. The information provided would show that the applicant is the largest producer of the subject goods in India and commands a major proportion in the total Indian production and fulfils the standing thresholds. While the injury information is based on the applicant alone,

another Indian producer namely M/s Automotive Axles Ltd has supported the application/petition.

- iv. Certain opposing interested parties have raised some counter claims so as to dispute the submissions of the domestic industry on standing and its eligibility as the domestic industry. However, the Authority may note that such rival submissions are not factually correct and are based on an inflated estimation of total Indian production of subject goods which is not correct in view of the real picture of Indian production of subject goods.
- v. The opposing interested party i.e. KKTC has premised their argument on a factual misinterpretation of certain data published by SIAM with regard to production of prime movers in India requiring subject goods in terms of tonnage of such trailers which can be broadly divided into trailers of 35 Ton and 40 Ton and above. KKTC in their submissions has considered the data precisely as follows;

| <b>Particular</b>                             | Nos of prime movers based on SIAM as per KKTC |
|---|---|
|   | 2014-15                                       |
| <b>35 ton</b>                                 |   |
| Ashok Leyland                                 | 1,937   |
| AMW Motors                                    | 1   |
| Eicher  | 61  |
| Mahindra & Mahindra                           | 74  |
| Tata Motors                                   | 3,292   |
| Total Prime mover all requiring Trailer Axles | <b>5,365</b>                                  |
| <b>40 ton and above</b>                       |   |
| Ashok Leyland                                 | 8,044   |
| AMW Motors                                    | 113   |
| Eicher Volvo                                  | 316   |
| Mahindra & Mahindra                           | 402   |
| Tata Motors                                   | 13,916  |
| Total Prime mover all requiring Trailer Axles | <b>22,791</b>                                 |

|  |               |
|--|---------------|
| <b>Total Axle requirement based on production of Prime movers as per KKTC Total =<br/>(5365*2+22791*3)</b> | <b>79,103</b> |
|--|---------------|

- vi. The Indian production data as per KKTC's submissions shows that KKTC has presumed that all 35 Ton prime movers have invariably 2 axles fitted in the trailers attached to it and all 40 Ton and above have 3 axles fitted in the trailers attached to it and they have derived the requirement of axles based on such presumption which is not the reality. KKTC multiplied 5365 numbers of Prime Movers with number of axles at 2 and 22791 Prime Movers with number of axles at 3 to reach to a total requirement of 79103 axles during 2014-15. In a way, KKTC claimed that single axles are not at all used in trailers of 35 Ton and above which is not correct.
- vii. We dispute and deny the highly presumptuous estimations of KKTC to exaggerate the production figures to suit their argument and on the contrary we wish to reproduce the below data for the consideration of the Authority which is based on facts and realities of the market vis-à-vis how the subject goods are produced and sold in India. There are broadly three aspects which have been conveniently forgotten by KKTC while deriving the very high number of axle requirements as above to dispute the standing of the applicant which is discussed herein below.
- viii. The claim of KKTC amounts to a submission that no trailers of 35 Ton and above uses single axle in it. This is evident from certain snippets of trailers provided to show that there are trailers using single axle though the tonnage is 35 and above. This it-self shows that the argument of KKTC is incorrect and the Indian production calculation of KKTC is untenable. Also, single axles can also be used in a wide range of tonnages including 40 and above etc.
- ix. Another impurity in the claim of KKTC is that they have claimed trailers of 40 tonnage and above invariably use 3 axles and it is even claimed that there is a statutory requirement to use 3 axles mandatorily for 40 tonnage and above. In this regard, the applicant places its reliance on the notification S.O.728 (E), dated 18.10.1996 notified by Ministry Of Road Transport And Highways concerning Specification of Maximum Gross Vehicle Weight and the Maximum Safe Axle Weight. This notification clearly shows the presumption adopted by KKTC that above 40 Ton trailer invariably requires 3 axles is an incorrect argument. There can be 2 axles in trailers above 40 Ton weight and so on and so forth as per the said notification and that is the market reality too. Two

axles are also widely used in 40 Ton and above trailers. On this basis also, the calculation of KKTC deriving huge requirements of subject goods is untenable.

- x. A third point which was not considered by KKTC is that the conversion of number of prime movers directly into new axle requirement is not correct since some prime movers market is captured by used axles and used railway axles and the evidences of the same is also provided to the Authority. In totality, the axle number derived by KKTC is not as per the facts and reality and cannot be based upon for a fact finding exercise by the Authority as the same is highly distorted and self-serving. Thus, the applicant denies the numbers of total requirement of Trailer Axles as put forward by KKTC since the same is not in sync with the reality.
- xi. The applicant has also pursued the SIAM data available in detail for the period 2014-15 and 1st Qtr of 2015-16 concerning production of Prime Movers so as to estimate the Axle requirements in the Trailers supposed to be connected with such Prime Movers to first estimate the requirement of subject goods and based on which total Indian production of subject goods during the POI;

| Particular*                                   | Prime Mover Production (As per SIAM Data) |               |               |
|---|---|---------------|---------------|
|   | 2014-15                                   | Q1 15-16      | POI           |
| <b>35 ton</b>                                 |   |               |               |
| Ashok Leyland                                 | 1,937                                     | 592           | 2,529         |
| AMW Motors                                    | 1   | 6             | 7             |
| Eicher  | 60  | 14            | 74            |
| Mahindra & Mahindra                           | 72  | 17            | 89            |
| Tata Motors                                   | 3,292                                     | 699           | 3,991         |
| Total Prime mover all requiring Trailer Axles | <b>5,362</b>                              | <b>1,328</b>  | <b>6,690</b>  |
| <b>40 ton and above</b>                       |   |               |               |
| Ashok Leyland                                 | 2,663                                     | 661           | 3,324         |
| AMW Motors                                    | 108                                       | 10            | 118           |
| Eicher Volvo                                  | 267                                       | 99            | 366           |
| Mahindra & Mahindra                           | 402                                       | 177           | 579           |
| Tata Motors                                   | 13,916                                    | 3,743         | 17,659        |
| Total Prime mover all requiring Trailer Axles | <b>17,356</b>                             | <b>4,690</b>  | <b>22,046</b> |
| <b>Total Axle requirement</b>                 | <b>45,436</b>                             | <b>12,036</b> | <b>57,472</b> |

|  |  |  |  |
|--|--|--|--|
| <b>based on production<br/>of Prime movers as<br/>per SIAM Total =<br/>(10%*1+80%*2+10%*3)</b> |  |  |  |
|--|--|--|--|

xii. It is our reasonable estimate that 10% of the prime movers have been having single axle trailer connected to it, 80% of the prime movers were having 2 axle trailers and another 10% required 3 axle trailers across the 30 Ton and above 40 Ton category. The table above on that basis shows the requirement of Axles at about 57,472 pieces in the POI.

xiii. The total Indian production derived in terms of numbers and the share of the applicant is provided in the table below which shows the share of YORK in the total Indian production has been 63.20% which clearly shows YORK fulfilled the standing requirements as stipulated in the AD rule and production by YORK constitutes a major proportion in the total Indian production. It may also be noted that some part of such requirement have been in fact fulfilled by used and used railway axles which is not figured in our calculation also and inclusion of the same would further reduce the number of total new axle requirement during the POI. Taking such axles also into consideration will make the share of York even higher in the total estimated Indian production of subject goods.

| <b>Particular</b>                              | <b>Requirement of Axles as per<br/>Prime Movers data by SIAM- Qty<br/>in Nos</b> |                 |               |
|--|--|-----------------|---------------|
|  | <b>2014-15</b>   | <b>Q1 15-16</b> | <b>POI</b>    |
| Axle Requirement                               | 45,436   | 12,036          | 57,472        |
| Imports From All countries                     | 17,918   | 5,157           | 23,075        |
| Axles Sold By Indian Producers                 | 27,518   | 6,879           | 34,397        |
| Petitioner's Domestic Sales                    | 14,834   | 3,846           | 18,680        |
| Estimated Sales by other Indian Producers      | 12,684   | 3,033           | 15,717        |
| Estimated Production by other Indian Producers | 13,352   | 3,193           | 16,544        |
| Production by York                             | 22834  | 5584            | 28,418        |
| Total Indian Production                        |  |                 | 44,962        |
| <b>Share of YORK</b>                           |  |                 | <b>63.20</b>  |
| <b>Share of YORK along</b>                     |  |                 | <b>69.60%</b> |

xiv. The applicant has provided the details of all known producers of the subject goods in India and a reasonable methodology was adopted to gauge the total production of subject goods in India during the POI, thus, there are adequate evidences available to test the accuracy of claims of standing by the applicant. All bonafide efforts are taken by the applicant to bring on record the factual position of its standing before the Authority. Notwithstanding this, the Authority may write to all the other Indian producers and ask them to disclose the actual production of subject goods by them during the POI. Also, as an alternative option, the Authority may write to the concerned Excise department to provide the details of production of subject goods by such other companies during the POI. In the absence of actual information of production by such producers and their cooperation, the claims made by the applicant should be considered as correct and reliable and all the arguments by the opposing parties in this regard should be rejected.

xv. An argument has been raised by the interested parties that TATA Motors Ltd is a 'related party' of the applicant and should have participated in the present investigation. However, the contention has no legal or factual tenability. The Annual Reports of TATA Motors Ltd is available in the public domain and also that of the applicant. The annual reports would clearly show that both the companies are separate legal entities under different holding companies and does not fall into the ambit of 'related party' as coined by the interested parties wherein YORK exercises some power to ask TATA Motors to participate in the present investigation. As far as YORK is concerned TATA Motors or any other producer are open to either support the petition or oppose it and YORK doesn't have any say on any of their decisions. YORK fulfils the requirements of Rule 2 (b) and discussion on participation or non- participation of TATA Motors have no consequences under the rule governing constitution of domestic industry. The rule provides in essence for express support of producers having not less than 25% of the total production and with support more than 50 % of the total production of the like article [ Rule (5) (3) (a) and (b) read with explanation]. In the present case, YORK alone has more than 63% share in the total Indian production.

xvi. Based on the facts as available, it is reiterated and submitted that M/s YORK Transport Equipment (India) Pvt. Ltd have the required standing and should be treated as the 'domestic industry' for the purpose of present investigation and the relevant findings.

xvii. With regard to the claim of opposing parties that the claim of total Indian production of subject goods by the applicant does not appear to be correct and there is substantial replacement market even exceeding the new vehicle segment for the product and there are small scale producers operating from places like Ludhiana and production for such market and producers is not been considered it is submitted that the contentions are incorrect. The PUC does not have any significant replacement market because the life of an Axle is equal to that of a Trailer or more. Also, there is no quantified information about small producers running some production provided by the opposing party and such conjectures have no evidentiary value.

xviii. With regard to the contention that TATA Group has imported and also indigenously procured raw materials which are nothing but third party imports under TATA brand and the Authority may check whether such indigenous procurement is actually made in India or not, it is submitted that the contention has no relevance since the applicant is a separate legal entity and is not a related party.

xix. With regard to the contention that the group company of the applicant i.e TATA Motors must have participated in the application, it is submitted that the applicant fulfils the standing requirement under AD rule and in any case TATA Motors Ltd is not a related entity within the eyes of the law.

xx. With regard to the contention that the estimated figures of Indian production have not been provided and the Petitioner has not explained how the Petitioner has arrived at the estimates and even if production of Prime Movers is to be taken as the basis to gauge production of subject goods then also the share of applicant is about 47% only, it is submitted that the opposing parties admits that the applicant alone holds about 47%. The information held as confidential is as permissible under that rule and justification for such claims is provided in the application.

xxi. With regard to the contention that the Petition is supported by Automotive Axles Ltd, however, it must be noted that the supporting company is not a regular producer of Axles and produces axles only when a demand is raised and Support by Automotive Axles Ltd is suspicious, it is submitted that the claims are baseless. There is an express support letter provided by Automotive Axles Ltd. Also, there is no factual or legal basis in the claim that Automotive Axles Ltd is not a regular producer.

xxii. With regard to the contention that it is suspected that the Petitioner's output may not be a major proportion of the total domestic production, it is submitted that such suspicions are out of place since the evidences shows the applicant holds majority in the Indian production. In fact, it is admitted by the opposing parties that York is the largest producer of subject goods in India.

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

18. Rule 2 (b) of the AD rules defines domestic industry as under;

*"(2) (b) "domestic industry" means the domestic producers as a whole engaged in the manufacture of the like article and any activity connected therewith or those whose collective output of the said article constitutes a major proportion of the total domestic production of that article except when such producers are related to the exporters or importers of the alleged dumped article or are themselves importers thereof in such case the term 'domestic industry' may be construed as referring to the rest of the producers"*

19. It is noted that the application based on which the present anti-dumping investigation is initiated has been filed by M/s York Transport Equipment (India) Pvt Ltd on behalf of the "domestic industry" concerning the subject goods in India. It is found that the applicant M/s York Transport Equipment (India) Pvt. Ltd is the largest Indian manufacturer of the subject goods. Also, M/s Automotive Axles Ltd has expressly supported the application.

20. Apart from the applicant producer and the supporting producer as above, the applicant identified following companies as producers of subject goods in India either for captive purposes or for the merchant market.

- a) TATA Motors Ltd.
- b) Ashok Leyland Ltd.
- c) JOST India Auto Component Pvt. Ltd.
- d) G.S. Auto International Ltd.

21. The Authority notes that none of the other producers above have responded to the investigation. Hence these companies neither support nor oppose the application. The explanation to Rule 5 states that "For the purpose of this rule the application shall be deemed to have been made by or on behalf of the domestic industry, if it is supported by those domestic producers whose collective output constitute more than fifty per cent of the total production of the like article produced by that portion of the domestic industry expressing either support for or opposition, as the case may be, to the application." In the present

case support to application constitutes a major proportion of the total production of the like article produced by that portion of the domestic industry expressing either support for or opposition.

22. It has also been observed that the information about total Indian production is not readily available in the public domain and the applicant has devised a methodology to estimate the total Indian production and the share of the applicant alone and with the supporter in such estimated total Indian production. It has relied upon production data of Prime Movers to which Trailers are attached wherein the subject goods are used which is published by the Society of Indian Automobile Manufacturers (SIAM) as a basis to derive the requirement of subject goods in India and to back calculate the probable domestic production in India. SIAM data has been made available for the entire POI. Out of the total number of production of prime movers reported by SIAM, the applicant has considered about 10% as having requirement of 1 Axle in it and considered 80% as requiring 2 Axles and the remaining 10% having a requirement of 3 Axles. The number of Prime Movers considered for the POI involved various types of Trailers such as 35 Ton, 40 Ton etc. The data below on the basis as provided herein above shows the following position vis-à-vis share of the applicant alone and also along with the supporter in the total Indian production. The below table is self-explanatory as to the basis of such estimation;

| Particular   | Requirement of Axles as per Prime Movers data published by SIAM and as claimed by the applicant- Qty in Nos |          |        |
|--|---|----------|--------|
|  | 2014-15   | Q1 15-16 | POI    |
| <b>Axle Requirement (A) (Prime Movers production into 10%*1+80%*2+10%*3 as explained herein above)</b> | 45,436  | 12,036   | 57,472 |
| Imports From All countries (B)   | 17,918  | 5,157    | 23,075 |
| Axles Sold By Indian Producers (A-B)   | 27,518  | 6,879    | 34,397 |
| Petitioner's Domestic Sales  | 14,834  | 3,846    | 18,680 |
| Estimated Sales by other Indian Producers  | 12,684  | 3,033    | 15,717 |

|  |        |       |        |
|--|--------|-------|--------|
| Estimated Production by other Indian Producers | 13,352 | 3,193 | 16,544 |
| Production by York                             | 22834  | 5584  | 28,418 |
| Total Indian Production                        |        |       | 44,962 |
| Share of YORK                                  |        |       | 63.20  |
| Share of YORK along with supporter             |        |       | 69.60% |

23. The above information shows that the applicant alone constitutes 63.20% of the total Indian production and along with the supporter the share is about 69.60%. Since the production of the applicant accounts for “a major proportion” in the total production of the subject goods in India on such basis as evident from detailed examination, the Authority finds that the applicant satisfies the standing criteria and constitutes domestic Industry within the meaning of Rule 2(b) of the AD Rules.

24. Even if the estimates as given by the responding parties are taken as the basis, the applicant is the largest producer of subject goods in India and the applicant alone constitutes about 47% share. Thus the production of the petitioner along with the support of automotive axle exceeds 50% of the total Indian production. Moreover, the Authority has not received any response by such other known producers. Hence these companies neither support nor oppose the application. Thus in the present case support to application constitutes the major portion of the total production of the like article produced by that portion of the domestic industry expressing either support for or opposition. In this scenario, it is noted that there are no evidences available on record to reject the submissions of the domestic industry vis-à-vis their share in the total Indian production.

25. With regard to the argument that there is substantial replacement market even exceeding the new vehicle segment for the product and there are small scale producers operating from places like Ludhiana and production for such market and producers is not been considered, it is noted that the claims are unsubstantiated and no evidence to substantiate such claims are provided. It is also noted that the applicants submitted that there is not any significant replacement market for the subject goods. There is also evidence of preference and utilisation of old axle in the manufacturing of Trailers by some of the trailer manufacturers indicating life of axle is higher than the trailer and hence the contention of the respondent interested parties is rejected.

26. With regard to the contention that TATA Group has imported and also indigenously procured raw materials which are nothing but third party imports under TATA brand and the Authority may check whether such indigenous procurement is actually made in India or not, such contentions are not supported by any pursuable evidences.

27. With regard to the contention that the group company of the applicant i.e TATA Motors must have participated in the application, it is noted that M/s York Transport Equipment (India) Pvt Ltd along with the supporter is found to be the domestic industry in the present investigation as per Rule 2 (b) and the rule does not mandate anything as submitted by the other interested parties other than requirements of rule 2(b). It is also noted that the applicant has submitted that TATA Motors Ltd is a different legal entity and not a related party as envisaged in the rules in any case and the applicant satisfies the requirement of standing. On examination of the share holding pattern of the company it was observed and found that the company York Transport Equipment(India) Pvt Ltd. is held by York Transport Equipment(Asia) Pte. Ltd, Singapore which in turn is held by TRF Singapore Pte. Ltd, Singapore. TRF Ltd, India is the holding company of TRF Singapore Pte. Ltd, Singapore. The shares of TRF Ltd, India are mainly held as follows: 34.29% by Tata Steel Ltd and 0.02% by Tata Industries Limited i.e. promoter and promoter group and the rest is public shareholding. The common shareholding promoter between Tata Motors Ltd and TRF Ltd, India are Tata Steel Ltd and Tata Industries Limited and they respectively hold 2.90% and 2.50% of shares in the Tata Motors Limited. Hence it is wrong to presume Tata Motors Ltd. and York Transport Equipment (India) Pvt Ltd. are related companies as per Rule 2 (b) of the Anti-Dumping rules.

28. However, it is found that TATA International DLT Private Limited and York Transport Equipment(India) Pvt Ltd. are related companies and they have some common Directors. It is also noted that TATA International DLT Private Limited has given declaration that they have not imported the subject goods from subject country. Also TATA International DLT Private Limited is not involved in the production of the subject goods. Hence M/s York Transport Equipment (India) Pvt Ltd along with the supporter is found to be the domestic industry in the present case and there is a declaration provided by the applicant that they have not imported the subject goods from subject goods directly or through any related party per Rule 2 (b) of the Anti-Dumping rules.

29. With regard to the contention that the estimated figures of Indian production have not been provided, the Authority notes that information about total Indian production has been estimated by adding 5% inventory to the sales of other Indian producers. The sales figure of other Indian producers is taken as the

difference between total Indian demand minus import of subject goods and domestic sales of the Domestic Industry.

30. With regard to the contention that the Petitioner has not explained how the Petitioner has arrived at the estimates, the Authority notes that the petition and subsequent submissions by the domestic industry is self-explanatory on this aspect.
31. With regard to the contention that even if production of Prime Movers is to be taken as the basis to gauge production of subject goods then also the share of applicant is about 47% only, the Authority notes that this submission of other interested parties shows that the claims of domestic industry along with the support of automotive axle exceeds 50% of the domestic production and the details of claims of the domestic industry are already provided and discussed herein above.
32. With regard to the contention that the Petition is supported by Automotive Axles Ltd and it must be noted that the supporting company is not a regular producer of Axles and produces axles only when a demand is raised, the Authority notes that M/s York Transport Equipment (India) Pvt Ltd along with the supporter is found to be the domestic industry in the present investigation as per Rule 2 (b). It is also noted that PUC is normally produced against orders and the interested parties has not provided any evidence as to why M/s Automotive Axles Ltd should not be considered as regular producer of subject goods.
33. With regard to the contention that support by Automotive Axles Ltd is suspicious, it is noted that such contentions are unsubstantiated since a support letter from the supporting company is available on record of the Authority.
34. With regard to the contention that it is suspected that the Petitioner's output may not be a major proportion of the total domestic production, it is noted that such conjectures have no evidentiary value in Anti-Dumping investigations and the facts as above shows that the application fulfils the requirement of standing.

## **E. CONFIDENTIALITY**

### **E.1 Submissions made by Exporters, Importers, Users and other Interested Parties**

35. Certain submissions made by the producers/exporters/importers/other interested parties with regard to confidentiality and disclosure of information considered relevant by the Authority are as follows:

- i. Petitioner has indulged in excessive confidentiality in the Petition, which is in violation of Article 6.5 of the WTO ADA and Rule 7(2) of the AD Rules.
- ii. Parameters prescribed in Proforma IVA have been either kept confidential, sketchy or not provided at all, not even in indexed form and such information is critical in analysing causal link as well as ascertaining whether the domestic industry has suffered any injury.
- iii. The annual reports of the petitioning companies are readily available on Ministry of Corporate Affairs (“MCA”) website on the payment of a nominal cost. The same have not been provided. In the absence of such data, the Respondent cannot effectively rebut the allegations of injury to the Petitioning Companies.
- iv. The details in the letters of support by Automotive Axles Ltd. have been redacted and the details have not even been provided in an indexed form when similar details have been provided for the Petitioning companies.

#### **E.2 Submissions made by Domestic industry**

36. Certain submissions made by the domestic industry with regard to confidentiality and disclosure of information and considered relevant by the Authority are as follows:

- i. Excessive Confidentiality in submissions was adopted by opposing parties. Even though we are not sure which is the correct IQR by KKTC, both the IQRs on record as well as the preliminary injury submission filed by the company suffers from excessive use of confidentiality without any justification.
- ii. The petitioner has disclosed all the volume information in its petition and a meaningful summary were provided wherever applicable. But KKTC has not provided the actual details of import volume and not even a summary on their import prices were provided. Thus, KKTC has resorted to make baseless allegations of excessive confidentiality on the petitioner when the fact of the matter is that KKTC has not disclosed even the rudimentary information to the petitioner.
- iii. KKTC disclosed some information in their first set of IQR and the same was treated confidential in the second set of IQR. This shows the hollowness of confidentiality argument by KKTC. KKTC should disclose

actual information about their imports so that meaningful rebuttals can be provided by us. Thus, it is submitted that KKTC has resorted to excessive confidentiality depriving the petitioner from offering meaningful comments which is completely against the confidentiality provisions provided in the AD Rules.

- iv. KKTC has kept considerable information confidential without providing any justifiable reasons. This is not permissible under the Rules as can be seen from the provisions above. Certain instances of information which has been withheld under the garb of confidentiality are as follows:
  - a. Information on total volume of imports from subject country
  - b. Average price of imports from subject country
  - c. Holding Company details
  - d. Volume information on utilization of product imported
  - e. P&L account not provided, not even the Registrar of Companies version of P/L is provided etc.
  - f. Information on alleged imports of axle/central beam by the petitioner as per Annexure 1 of preliminary injury submission restricting us to provide any meaningful comments to such baseless allegations
  - g. Annexure 3 and 3A is also nothing but some price comparison which is also held confidential restricting our rights to offer meaningful rebuttals
- v. We submit that the above list of information, though not complete, show some information which should not have been held as confidential by KKTC. While the rules require the parties providing information on a confidential basis to furnish non-confidential summary thereof, KKTC has resorted to a methodology convenient to them and literally restricted the petitioner from gauging the factual position with regard dumped imports made by them. Excessive confidentiality adopted by KKTC also contravenes the findings of the Appellate Body in European Communities-Anti-Dumping Measures on certain Iron or Steel Fasteners from China (WT/DS 397/AB/R dated 15th July, 2011) wherein the Appellate Body has interpreted Articles 6.5 and 6.5.1 of the Anti-dumping Agreement concerning confidentiality.
- vi. Excessive confidentialities were adopted by the participating exporters also and no appropriate summary of information held confidential in EQ Response and MET Response has been provided to the applicant. Very basic information such as complete legal form of the company,

shareholders name, name of the related parties involved in the PUC, contact details etc are all kept confidential that too when the company is claiming MET status. This is impermissible.

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

37. Various submissions made by the interested parties with regard to confidentiality/disclosure of information and considered relevant by the Authority are examined and addressed as follows:
38. With regard to confidentiality of information Rule 7 of Anti-Dumping 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 authorise its disclosure in a generalized or summary form, it may disregard such information.*

39. 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 was directed to provide sufficient non confidential version of the information filed on confidential basis. The Authority

made available the non-confidential version of the evidences submitted by various interested parties in the form of public file.

40. With regard to a contention that annual reports of the petitioning companies are readily available on Ministry of Corporate Affairs (“MCA”) website on the payment of a nominal cost and the same have not been provided and in the absence of such data, the Respondents cannot effectively rebut the allegations of injury to the Petitioning Companies, the Authority notes that the Annual Reports of the applicant are available in the public file and the same is also available on the website of the applicant as provided in the application. Thus, the contention has no merit.

## **F. MISCELLANEOUS ISSUES**

### **F.1 Submissions made by Exporters, Importers, Users and other Interested Parties**

41. Certain miscellaneous submissions made by the producers/exporters/importers/other interested parties considered relevant by the Authority are as follows:

- i. Any AD investigation can be initiated upon the Designated Authority satisfying himself of the existence of sufficient evidence as per Rule 5 (3) (b) of the AD Rules. However, in the present case the applicant did not establish any ground to initiate the investigation and there are serious deficiencies in the petition which has handicapped the opposing parties from making their submissions.
- ii. In the updated petition, only the Annexure have been updated. There is no change in the figures and the analysis in relation to injury parameters.
- iii. No clarity as to how the IBIS transaction-wise raw import data provided by the Petitioner is being used. The Petitioner should provide the IBIS transaction-wise raw import data as well as sorted import data to the Respondent in MS-Excel format. The Authority is also requested to direct the Petitioner to provide an explanation as to how it has sorted import data from the raw import data as it is vital to analyse the trend of the imports of the subject product into India during the POI and the injury analysis period.
- iv. Petitioner has mentioned that whenever the unit in terms of kilograms (KG) is not available in the import data, the Petitioner has converted the same into equivalents of weight using standard weight of the PUC.

However, there is no mention of what the standard weight is and how the same has been arrived at.

- v. There are gross mis-declarations/suppressions in the Petition. The Petitioner has stated central or axle beam constitutes the significant part of the subject goods and no such product has been purchased or even imported to complement the product line. However, this information is not correct. On a number of occasions, the Petitioner has imported the central/axle beam from China PR. The same is clearly evidenced by the import records obtained from a reliable source.
- vi. York Transport Equipment (India) Pvt. Ltd., a TATA enterprise has two related companies in India namely Tata Motors Ltd and Tata International Pvt., Ltd which are dealing with the product concerned. These parties did not file any response or did not join the application. This has vitiated the domestic industry chain as applied in the case of exporters.
- vii. In case an exporter does not file Questionnaire Response of its related producer in subject country even though it has not exported the subject goods, DGAD in the past several cases have rejected the response of participating exporter. The same analogy should be applied in the instant investigation also.
- viii. It has been stated that Yorks has two related producers of subject goods in China PR. Mere statement by Yorks that related companies in China namely Qungdao YTE Special Products Co. Ltd. and York Transport Equipment (Shanghai) Co. Ltd., China have not exported the subject goods is not sufficient. These related companies' must have filed questionnaire response themselves or should have given details of its sales to establish that these companies have not exported the subject goods to India.

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

42. Certain submissions made by the domestic industry with regard to miscellaneous issues and considered relevant by the Authority are as follows:

- i. Some interested parties attended the oral hearing and made submissions, however, did not reproduce their oral submissions in writing. We request the Authority not to consider such oral submissions which are not subsequently reproduced in writing for the purpose of present investigation in view of Rule 6 (6) which says such oral

information shall be taken into consideration by the Designated Authority only when it is subsequently reproduced in writing.

- ii. King Kaveri Trading Company (at place also written as King Kaveri Trading Co) has filed multiple IQRs through different legal representative and there is no confirmation as to which is the correct IQR which should be relied upon.
- iii. There is no basis to the argument that the petitioner should provide the raw as well as sorted transaction wise data in the excel format. The requirement is only to give a summary of import volume and price and rest of the arguments have no support of law. Notwithstanding this legal position which is reflected in various findings of the Authority, the petitioner has provided transaction wise import data in Annexure 1.4 of the petition by clearly identifying the PUC and Non PUC items. Also, there is no basis to the argument that standard weight of conversion was not provided. In fact, the transaction wise data contains both number of pieces and weight derived wherever applicable meaning thereby standard weight was also disclosed.
- iv. We reiterate our submission that certain purchases of minor components were made by the company and those purchases are reflected in our raw material purchase records. It is also submitted that the import data as per Zauba.com supplied by KKTC do not show that York imported central axle/beam from China PR. In any case the imports appearing in the annexure 1 enclosed by KKTC is apparently of minor components.

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

43. Various submissions made by the interested parties with regard to miscellaneous issues and considered relevant by the Authority are examined and addressed as follows:

- i. With regard to the contention that in the present case the applicant did not establish any ground to initiate the investigation and there are serious deficiencies in the petition which has handicapped the opposing parties from making their submissions, the Authority notes that the investigation was initiated based on a well-documented application and after satisfying *prima facie* the adequacy and accuracy of the

information concerning alleged dumping and injury to the domestic industry and causal link between the alleged dumping and injury.

- ii. With regard to the contention that in the updated petition, only the Annexure have been updated and there is no change in the figures and the analysis in relation to injury parameters, it is submitted that the POI was extended to make it more recent by the Authority and dumping and injury information pertaining to the extended POI has been provided to all the interested parties.
- iii. With regard to the contention that no clarity as to how the IBIS transaction-wise raw import data provided by the Petitioner is being used and the Petitioner should provide the IBIS transaction-wise raw import data as well as sorted import data to the Respondent in MS-Excel format it is noted that there is no requirement under the rule to provide import data in a particular format including MS Excel. With regard to the methodology, it is seen that Part I of the application is self-explanatory on how the import information has been provided.
- iv. With regard to the contention that the petitioner has not mentioned the standard weight, it is noted that the import transactions have been given. It is noted that out of the total imports of 23075 Axles in the POI 22040 were already reported in kgs and only 1035 were converted from numbers to kgs. They were converted at standard weight of 353 kgs per axle.
- v. With regard to the contention that there are gross mis-declarations/suppressions in the Petition and on a number of occasions, the Petitioner has imported the central/axle beam from China PR and the same is clearly evidenced by the import records obtained from a reliable source, the Authority notes that the contentions are denied by the applicant. It is also noted that the evidence of import provided by the opposing party does not show that such imports are made by the applicant or there are imports of central/axle beam.
- vi. With regard to the contention that York Transport Equipment (India) Pvt. Ltd., a TATA enterprise has two related companies in India namely Tata Motors Ltd and Tata International Pvt., Ltd which are dealing with the product concerned and these parties did not file any response or did not join the application and this has vitiated the domestic industry chain as applied in the case of exporters, it is noted that the application satisfies the requirement of standing as per the relevant rule.

- vii. With regard to the contention that in case an exporter does not file Questionnaire Response of its related producer in subject country even though it has not exported the subject goods, DGAD in the past several cases have rejected the response of participating exporter and the same analogy should be applied in the instant investigation also, the Authority notes that such comparison have no factual or legal basis. The requirement of establishing standing and establishing reliability of export price in an anti-dumping investigation cannot be equated and the criteria are ought to differ as provided in the rule.
- viii. With regard to the contention that Yorks has two related producers of subject goods in China PR and mere statement by Yorks that related companies in China namely Qungdao YTE Special Products Co. Ltd. and York Transport Equipment (Shanghai) Co. Ltd., China have not exported the subject goods is not sufficient and these related companies' must have filed questionnaire response themselves or should have given details of its sales to establish that these companies have not exported the subject goods to India, the Authority notes that such contentions have no legal sanctity and also the responding interested parties have not given any evidence to show export of subject goods to India from the above stated related producers.
- ix. With regard to the argument that some interested parties attended the oral hearing and made submissions, however, did not reproduce their oral submissions in writing and the Authority should not consider such oral submissions which are not subsequently reproduced in writing for the purpose of present investigation, it is noted that the position of Rule 6 (6) is very clear which says such oral information shall be taken into consideration by the Designated Authority only when it is subsequently reproduced in writing.
- ix. With regard to the contention that KKTC has filed multiple IQRs through different legal representative and there is no confirmation as to which is the correct IQR which should be relied upon, the Authority notes that the company has provided a clarification on the same along with a new authorisation letter.

**G. MARKET ECONOMY TREATMENT, NORMAL VALUE, EXPORT PRICE AND DUMPING MARGIN.**

44. Of the three responding producers/exporters from China PR, Guangdong FUWA Engineering Manufacturing Co. Ltd and Guangdong FUWA Heavy Industries Co. Ltd. had filed the Market Economy Treatment (MET) Questionnaire to rebut the presumption of non-market economy status of China PR as per the anti-dumping rules. However, before verification visit both the producers/exporters withdrew their claim for Market Economy Status. Thus, no producers/exporters from China PR have effectively claimed MET.

**G.1 Submissions made by Exporters, Importers, Users and other Interested Parties**

45. The submissions concerning market economy, normal value, export price and dumping margin made by the producers/exporters/importers/other interested parties and considered relevant by the Authority are as follows;

- i. Normal value is given at US\$2 - 4 per Kg by the applicant. It does not appear correct and normal value has to be a finite number and not a range. The normal value does not appear range bound also and the variance is 100%
- ii. Applicant had kept profit and interest in the Normal Value as confidential. The Authority should disclose those numbers and the Authority should not have permitted confidentiality on this data in the application.
- iii. The level of comparison of Normal value and export price is improper.
- iv. Dumping margin calculated by the applicant is erroneous.
- v. Separate rate of duty may please be accorded to Guangdong Fuwa Engineering Manufacturing Co., Ltd., and Guangdong Fuwa Heavy Industries Co., Ltd., China PR, a fully cooperating Producer/Exporter of the subject goods into India.
- vi. No methodology as to how the normal value has been arrived at has been provided in the Petition. Also, things like raw material costs, consumption norms used to calculate the normal value which could be easily furnished, have not been provided in the Petition.

- vii. No evidence of adjustments made in export price such as ocean freight, marine insurance, commission, port expenses, inland freight expenses, bank charges has been provided in the Petition.
- viii. There is no mention of the efforts undertaken by the Petitioner to find the domestic prices in the third country for the purposes of calculating the normal value.
- ix. The normal value determined for China PR is in contravention of the requirements under paragraph 7 of Annexure I of the AD Rules as the normal value has been computed based on prices paid or payable in India which is to be used as a last resort rather than the primary method.
- x. It is clear from various judgments and decisions available that in case of exports from non-market economy countries, the only correct practice to arrive at normal value is to apply the general rule i.e. the price or constructed value in a market economy third country or the price from such a third country to other countries including the country conducting the investigation. Only in those cases, where an Authority is unable to apply or exhaust the general rule, the alternative option of using some other reasonable basis can be resorted to.
- xi. The term “as is reasonably available to the applicant” does not mean that the Petitioner is at liberty not to give any evidence. The Authority acted in violation of Article 5.3 of WTO ADA by not examining the sufficiency of evidence presented along with the Petition.

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

46. The submissions concerning market economy, normal value, export price and dumping margin made by the domestic industry and considered relevant by the Authority are as follows;

- a. China PR should be treated as Non Market Economy country for the purpose of present investigation and Normal Value in case of Chinese producers should be determined as per the provisions of Annexure I Para 7.
- b. Chinese producers have been denied MET status in several investigations including recently concluded investigations by both Indian Authority and other countries like EU, USA, Australia etc as a

part of various anti dumping investigations by treating China PR an NME country.

- c. Also we object to the claim of the responding exporters that they should be given different individual margins. Instead the above producers must be seen as one entity.
- d. Responding exporter has submitted at page 2 of the EQR that the VAT refund rate on inputs during the POI was 15%. Adjustments for unclaimed VAT on exports should be adjusted from the export price of the exporter as per the consistent practice of the Authority. Also, the VAT refund rate may be taken as per actual evidences.
- e. The information provided to the Authority shows warranty costs borne by the exporter. This straight away calls for adjustment of warranty cost while deriving net export price.
- f. With regard to the contentions on determination of normal value and dumping margin, it is submitted that the applicant submitted normal value and dumping margin as per the available information and methods permissible specified in the AD Rule and relevant annexure to the rule. Details of such calculations are provided in the NCV application which is elaborate and contains all essential specifics. Thus, the misapprehensions and contentions of the interested parties have no basis.

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

47. With regard to the contention that the normal value determined for China PR is in contravention of the requirements under paragraph 7 of Annexure I of the AD Rules as the normal value has been computed based on prices paid or payable in India which is to be used as a last resort rather than the primary method, it is noted that the Authority has proceeded to calculate normal value and export and dumping margin as provided under the AD rule and not otherwise and the methodology adopted and the reasoning is self- explanatory.

#### **a) Determination of Normal Value**

48. The Authority notes that none of the producers/exporters from China PR have claimed to be operating under market economy condition for determination of

normal value in case of China PR in terms of Para-6 of Annexure-1 to the Rules. Under this circumstance, the Authority is not in a position to apply Para 8 of Annexure 1 to the Rules to the Chinese producers/exporters and the Authority has to proceed in accordance with Para 7 of Annexure - I to the Rules.

49. Paragraph-7 of the Annexure-1 to the Anti-Dumping Rules provides as follows:

*"In case of imports from non-market economy countries, normal value shall be determined on the basis of the price or constructed value in the market economy third country, or the price from such a third country to other countries, including India or where it is not possible, or on 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. An appropriate market economy third country shall be selected by the designated authority in a reasonable manner, keeping in view the level of development of the country concerned and the product in question, and due account shall be taken of any reliable information made available at the time of selection. Accounts shall be taken within time limits, where appropriate, of the investigation made in any similar matter in respect of any other market economy third country. The parties to the investigation shall be informed without any unreasonable delay the aforesaid selection of the market economy third country and shall be given a reasonable period of time to offer their comments"*

50. 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.

51. The Authority notes that for determination of normal value based on third country cost and prices, the complete and exhaustive data on domestic sales or third country export sales, as well as cost of production and cooperation of such producers in third country is required. No such information with regard to prices and costs prevalent in these markets have been provided either by the applicant or by the responding exporters, nor any publicly available information could be accessed, nor the responding Chinese companies have made any claim with

regard to an appropriate market economy third country at this stage. The Authority proceeds to construct the normal value based on any other reasonable basis.

52. The Authority has determined the Normal value for China PR on available facts basis in terms of second proviso of Para 7 of Annexure 1 to the AD Rules. Accordingly, the ex-works Normal Value of the product under consideration has been determined based on constructed costs of production based on the optimum cost of production of domestic industry along with selling, general & administrative costs and reasonable profits. The normal value so determined is US \$ \*\*\*/Kg.

**b) Determination of Export Price**

**i. M/s Guangdong FUWA Engineering Manufacturing Co., Ltd**

53. In the EQ Response, M/s Guangdong FUWA Engineering Manufacturing Co., Ltd, producer cum exporter, China PR has claimed to have exported \*\*\* pieces (\*\*\* MT) of PUC for a total CIF value of US \$ \*\*\* to India. The Authority made adjustments on account of Ocean freight, marine insurance, handling charges, inland freight, credit cost, bank charges as claimed by the exporter in their EQ response besides impact of VAT refund in order to arrive at the net export price at ex-factory level. Accordingly, the net export price at ex-factory level for M/s Guangdong FUWA Engineering Manufacturing Co., Ltd, China PR is determined as US \$ \*\*\* per Kg.

**ii. Guangdong FUWA Heavy Industries Co., Ltd. China PR**

54. In the EQR, Guangdong FUWA Heavy Industries Co., Ltd, producer cum exporter, China PR has claimed to have exported \*\*\* pieces ( \*\*\* MT) of PUC for a total CIF value of US \$ \*\*\* to India. The Authority made adjustments on account of Ocean freight, marine insurance, handling charges, inland freight, credit cost, bank charges as claimed by the exporter in their EQ response besides impact of VAT refund in order to arrive at the net export price at ex-factory level. Accordingly, the net export price at ex-factory level for Guangdong FUWA Heavy Industries Co., Ltd, China PR is determined as US\$ \*\*\*/KG.

**iii. Shandong Jinsheng Axle Manufacturing Co., Ltd.**

55. In the EQR, Shandong Jinsheng Axle Manufacturing Co., Ltd, producer cum exporter, China PR has claimed to have exported \*\*\* pcs (\*\*\* MT) of PUC for a total FOB value of US \$ \*\*\* to India. The Authority made adjustments on account of inland freight, credit cost, bank charges as claimed by the exporter in

their EQ response besides impact of VAT refund in order to arrive at the net export price at ex-factory level. Accordingly, the net export price at ex-factory level for Shandong Jinsheng Axle Manufacturing Co., Ltd, China is determined as US\$ \*\*\*/KG.

iv. **All other Producers/Exporter from China PR**

56. In respect of non-cooperating producer/exporters from China PR, the Authority has determined their net export price as per facts available in terms of Rule 6(8) of the Rules. Accordingly, the net export in respect of the non-cooperating exporters from China PR has been determined as US\$ \*\*\* /Kg.

c) **Determination Of Dumping Margin**

57. Based on normal value and export price determined as above, the dumping margin for producers/exporters from China PR has been determined by the Authority as follows;

| Particulars  | Normal Value - US\$/Kg | Export price - US\$/Kg | Dumping Margin - US\$/Kg | Dumping Margin Range - % |
|--|------------------------|------------------------|--------------------------|--------------------------|
| M/s Guangdong FUWA Engineering Manufacturing Co., Ltd, (Producer and Exporter) | ***                    | ***                    | ***                      |                          |
| Guangdong FUWA Heavy Industries Co., Ltd (Producer and Exporter)               | ***                    | ***                    | ***                      | 30-35                    |
| Shandong Jinsheng Axle Manufacturing Co., Ltd.                                 | ***                    | ***                    | ***                      | 35-40                    |
| All other Producers/Exporters  | ***                    | ***                    | ***                      | 55-60                    |

H. **METHODOLOGY FOR INJURY DETERMINATION AND EXAMINATION OF INJURY AND CAUSAL LINK**

i. **INJURY EXAMINATION**

#### **H.1 Submissions made by Exporters, Importers, Users and other Interested Parties**

58. The following are the injury related submissions made by the producers/exporters/importers/other interested parties;

- i. The applicant has relied upon IBIS data which is claimed to be not covering all the ports and casted the responsibility of getting the correct and full data of imports as per DGCI&S on the Authority. The import figure provided by the applicant doesn't appear reliable.
- ii. The domestic industry hasn't suffered any volume injury. Gloomy picture of certain price parameters showing injury are not correct in view of the annual report of the company for 2014-15 which shows profits. Thus, there is no injury.
- iii. The term capacity utilisation has no relevance in this case since there is no real manufacturing activity involved.
- iv. There is no price undercutting in the present case and the claims of price undercutting by the applicant is not correct. Also, there haven't been any price suppression/depression effects created by the dumped imports.
- v. The real position of injury of the company is available in the balance sheet of the company which is provided in the public domain. There is robust growth in terms of production, capacity, capacity utilization and domestic sales. It is evident from this that there is no injury on account of dumping but other factors are influencing the industry as whole.
- vi. There is variation in the NCV trend of profitability, ROCE etc as per the application and the actual profits given in the Annual Report of the applicant. This needs to be examined by the Authority and the applicant should be asked to explain the difference
- vii. Market share provided in the application is not correct as the demand is without taking into consideration the large replacement market. Even the import data relied upon doesn't show complete picture of import.
- viii. Admittedly, there is no injury on account of employment, wages and productivity.

- ix. There are many known importers and users of subject goods who are importing as well as indigenously procuring. The Authority should call for information from such parties.
- x. Increase in inventories could be due to a strategy of the applicant to store the material for exports and the same has no other relevance.
- xi. In this investigation price at which Yorks has sold the subject goods to its related company in India is very important. Whether they have charged a lower price to the related company? Whether this transfer price is the main cause of injury to the applicant domestic industry?
- xii. Tata Motors has not filed response due to the fact that it is making huge profits and its cost is much lower than cost of Yorks. In case Tata Motors files the response there is strong possibility that it will lower the Non-injurious price and as per practice of DGAD, constructed Normal Value shall be based on the cost of the most efficient producer in India. Inclusion of Tata Motors as part of Domestic Industry will definitely show that negative dumping and injury margins.
- xiii. No details about any fixed costs – such as interest costs and depreciation have been provided so as to verify the reasons for which alleged losses have been incurred. This is especially important as the Petitioner Company had been set up recently and would not have been able to make up for these costs.
- xiv. There is no mention of the efforts undertaken by the Petitioner to find the domestic prices in China PR or a third country market economy for the purposes of calculating the normal value.
- xv. The manufacturing facility at Pune was set up in mid 2011 and the Jamshedpur plant of the Petitioner was the only unit in operation prior to that. This fact has not been stated in the Petition. It must be noted that this fact has a material bearing in the analysis of profit/loss as it is unlikely for a new unit to recover all the costs in the first few years of its setting up.
- xvi. Market intelligence suggests that a sizeable number of sales of such axles produced by the Petitioner have been made to Tata International Pvt Ltd. This can play an important role in assessing the reason for the alleged losses of the domestic industry.
- xvii. KKTC has been consistently selling its products at prices higher than the prices of the domestic industry and this raises suspicion on the

allegation of price undercutting range indicated in the Petition and also raises suspicion on the *bona fide* of the Petitioner.

xviii. The demand in India is incorrectly shown in the Petition. As per the data obtained by “SIAM”, the number of axles and their quantity (in MT) required in India has been calculated for the financial years 2012-2013, 2013-2014 and 2014-2015 which is as follows;

| Particulars                          | Unit | 2012-13 | 2013-14 | POI<br>Annualised |
|--------------------------------------|------|---------|---------|-------------------|
| Demand – as stated in the Petition   | MT   | 13,892  | 8,762   | 16,639            |
| Demand - Calculated as per SIAM Data | MT   | 18,593  | 13,109  | 27,644            |

xix. There is gross discrepancy in the demand and the figures provided by the Petitioner are incorrect and without any evidentiary support. It must also be noted that there are producers of trucks who are not part of SIAM and their data is not included. This suggests that the demand is much higher than what is represented.

xx. Even with the data in the Petition, injury – especially causal link cannot be established.

xxi. The data concerning imports and demand shows that the volume of imports is in tandem with the demand that is - the import volumes are high when the demand is the high and the import volumes are low when the demand is low. The trend suggests that the volume of imports has no real impact on the domestic industry.

xxii. There is a significant increase in the production, productivity per day, productivity per employee and the capacity utilisation. There is a gradual reduction in the imports in relation to the production in India. This suggests that the domestic industry is showing signs of growth despite imports from China PR. Imports have no impact on the domestic industry.

- xxiii. 49% utilisation is not a very meagre amount when seen in the context of the demand in the Indian market. The demand in India is around 16,639 MT and the Petitioner produces 7,967 with the said capacity utilisation. With the said utilisation, the Petitioner is almost producing almost 48% of the goods required in the Indian market. Considering the growth and the significant capacity to meet the demand in India, it cannot be said that the imports are causing injury to the domestic industry.
- xxiv. Imports from the subject country cannot cause injury with a limited market share and the losses of the domestic industry are reducing over the period of injury.
- xxv. The domestic industry is showing signs of growth despite imports from China PR
- xxvi. The domestic producers are unable to provide good quality axles and cannot meet the demand of the Indian users. The axles imported by KKTC is mainly a unique one-piece produced by FUWA Engineering Group Ltd. (which has 80% market share in China PR as per Market intelligence) using One-Piece Beam with Hot Forming Spindles Technology as opposed the welding of four (4) individual parts by the domestic industry. The latter is weak/ not stable and market intelligence suggests that it has succumbed to daily usage. End users of the Axle are willing to pay more for the axles sold by KKTC which also suggests that the consumers prefer the said axles over the axles produced in India.
- xxvii. The domestic producers are unable to recover losses in light of the fixed costs. The alleged losses are on account of the costs of setting up a new plant.
- xxviii. If AD duty is imposed, the Petitioner being the only big and regular manufacturer of axles will monopolize the market and may abuse its dominant position. Giving further protection to the biggest producer of axles in India will probably give rise to adverse anti-competitive effects.
- xxix. Working capital and net fixed assets shows a very suspicious fluctuation on the Proforma IV A.
- xxx. The Petitioner has failed to establish dumping, injury and causal link in the present investigation. The data in the Petition does not support imposition of anti-dumping duties on the subject goods.

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

59. The following are the injury related submissions made by the domestic industry in brief;

- a) The information with regard to Volume and Price effect and economic parameters relating to the domestic industry in Proforma IV and IVB shows that although some volume parameters such as production, capacity utilization and sales followed a positive trend, a number of other indicators relating to the financial situation of the domestic industry, namely profitability, return on investment, cash profit etc were significantly negative in the POI and did not follow any satisfactory or even reasonable trend during the POI vis-à-vis some volume improvement apparent in the same period.
- b) In fact the domestic industry has faced huge financial losses on account of aggressive dumping adopted by producers/exporter from China PR in the injury period except the base year and meagre volume growths did not help the domestic industry to achieve any reasonable profit since the price increases were prevented by dumped imports.
- c) An objective and holistic evaluation of various economic parameters would clearly demonstrate that dumped imports from subject country have caused material injury to the domestic industry.
- d) The price effect of the dumped imports has been significant on the basis of price undercutting, price suppression and price depressions as a result of which profitability of the domestic industry has deteriorated and situation of the domestic continued to be loss making after base year, thus, the domestic industry has suffered material injury.
- e) The improvements in volume parameters were all vitiated because of the below par price realization triggered by dumping and in effect the improvements in some standalone volume parameters did not create any material positive effect on the overall situation of the domestic industry as the domestic industry was forced to sell at a price which is was not remunerative and, in fact, below its cost of production. The domestic industry has, thus, suffered material injury.
- f) The price at which the product under consideration is imported into India is below its normal value resulting in significant dumping margin.

- g) The domestic industry has been compelled to offer sub-optimal prices lowering profitability to a negative level and to the level which is unviable and continuity of operation is hugely impacted.
- h) Presence of import at very low and dumped price preventing domestic industry to increase their price to the extent of increase in input cost, thus imports are suppressing the selling prices of the domestic industry and also causing depressing effect.
- i) Reduction in profits directly resulted in deterioration in return on capital employed and cash profits. The domestic industry has not been able to cover the cost of capital. Thus, losses, negative return on capital employed and also cash profit is directly due to dumped imports.
- j) The injury caused to the domestic industry is on account of dumped imports from subject country only.
- k) It is also submitted that even though significant demand for the product remained in the Indian market, the domestic industry was put in a situation of huge financial losses as an effect of injurious dumping from subject country. In fact, continuous adverse market conditions with regard to subject goods on account of dumping from China PR prevented the domestic industry from achieving any reasonable and legitimate profits and further enhancing the capacities.

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

- 60. Article 3.1 of the WTO Agreement and Annexure-II of the AD Rules provide for an objective examination of both, (a) the volume of dumped imports and the effect of the dumped imports on prices, in the domestic market, for the like products; and (b) the consequent impact of these imports on domestic producers of such products. With regard to the volume effect of the dumped imports, the Authority is required to examine whether there has been a significant increase in dumped imports, either in absolute term or relative to production or consumption in India. With regard to the price effect of the dumped imports, the Authority is required to examine whether there has been significant price undercutting by the dumped imports as compared to the price of the like product in India, or whether the effect of such imports is otherwise to depress the prices to a significant degree, or prevent price increases, which would have otherwise occurred to a significant degree.
- 61. As regards the impact of the dumped imports on the domestic industry para (iv) of Annexure-II of the AD Rules states as follows.

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

62. The injury analysis made by the Authority hereunder ipso facto addresses the various submissions made by the interested parties. However, the specific submissions made by the interested parties are addressed by the Authority are as below;
63. With regard to the contention that the applicant has relied upon IBIS data which is claimed to be not covering all the ports and casted the responsibility of getting the correct and full data of imports as per DGCI&S on the Authority and the import figure provided by the applicant does not appear reliable, it is noted that IBIS data has been relied upon in many past cases by the Authority. Further, the import data of IBIS has been cross verified with DGCIS data. There is similar trend in volume and prices.
64. With regard to the contention that the domestic industry hasn't suffered any volume injury and the gloomy picture of certain price parameters showing injury are not correct in view of the annual report of the company for 2014-15 which shows profits, thus, there is no injury, it is noted that the information in Annual Report is for company as a whole and does not pertain to PUC alone. Facts of dumping and injury and a causal link between the same are provided at appropriate places in this final findings.
65. With regard to the contention that the term capacity utilisation has no relevance in this case since there is no real manufacturing activity involved, it is noted that the contention is unsubstantiated.
66. With regard to the contention that there is no price undercutting in the present case and the claims of price undercutting by the applicant is not correct and also, there haven't been any price suppression/depression effects created by the dumped imports, it is noted that the final findings herein below is self-explanatory on such claims.
67. With regard to the contention that the real position of injury of the company is available in the balance sheet of the company which is provided in the public

domain, it is noted that the Balance sheet and profit and loss account referred pertains to company as a whole whereas the Authority has to analyse the performance parameters relating to PUC only.

68. With regard to the contention that market share provided in the application is not correct as the demand is without taking into consideration the large replacement market, it is noted that the claim is not backed with any evidences.
69. With regard to the contention that price at which York Transport Equipments (India) Pvt Ltd. has sold the subject goods to its related company in India is very important and whether this transfer price is the main cause of injury to the applicant domestic industry, the matter has been examined and It was found that related party sales in domestic market was less than 20% during POI. Further, the average selling price to the related company was marginally lower than average selling price in the domestic market. This may be due to various reasons like non-incurrence of certain expenses like freight due to proximity of the unit and non-payment of commission to any intermediary for undertaking sales. Moreover, even after excluding the sales to related parties there was positive price undercutting. Hence the main cause of injury to the applicant domestic industry is not any related party transaction as claimed by the interested parties.
70. With regard to the contention that Tata Motors has not filed response due to the fact that it is making huge profits, it is noted that M/s York Transport Equipment (India) Pvt Ltd along with the supporter is found to be the domestic industry in the present investigation as per Rule 2 (b) and the rule does not mandate anything as submitted by the other interested parties other than requirements of rule 2(b). It is also noted that the applicant has submitted that TATA Motors Ltd is a different legal entity and not a related party as envisaged in the rules in any case and the applicant satisfies the requirement of standing.
71. With regard to the contention that the manufacturing facility at Pune was set up in mid 2011 and the Jamshedpur plant of the Petitioner was the only unit in operation prior to that, it is noted that the Authority has examined the claim of injury as provided in the rules and not otherwise.
72. With regard to the contention that KKTC has been consistently selling its products at prices higher than the prices of the domestic industry and this raises suspicion on the allegation of price undercutting range indicated in the Petition and also raises suspicion on the *bona fide* of the Petitioner, it is noted that price undercutting is worked out based on the average NSR and landed price of imports and not based on reselling price to any individual buyer.

73. With regard to the contention that the data concerning imports and demand shows that the volume of imports is in tandem with the demand that is - the import volumes are high when the demand is the high and the import volumes are low when the demand is low, it is noted that imports are significant and occurring at dumped and injurious price.
74. With regard to the contention that there is a significant increase in the production, productivity per day, productivity per employee and the capacity utilisation and there is a gradual reduction in the imports in relation to the production in India and this suggests that the domestic industry is showing signs of growth despite imports from China PR. Imports have no impact on the domestic industry, it is noted that the facts emanating from this final findings is self-explanatory on such contentions.
75. With regard to the contention that imports from the subject country cannot cause injury with a limited market share and the losses of the domestic industry are reducing over the period of injury, it is noted that the facts emanating from the present final findings is self- explanatory on this contention.
76. With regard to the contention that the domestic industry is showing signs of growth despite imports from China PR, it is noted that the facts emanating from the present final findings is self- explanatory on this contention.
77. With regard to the contention that the domestic producers are unable to provide good quality axles and cannot meet the demand of the Indian users, it is noted that the applicant submitted that their product meets required quality standard and the contentions of the opposing party is not true. Also, the interested parties have not produced any evidences to show that there are material differences in the PUC imported and that domestically manufactured product.
78. With regard to the contention that the domestic producers are unable to recover losses in light of the fixed costs and the alleged losses are on account of the costs of setting up a new plant, it is noted that the argument is unsubstantiated.
79. With regard to the contention that if AD duty is imposed, the Petitioner being the only big and regular manufacturer of axles will monopolize the market and may abuse its dominant position and giving further protection to the biggest producer of axles in India will probably give rise to adverse anti-competitive effects, it is to be noted that the AD duties if imposed are only to remove the injurious effect of dumping and do not envisage any protection beyond the lower of injury or dumping margin.

80. With regard to the contention that the Petitioner has failed to establish dumping, injury and causal link in the present investigation and the data in the Petition does not support imposition of anti-dumping duties on the subject goods, it is noted that the facts emanating from the present final findings is self- explanatory on this contention.

81. For the examination of the impact of imports on the domestic industry in India, the Authority has considered such further indices having a bearing on the state of the industry as production, capacity utilization, sales quantum, stock, profitability, net sales realization, the magnitude and margin of dumping etc in accordance with Annexure II (iv) of the Rules supra.

**ii. VOLUME EFFECT OF THE DUMPED IMPORTS ON THE DOMESTIC INDUSTRY**

82. For assessing the injury, the Authority has examined the volume and price effects of the dumped imports of the subject goods from the subject country on the domestic industry and its effect on the price and profitability to examine the existence of injury and causal link between the dumping and injury, if any. Accordingly, the volume and price effects of dumped imports have been examined as follows:

**a. Demand and market share**

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

**i) Demand**

| Particulars                           | Unit  | 2011-12 | 2012-13 | 2013-14 | POI   | POI<br>Annualised |
|---------------------------------------|-------|---------|---------|---------|-------|-------------------|
| Demand                                | MT    | 16902   | 13923   | 8785    | 20855 | 16684             |
| Indexed                               | Trend | 100     | 82      | 52      | 99    | 99                |
| Imports<br>from<br>Subject<br>Country | MT    | 4,917   | 4,433   | 3,066   | 8,250 | 6,600             |

|                                 |    |       |       |       |       |       |
|---------------------------------|----|-------|-------|-------|-------|-------|
| Imports from Other Country      | MT | 526   | 8     | -     | -     | -     |
| Sales of Domestic Industry      | MT | 4542  | 3517  | 2605  | 6501  | 5201  |
| Sales of other Indian Producers | MT | 6,916 | 5,965 | 3,114 | 6,104 | 4,883 |

## ii) Market Share in Demand

84. Considering imports of subject goods from various sources and sales of subject goods of the Indian Producers, market share of subject imports in demand in India was examined. Factual position in this respect is as follows;

| Particulars                     | Unit | 2011-12 | 2012-13 | 2013-14 | POI   | POI Annualised |
|---------------------------------|------|---------|---------|---------|-------|----------------|
| Imports from Subject Country    | %    | 29.09   | 31.84   | 34.90   | 39.56 | 39.56          |
| Imports from Other Country      | %    | 3.11    | 0.06    | -       | -     | -              |
| Sales of Domestic Industry      | %    | 26.88   | 25.26   | 29.65   | 31.17 | 31.17          |
| Sales of other Indian Producers | %    | 40.92   | 42.84   | 35.44   | 29.27 | 29.27          |

85. It is seen from the above tables that demand of the product in the country has declined during 2012-13 and 2013-14 as compared to the base year and has picked up during POI. Applicant claimed that the dip in demand between base year and 2013-14 was the result of adverse economic situation in the country which impacted the Trailer production however the same was corrected to large extent by the POI. It is noted that the share of subject country imports which was

29.09% in the base year increased to 39.56% in the POI whereas the market share of the domestic industry which was 26.88% in the base year increased only to 31.17% during POI. Even the share of other Indian producers declined in this period. Thus, the increases in demand were all primarily absorbed by dumped imports from subject countries. Impact of dumped import from subject countries on market share of the domestic industry is evident.

**b. Import volume and market share**

86. The Authority has examined the volume of imports of the subject goods as per the transaction wise import data of the IBIS and correlated with the DGCI&S data. The Authority has relied upon the same for this final findings. On the basis of import data on record, the import volume from subject country is found to be above the de-minimis levels. Imports volume from subject country and other country has been as under:-

| Particulars             |                 | Unit | 2011-12 | 2012-13 | 2013-14 | POI    | POI Annualised |
|-------------------------|-----------------|------|---------|---------|---------|--------|----------------|
| Volume                  | Subject Country | MT   | 4,917   | 4,433   | 3,066   | 8,250  | 6,600          |
|                         | Other country   | MT   | 526     | 8       | -       | -      | -              |
|                         | Total imports   | MT   | 5,444   | 4,441   | 3,066   | 8,250  | 6,600          |
| Market Share in Imports | Subject Country | %    | 90.33   | 99.81   | 100.00  | 100.00 | 100.00         |
|                         | Other country   | %    | 9.67    | 0.19    | Nil     | Nil    | Nil            |

87. It is observed that imports from subject country increased in absolute terms and was all along more than 90% of the total imports into India throughout the injury period including the POI. In fact, imports from subject country constituted 100% except the base year and year after that. It is also noted that imports from subject country accounts for very significant proportion of the demand of the product in India. The volume of imports from the subject country increased in absolute terms and also relative to increase in demand in India during the injury period and during the POI. The imports from subject country which was 4917 MT in the base year has increased significantly in absolute terms to 6600 MT

(Annualised) during the POI and also in relation to demand. The significant share of dumped imports in domestic demand and the growth of the same relative to the increase in demand is very evident.

**c. Capacity & capacity utilization**

88. Capacity and capacity utilization of the domestic industry over the injury period is given in the following table: -

| Particulars          | Unit | 2011-12 | 2012-13 | 2013-14 | POI   | POI<br>Annualised |
|----------------------|------|---------|---------|---------|-------|-------------------|
| Capacity MT          | MT   | 16560   | 16560   | 16560   | 20700 | 16560             |
| Capacity utilization | %    | 26.81   | 30.96   | 32.81   | 50.23 | 50.23             |

89. It is observed that capacity utilization of the domestic industry increased over the base year but remained at 50.23% during the POI. It is also noted that capacity utilization has remained at a below par level throughout the injury period. The dumped imports prevented them from operating at an optimal level of capacity utilisation. Increase in capacity utilisation if looked at as a standalone parameter would give distorted picture of actual position of injury to the domestic industry. The slight increase in capacity utilisation should be seen along with the price parameters pertaining to injury which showed sharp decline.

**d. Production**

90. Production of the domestic industry is given in the following table: -

| Particulars                      | Unit | 2011-12 | 2012-13 | 2013-14 | POI    | POI<br>Annualised |
|----------------------------------|------|---------|---------|---------|--------|-------------------|
| Production                       | MT   | 4439    | 5127    | 5433    | 10,397 | 8,318             |
| Demand                           | MT   | 16902   | 13923   | 8785    | 20855  | 16684             |
| Production in relation to Demand | %    | 26.26%  | 36.82%  | 61.84%  | 49.85% | 49.85%            |

91. Production showed increasing trend throughout the injury period. Even though the above volume parameters show an increasing trend, the associated price parameters showed sharp declines and financial losses have been suffered by the domestic industry effectively negating the benefits which ought to have been achieved by the domestic industry by virtue of increase in volume parameters. It is also noted that production in relation to demand in India which was increased to a level of 61.84% in 2013-14 declined to a level of 49.85% in the POI.

**e. Sales volume**

92. Sales volume of the domestic industry is given in the following table:

| Particulars  | Unit | 2011-12 | 2012-13 | 2013-14 | POI   | POI<br>Annualised |
|--|------|---------|---------|---------|-------|-------------------|
| Domestic sales                                       | MT   | 4542    | 3517    | 2605    | 6501  | 5201              |
| Demand   | MT   | 16902   | 13923   | 8785    | 20855 | 16684             |
| Market Share of<br>domestic<br>industry in<br>Demand | %    | 26.87   | 25.26   | 29.65   | 31.17 | 31.17             |

93. Even though the sales volume shows an increasing trend, the associated price parameters showed sharp declines and financial losses have been suffered by the domestic industry. This increase in sales volume has been achieved by adjusting the price to match the landed price of imports. In essence, increase in sales volume did not create any bottom line improvement.

94. In this context of increase in volume parameters as such were not reflected in the overall performance of the domestic industry if financial parameters are also taken into consideration. Increases in volume parameters may at the best have neutralised some effect of fixed costs on performance but the same was not adequate to bring an overall improvement in the performance.

95. The Authority notes in this respect that the sales volume of the domestic industry among other volume parameters increased over the injury period and during the POI. However, as noted herein above, the increase in market share of imports from China PR has been much higher than the increase in market share of domestic industry in the Indian demand during the POI.

**f. Inventories**

96. Inventories with the domestic industry moved as follows:

|               | Units | 2011-12 | 2012-13 | 2013-14 | POI | POI<br>Annualised |
|---------------|-------|---------|---------|---------|-----|-------------------|
| Average Stock | MT    | 180     | 221     | 279     | 332 | 332               |
| Indexed       |       | 100     | 123     | 155     | 184 | 184               |

97. It is noted that inventories with the domestic industry increased consistently during the injury period. It is noted that this may not be a significant indicator of injury considering the fact that the subject goods are primarily produced against order.

**iii. PRICE EFFECT OF THE DUMPED IMPORTS ON THE DOMESTIC INDUSTRY**

98. With regard to the effect of the dumped imports on prices, the Designated Authority is required to consider whether there has been a significant price undercutting by the dumped imports as compared with the price of the like product in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree. For the purpose of this analysis, the weighted average cost of production (COP), weighted average Net Sales Realization (NSR) and the Non-Injurious Price (NIP) of the domestic industry have been compared with the landed cost of imports from the subject country.

**a) Price Undercutting**

99. The net sales realization was arrived after deducting all rebates and taxes. Landed value of imports has been calculated by adding 1% handling charge and applicable basic customs duty to the CIF value of subject imports. The landed value of imports was compared with net sales realization of the domestic industry and it was found that the dumped imports are undercutting the prices of the domestic industry.

| Particulars  | Unit   | 2011-12 | 2012-13 | 2013-14 | POI |
|--------------|--------|---------|---------|---------|-----|
| Landed Value | Rs./KG | ***     | ***     | ***     | *** |

|                       |         |       |      |     |      |
|-----------------------|---------|-------|------|-----|------|
| Net Sales realization | Rs./KG  | ***   | ***  | *** | ***  |
| Price Undercutting    | Rs./KG  | ***   | ***  | *** | ***  |
| Price Undercutting    | %       | ***   | ***  | *** | ***  |
| Price Undercutting    | % Range | 15-20 | 5-10 | 1-5 | 5-10 |

100. It is observed that landed price of imports from subject country have been significantly lower than the net sales realization of the domestic industry resulting in significant price undercutting during the injury period and in the POI. Landed price of import from subject country showed some decreases during POI after some increases between base year and immediate previous year. The price undercutting which showed some reduction in the year 2012-13 and 2013-14 once again increased in the POI.

**b) Price Underselling**

101. Authority notes that the price underselling is an important indicator of assessment of injury. Non injurious price has been worked out and compared with the landed value of the subject goods to arrive at the extent of price underselling. The non-injurious price has been evaluated for the domestic producer by appropriately considering the cost of production for the product under consideration during the POI in accordance with Annexure III of the AD Rules. The analysis shows that the landed value of subject imports was significantly below the non-injurious price determined as follows;

| Particulars         | Unit    | China PR |
|---------------------|---------|----------|
| Non-Injurious Price | Rs/KG   | ***      |
| Landed price        | Rs/KG   | 109.73   |
| Price underselling  | Rs/KG   | ***      |
| Underselling        | %       | ***      |
| Underselling        | % Range | 10-15    |

**c) Price suppression/depression**

102. The Authority examined whether the effect of the dumped imports was to depress the prices of the like article in India, or prevent price increases which would have otherwise occurred.

| Particulars        | Unit    | 2011-12 | 2012-13 | 2013-14 | POI    |
|--------------------|---------|---------|---------|---------|--------|
| Cost of production | Rs./KG  | ***     | ***     | ***     | ***    |
| Trend              | Indexed | 100     | 115     | 118     | 108    |
| Selling Price      | Rs./KG  | ***     | ***     | ***     | ***    |
| Trend              | Indexed | 100     | 100     | 98      | 102    |
| Landed Value       | Rs./KG  | 95.35   | 105.80  | 110.09  | 109.73 |
| Trend              | Indexed | 100     | 110     | 115     | 115    |

103. It can be seen from the above table that while the cost of production increased from 100 in the base year to 108 in the POI, the selling price moved from 100 indexed in the base year to 102 only during the same period meaning thereby the prices were suppressed on account of the dumped prices as the domestic industry was not able to increase its prices in proportion to increase in costs. It is evident that the landed price of imports was causing price suppression of a significant magnitude showing serious price effects on the sales realization of the domestic industry apart from serious price undercutting. Thus, the dumped imports were creating price suppression effect on the domestic industry.

**d) Profit/Loss**

104. The profitability of the domestic industry is given in the following table;

| Particulars | Unit    | 2011-12 | 2012-13 | 2013-14 | POI<br>(Annualised) |
|-------------|---------|---------|---------|---------|---------------------|
| Profits     | Rs./Kg  | ***     | ***     | ***     | ***                 |
| Trend       | Indexed | 100     | (971)   | (1266)  | (315)               |

|         |         |     |       |       |       |
|---------|---------|-----|-------|-------|-------|
| Profits | Rs Lacs | *** | ***   | ***   | ***   |
| Trend   | Indexed | 100 | (750) | (725) | (360) |

105. It is noted that there have been serious distortions on the profitability of the domestic industry during the injury period and the profits declined significantly over the years whereas the domestic industry was earlier earning profits but subsequently incurred losses throughout the injury period, though the losses during POI have declined due to improvement in production and sales. It is noted herein above that the landed price of imports were creating price undercutting and underselling effects on the domestic prices in the same period. The impacts of such landed prices are evident in financial loss situation of the domestic industry.

**e) Return on capital employed**

106. Information regarding return on capital employed is given in the table below;

|                            | Unit    | 2011-12 | 2012-13 | 2013-14 | POI   |
|----------------------------|---------|---------|---------|---------|-------|
| Return on Capital Employed | %       | ***     | ***     | ***     | ***   |
| Trend                      | Indexed | 100     | (949)   | (1061)  | (293) |

107. The Authority notes that return on capital employed of the domestic industry has deteriorated significantly over the injury period and remained negative in the POI and the trend is comparable to that of profitability. It is also noted that the domestic industry has been incurring financial losses in the same period.

**f) Cash Flow**

108. Authority has examined the trends in cash profits in order to examine the impact of dumping on cash flow situation of the domestic industry. Information regarding cash profit of the domestic industry is given in the following table;

|              | Unit     | 2011-12 | 2012-13 | 2013-14 | POI<br>(annualised) |
|--------------|----------|---------|---------|---------|---------------------|
| Cash profits | Rs. Lacs | ***     | ***     | ***     | ***                 |

|       |         |     |       |       |       |
|-------|---------|-----|-------|-------|-------|
| Trend | Indexed | 100 | (325) | (325) | (135) |
|-------|---------|-----|-------|-------|-------|

It is seen that the cash profits of the domestic industry steeply declined over the injury period. It is also noted that the cash profit and cash flow situation of the domestic industry recorded adverse situation.

**g) Factors affecting domestic prices**

109. Change in cost structure, competition in the domestic market and prices of competing substitutes, if any, have been examined for analyzing the factors other than dumped imports that might be affecting the prices in the domestic industry. It could not be concluded that inter-se competition or any such change in cost structure led to decline in the prices of the domestic industry.

**h) Productivity**

110. Authority notes that productivity of the domestic industry shows same trend as that of production. Productivity shows an increasing trend, and it can be construed that productivity has not been a cause any of injury to the domestic industry;

| Particulars               | Unit    | 2011-12 | 2012-13 | 2013-14 | POI |
|---------------------------|---------|---------|---------|---------|-----|
| Productivity per employee | MT      | ***     | ***     | ***     | *** |
| Trend                     | Indexed | 100     | 116     | 114     | 176 |
| Productivity per day      | MT/day  | ***     | ***     | ***     | *** |
| Trend                     | Indexed | 100     | 117     | 125     | 192 |

**i) Employment and Wages**

111. The employment level has shown some increases by the POI but only at very marginal levels. Overall wages per kg, however, showed declines in the POI which should be seen along with the improved productivity per employee and per day.

| Particulars | Unit | 2011-12 | 2012-13 | 2013-14 | POI |
|-------------|------|---------|---------|---------|-----|
| Employment  | Nos. | ***     | ***     | ***     | *** |

|       |         |     |     |     |     |
|-------|---------|-----|-----|-----|-----|
| Trend | Indexed | 100 | 100 | 107 | 107 |
| Wages | Rs/Kg   | *** | *** | *** | *** |
| Trend | Indexed | 100 | 81  | 74  | 88  |

**j) Growth**

112. The Authority notes that growth of the domestic industry was negative in a number of parameters. Growth of domestic industry in many parameters occurred when the market demand for the product showed substantial growth.

| Particulars            | Unit | 2011-12 | 2012-13 | 2013-14 | POI   |
|------------------------|------|---------|---------|---------|-------|
| Production (MT)        | %    |         | 15.49   | 5.97    | 53.09 |
| Domestic Sales (MT)    | %    |         | -22.58  | -25.93  | 99.65 |
| Profit/ (Loss) Rs lacs | %    |         | -850    | 3.35    | 50.35 |
| Cash Profit (Rs. Lacs) | %    |         | -425    | 0.21    | 58.42 |
| ROI                    | %    |         | -1049   | -11.81  | 72.42 |
| Demand                 | %    |         | -18     | -37     | 90    |

**k) Ability to raise capital investment**

113. It is seen that the profitability of the domestic industry has marked sharp declines and the domestic industry has been suffering financial losses. The situation is not viable to raise additional capital investment when the ROI from the existing investments were suffering.

**I. CONCLUSIONS ON INJURY**

114. On examination of various injury parameters, the Authority concludes that imports from subject country have increased in absolute terms and also in relation to production and consumption in India. Imports of the product were undercutting the prices of the domestic industry in the market and were creating underselling and price suppression effects. Further, whereas cost of production kept increasing over the injury period, the selling price of the domestic industry could not be increased even to the levels of cost of production that the domestic industry suffered financial losses. The imports were, thus, suppressing the

prices of the domestic industry and preventing the price increases that would have otherwise been occurred in the absence of dumped imports.

115. It is noted that the demand for the product and sales of the domestic industry increased significantly, however, domestic industry could not increase its profitability proportionately as dumped imports continued to hold very significant share in the market. Such dumped volumes showed increasing trend with continues price cuts prejudicing the ability of the domestic industry to pass on increase in costs to the customers and realising reasonable profits. Resultantly, the domestic industry started incurring financial losses. Even though the domestic industry could increase its sales volumes, the same did not create any positive effect on the profitability since such increased sales volumes were achieved by matching the dumped price of subject goods from subject country.
116. Profitability of the domestic industry declined continuously and the domestic industry has been making financial losses. Return on capital employed and cash profits followed the same trend as that of profits. Both return on capital employed and cash profits marked significantly negative figures in the POI.

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

117. Having examined the existence of material injury, volume and price effects of dumped imports on the prices of the domestic industry, in terms of its price underselling and price suppression, and depression effects, other indicative parameters listed under the Indian Rules and Agreement on Anti-Dumping, the Authority has examined whether other factors listed under the AD Rules could have contributed to injury to the domestic industry. The examination of causal link has been done as follows;

##### **(a) Volume and prices of imports not sold at dumped prices**

118. During POI, it is noted that entire imports of the subject goods has been from subject country. Therefore, the imports from other countries cannot be considered to have caused injury to the domestic industry.

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

119. It is noted that there is a single market for the subject goods where dumped imports from the subject country compete directly with the subject goods supplied by the domestic industry. It is also noted that the imported subject

goods and domestically produced goods are like article and are used for similar applications/end uses. There is no evidence of trade restrictive practices of and competition between the foreign producers and domestic producers causing injury to the domestic industry.

**(c) Contraction of demand or Changes in the pattern of consumption**

120. The Authority notes that demand for the product showed decrease in the earlier part of the injury period and increased significantly during the POI. The Authority, thus, concludes that injury to the domestic industry was not due to contraction in demand.

**(d) Development in Technology**

121. None of the interested parties have furnished any evidence to demonstrate significant changes in technology that could have caused injury to the domestic industry.

**(e) Export performance of Domestic Industry;**

122. The details of exports by the domestic industry is as follows;

| Period          | 2011-12 | 2012-13 | 2013-14 | POI<br>Annualised |
|-----------------|---------|---------|---------|-------------------|
| Volume in MT    | -       | ***     | ***     | ***               |
| Indexed         | Nil     | 100     | 204     | 212               |
| Value Rs per KG | Nil     | ***     | ***     | ***               |
| Indexed         | Nil     | 100     | 113     | 123               |

123. Performance of the domestic industry has been segregated for domestic and export market and profitability in the domestic market alone is considered for this final findings. Therefore, any possible decline in export performance is not a cause of any injury. The Authority has considered only domestic operations in order to ascertain impact on price parameters.

**(f) Productivity of the Domestic Industry**

124. Productivity of the domestic industry increased consistently. However, regardless of changes in productivity levels, the profitability of the domestic industry showed continued decline.
125. From the foregoing, the Authority concludes that there is no evidence of injury being caused due to other factors.

#### **K. FACTORS ESTABLISHING CAUSAL LINK**

126. Analysis of the performance of the domestic industry over the injury period shows that the performance of the domestic industry has been materially injured over the injury period and during the POI. The causal link between dumped imports and the injury to the domestic industry is established on the following grounds:
  - a) Subject goods are imported into India at dumped prices. The dumped imports from subject country have significantly increased over the injury period. Significant increase in imports from subject country coincided with significant share in the domestic market adversely affected the ability of domestic industry to increase its market share while achieving fair and profitable price for the subject goods;
  - b) Dumped imports from subject country are suppressing the prices of the domestic industry. As the domestic industry has tried to align its selling prices close to the landed prices, the increase in selling prices were considerably less than increase in cost of production and resultantly the domestic industry suffered financial losses;
  - c) Imports from subject country are undercutting the prices of the domestic industry at significant levels. This is preventing the domestic industry from increasing its prices in line with increase in cost and so as to achieve reasonable profit. In fact, the domestic industry has been forced to reduce the prices when the cost of production increased over the injury period;
  - d) The price suppression effect of dumped imports is visible on significant decline in profitability to the domestic industry;
  - e) Deterioration in profits, return on capital employed and cash profits are direct result of dumped imports;

127. The Authority is of the view that the above grounds clearly establish existence of causal link between dumped imports from subject country and injury to the domestic industry. Thus, the Authority concludes that the domestic industry has suffered material injury due to dumped imports of the subject goods originating in or exported from the subject country.

**L. MAGNITUDE OF INJURY AND INJURY MARGIN**

128. The Authority has determined non-injurious price for the domestic industry on the basis of principles laid down in the Rules, as amended. The non-injurious price so determined has been compared with the landed prices of imports from the subject countries.

| Name of Producer/exporter                               | NIP/Kg<br>(US\$) | Landed<br>Value/kg<br>(USD) | Injury<br>Margin | Injury<br>margin % | IM<br>(%)<br>Range |
|---|------------------|-----------------------------|------------------|--------------------|--------------------|
| Guandong FUWA Engineering<br>Manufacturing company Ltd. | ***              | ***                         | ***              | ***                |                    |
| Guangdong FUWA Heavy<br>Industries Co., Ltd.            | ***              | ***                         | ***              | ***                | 5-15               |
| Shandong Jinsheng Axle<br>Manufacturing Co., Ltd.       | ***              | ***                         | ***              | ***                | 5-15               |
| Any other producer                                      | ***              | ***                         | ***              | ***                | 25-35              |

**M. SUBMISSIONS MADE BY THE INTERESTED PARTIES POST DISCLOSURE STATEMENT**

129. The examination of the comment to the disclosure comment is as follows:

**M.1 Comments from Domestic Industry**

130. M/s Guangdong FUWA Engineering Manufacturing Co., Ltd, (Producer and Exporter) and Guangdong FUWA Heavy Industries Co., Ltd (Producer and Exporter) are related entities and same duties should be recommended for these parties- It may be noted that M/s Guangdong FUWA Engineering Manufacturing

Co., Ltd, (Producer and Exporter) and Guangdong FUWA Heavy Industries Co., Ltd (Producer and Exporter) are related entities and same duties needs to be recommended for these parties. This is the practice in the DGAD in the case of related producer/exporter and we request the Authority to follow the same practice for the purpose final finding in the present case also

## **M.2 Comments from other interested parties**

### **PUC and like article**

- Single piece axles are the most preferred axles in the country and such a product is not available in York range. The product offered by the domestic industry is inferior and substandard.
- The Respondent has been submitting to the Authority that there are material differences in quality of the axles sold by the Respondent and the one produced by the domestic producers.

### **Scope of Domestic industry and standing**

- The Authority merely notes that information about total Indian production has been estimated by adding 5% inventory to the sales of other Indian producers; and the sales figure of other Indian producers is taken as the difference between total Indian demand minus imports and domestic sales of the Domestic Industry. The Authority has given no basis as to why an arbitrary 5% must be added to the sales to calculate production. In fact, the choice of 5% is even more arbitrary as the Petitioner's own inventories (332 MT in the POI) constitute 6.38% of their domestic sales (5201 MT). In light of the same, the Authority must at least add 6.38% to the sales of the other producers to arrive at the estimated production.
- The assumption that the sales of the prime movers can be used to estimate the production will lead to a severe under-representation of the production figures as it does not account for the unsold axles, axles produced for replacement market, and non-inclusion of many producers in the SIAM data. It is imperative that the Authority arrives at the actual demand, production and sales figures here. As submitted earlier, the implications of these calculations not only on the issue of standing but also to assess injury. Parameters like demand, market share of production and sales of other Indian producers which are essential for injury analysis.

### **Calculation of normal value and Dumping Margin**

- The Authority has stated that it has constructed the Normal value for the Chinese producers on the basis of constructed costs of production, after including selling, general & administrative costs and reasonable profit margin. It does not mention what it relies on to calculate the raw material costs to arrive at the cost of production – domestic prices or international prices. This

in itself prejudices Respondent as the Respondent will be unable to comment on how the normal value has been arrived at. If the Authority considers domestic prices to calculate the normal value, it goes against its own past practice. In fact, in light of the past practice, it should have necessarily considered international prices.

### Miscellaneous Issues

- York prices are much lower than other domestic manufacturers. A strategic pricing to keep the competition away to garner major chunk of business in the Indian market and to move towards monopolistic position may be the reason.
- The extent of credit offered by the York in the market has not been studied.
- It is also submitted that the figures also suggest that there is inter- se competition between the domestic industry, other producers and the imported goods. The Respondent, therefore, fails to understand the basis for the submission that imports from the subject country is causing injury to the domestic industry. It is highly implausible that imports that hold a very small market share are capable of having a negative impact on the domestic industry. In light of the same, the Authority is requested to specifically assess inter- se competition between the domestic industry, other producers and the imported goods. In particular, it must assess inter- se competition between the domestic industry and the other producers as other axle producing companies such as Automotive Axles Ltd. and JOST India Auto Component Pvt. Ltd. have also recently (around 3-4 years) started their operations. This must be especially done in relation to Automotive Axles Ltd which being a supporter has provided its particulars like prices.
- There are three issues relating to Non Injurious Price-fixing of 22% return, assessment of capital employed and adjustment of after sales warranty.

### Causal Link

- It has been submitted that other factors such as contraction of demand, increase in costs, sales to a related party and increase in fixed costs/costs due to setting up a new plant may have caused injury to the domestic industry. It is submitted that the injurious effects arising out of other factors besides dumped imports must be given adequate weightage. There may not be any correlation between price-under cutting and profits, cash flow and return on capital employed.

### M.3 Examination by the Authority

- The submission made by the Domestic Industry with regard to imposition of single rate of antidumping duty on two related exporters has been examined and a weighted average dumping and injury margin has been worked for M/s Guangdong FUWA Engineering Manufacturing Co., Ltd, (Producer and

Exporter) and Guangdong FUWA Heavy Industries Co., Ltd (Producer and Exporter) has been considered. The Authority noted that granting of individual dumping margins might enable related exporting producers to channel their exports to India through the company with the lowest individual antidumping duty enabling them to circumvent the anti-dumping measures and thus rendering them ineffective. In view of the above, the related exporting producers belonging to the same FUWA group have been regarded as one single entity and accordingly granted one single duty rate. For this purpose, weighted average dumping and injury margin has been separately worked out. Having regard to the lesser duty rule followed by the Authority, the Authority recommends imposition of 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.

- As regards quality issues, this issue has been dealt with a number of times and CESTAT has also pronounced judgements on this issue that quality is not a relevant consideration to like product determination, particularly when the claim of poor quality has not been quantified. The Authority notes that the Domestic Industry has been exporting the product globally in a significant quantity.
- As regards estimation of Indian production and standing, it is reiterated that the information about total Indian production was not readily available in the public domain and the applicant has devised a methodology to estimate the total Indian production and has relied upon production data of Prime Movers to which Trailers are attached wherein the subject goods are used in turn published by the Society of Indian Automobile Manufacturers (SIAM) as a basis to derive the requirement of subject goods in India and to back calculate the probable domestic production in India. The opposing interested parties have neither provided the production data nor suggested any alternate methodology. They had suggested a higher demand on the basis of prime movers. Further, assumption of 5% inventory was considered reasonable by the Authority in view of the nature of the product. Even if such a figure was accepted, the Applicant domestic industry would have constituted 47% of the domestic production and along with the support of Automotive axles exceeded 50% of the production in India. More ever, none of the other producers have opposed the investigation.
- As regards methodology of construction of normal value, it is noted that the product is assemblage of a variety of components for which international prices are not available. Therefore, the Authority had no option but to adopt the raw material (components) consumption and prices of domestic industry which is in consonance with the set Rules and practice.
- Regarding the contention that York prices are much lower than other domestic manufacturers and a strategic pricing to keep the competition away to garner major chunk of business in the Indian market, these have not been substantiated with any evidences. Analysis given in the finding does not also support this contention.

- Extent of credit given by Domestic Industry form part of working capital which has been duly studied and dealt with in terms of Annexure III to the AD Rules. Similarly, reasonable return has been provided and capital employed has been assessed as per consistent practice followed in DGAD. The incidence of warranty/after sales service has been worked as per books of accounts maintained by Domestic Industry and has been excluded from NIP treating it as post manufacturing expenses.
- As regards the contention that injury to the domestic industry is due to inter se competition between the domestic producers, the Authority notes that there is no such evidence provided by the interested parties. It is noted in this regard that the applicant is the largest producer of PUC and there is no opposition from any other producer. The landed value of imported articles is significantly lower than the NIP and net selling price of the applicant. Therefore, the Authority concludes that the lower landed price of the imported article triggers the domestic price. As such, the contention that inter-se competition is causing injury to the domestic industry does not hold.
- As regards other indicator of absence of causal link, it is noted that the demand pattern does not show contraction as it fell during early part of the injury period and picked up considerably during POI exceeding that of the base year. The Authority considers the fair cost of production as non-injurious price after optimising the actual cost of production for the purpose of injury analysis, therefore, the contention of the interested party does not have any strength. Moreover, the Authority examines all the relevant factors in totality and all the economic parameters need not show adverse performance to indicate material injury. As regards the contention of the interested party that injury has been inflicted by sales to the related party, the Authority examined this allegation and found that the price realisation in the case of related party was hardly 2.7%. Even if the price of the related party is increased by 2.7% in the injury analysis, overall impact on price undercutting would be hardly 0.7%.

## **N. Conclusions**

131. After examining the submissions made by the interested parties and issues raised therein; and considering the facts available on record, the Authority concludes that:

- (a) The products under consideration have been exported to India from China PR below their associated Normal values.
- (b) The domestic industry has suffered material injury.
- (c) The material injury has been caused by the dumped imports of the subject goods from China PR.

## **O. Indian industry's interest & other issues**

132. The Authority notes that the purpose of anti-dumping duties, in general, is to eliminate injury caused to the Domestic Industry by the unfair trade practices of dumping so as to re-establish a situation of open and fair competition in the Indian market, which is in the general interest of the Country. Imposition of anti-dumping measures would not restrict imports from the subject country in any way, and therefore, would not affect the availability of the products to the consumers.

133. It is recognized that the imposition of anti-dumping duties might affect the price levels of the products manufactured using the subject goods and consequently might have some influence on relative competitiveness of these products. However, fair competition in the Indian market will not be reduced by the antidumping measures, particularly if the levy of the anti- dumping duty is restricted to an amount necessary to redress the injury to the domestic industry. On the contrary, imposition of 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 the 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.

#### **P. Recommendations**

134. 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 aspects of dumping, injury and causal link. Having initiated and conducted the investigation into dumping, injury and the causal link thereof in terms of the AD Rules and having established definitively positive dumping margins concerning imports of the subject goods originating in or exported from the subject country and 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 in the instant matter. Therefore, the Authority considers it necessary to recommend imposition of definitive anti-dumping duties concerning imports of the subject goods from the subject country in the form and manner described here under.

135. 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. Accordingly, the antidumping duty equal to the amount indicated in Col 8 of the table below is recommended to be imposed concerning

all imports of the subject goods originating in or exported from the subject country.

**Duty Table**

| S.no. | Tariff Item  | Description Of Goods | Country of Origin | Country Of Export            | Producer   | Exporter   | Amount | Unit of Measurement | Currency |
|-------|--------------|----------------------|-------------------|------------------------------|--|--|--------|---------------------|----------|
| (1)   | (2)          | (3)                  | (4)               | (5)                          | (6)  | (7)  | (8)    | (9)                 | (10)     |
| 1.    | 8716<br>9010 | Axle for Trailers    | China             | China                        | Guangdong FUWA Engineering Manufacturing Co., Ltd. | Guangdong FUWA Engineering Manufacturing Co., Ltd. | 0.16   | Kg                  | US\$     |
| 2.    | 8716<br>9010 | Axle for Trailers    | China             | China                        | Guangdong FUWA Heavy Industries Co. Ltd.           | Guangdong FUWA Heavy Industries Co. Ltd.           | 0.16   | Kg                  | US\$     |
| 3.    | 8716<br>9010 | Axle for Trailers    | China             | China                        | Shandong Jinsheng Axle Manufacturing Co., Ltd.     | Shandong Jinsheng Axle Manufacturing Co., Ltd.     | 0.14   | Kg                  | US\$     |
| 4.    | 8716<br>9010 | Axle for Trailers    | China             | China                        | Any combination other than Sl. No 1 to 3 above     |  | 0.46   | Kg                  | US\$     |
| 5.    | 8716<br>9010 | Axle for Trailers    | China             | Any country other than China | Any  | Any  | 0.46   | Kg                  | US\$     |

|    |              |                      |  |       |     |     |      |    |      |
|----|--------------|----------------------|--|-------|-----|-----|------|----|------|
| 6. | 8716<br>9010 | Axle for<br>Trailers | Any<br>country<br>other<br>than<br>China | China | Any | Any | 0.46 | Kg | US\$ |
|----|--------------|----------------------|--|-------|-----|-----|------|----|------|

136. Landed value of imports for the purpose of this Notification shall be the assessable value as determined by the Customs under the Customs Act, 1962 (52 of 1962) and includes all duties of customs except duties under sections 3, 3A, 8B, 9 and 9A of the said Act.

137. An appeal against the order of the Central Government arising out of this Final Findings Notification shall lie before the Customs, Excise and Service Tax Appellate Tribunal in accordance with the Customs Tariff Act.

(A K Bhalla)  
Additional Secretary & Designated Authority

