

(To be published in Part-I Section-I of the Gazette of India Extraordinary)

\*\*\*\*

**Government of India**  
**MINISTRY OF COMMERCE & INDUSTRY**  
**DEPARTMENT OF COMMERCE**  
**(DIRECTORATE GENERAL OF ANTI-DUMPING & ALLIED DUTIES)**  
**NOTIFICATION**

**NEW DELHI, the 5<sup>th</sup> March, 2009**

**PRELIMINARY FINDINGS**

**Sub: Anti-Dumping Investigation involving import of “Tyre Curing Presses” also known as Tyre Vulcanisers or Rubber Processing Machineries for tyres<sup>from China</sup> PR.**

**F.NO 14/22/2007-DGAD:-** Having regard to the Customs Tariff Act 1975 as amended in 1995 (hereinafter referred to as the Act) and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, (hereinafter referred to as the Rules) thereof:

1. WHEREAS M/s Larsen and Toubro Limited, Chennai, Tamil Nadu, (herein after referred to as the applicant) has filed an application before the Designated Authority (hereinafter referred to as this Authority), in accordance with the Act, and the Rules, alleging dumping of all kinds of tyre curing presses, used for curing tyres during manufacturing of a tyres (hereinafter referred to as the subject goods), originating in or exported from the China PR (herein after also referred to as subject country) and requested for initiation of an investigation for levy of anti dumping duties on the subject goods. The subject country was informed about receipt of application in accordance with the Rule 5(5).

2. AND WHEREAS, the Authority on the basis of sufficient evidence submitted by the applicants issued a public notice dated 16th October 2008, published in the Gazette of India, Extraordinary, initiating Anti-Dumping investigations concerning imports of the subject goods, originating in or exported from the subject country, to determine the existence, degree and effect of alleged dumping and to recommend the amount of antidumping duty, which, if levied would be adequate to remove the injury to the domestic industry.

**A. Procedure**

3. Procedure described below has been followed with regard to this investigation after issuance of the public notice notifying the initiation of the above investigation by the Authority.

(i) The Embassy of the subject country in New Delhi was informed about the initiation of the investigations in accordance with Rule 6(2).

(ii) The Authority provided copies of the non confidential version of the application to the known exporters and the Embassies of subject country in accordance with Rules 6(3) supra. A copy of the non-confidential application was also provided to other interested parties, wherever requested.

(iii) The Authority forwarded a copy of the public notice to the known exporters (whose names and addresses were available with the authority) and gave them opportunity to make their views known in writing within forty days from the date of the letter in accordance with the Rules 6(2) & 6(4). Response to exporter's questionnaire has been received from the following only one producer/ exporter of the subject goods from the subject country:

a. Guilin Rubber Machinery Ltd., China PR

(iv) The Authority forwarded a copy of the public notice to all the known importers (whose names and addresses were available with the authority) of subject goods in India and advised them to make their views known in writing within forty days from the date of issue of the letter in accordance with the Rule 6(4). Responses to the Importer's questionnaire have been received from the following importers of the subject goods In India:

a. J.K. Tyres Ltd.

b. Appolo Tyres Ltd.

(v) The Authority kept available non-confidential version of the evidence presented by various interested parties in the form of a public file maintained by the Authority and kept open for inspection by the interested parties as per Rule 6(7).

(vi) Other exporters, producers and other interested parties who have not supplied information in this investigation have been treated as non-cooperating interested parties.

(vii) x) A Market Economy Treatment (MET) questionnaire was forwarded to all the known exporters and Embassy of China PR. While for the purpose of initiation the normal value in China PR was considered based on the constructed cost of production of the subject goods in China PR, the Authority informed known exporters that it proposes to examine the claim of the applicant in the light of para 7 and para 8 of Annexure I of Anti Dumping Rules, as amended. The exporters/producers of the subject goods from China PR was therefore requested to furnish necessary information/sufficient evidence as mentioned in sub-paragraph (3) of paragraph 8 to enable the Authority to consider whether market economy treatment be granted to cooperative exporters/producers.

(viii) Request was made to the Directorate General of Commercial Intelligence and Statistics (DGCI&S) to arrange details of imports of subject goods for the past three years, including the period of investigations. The information received from DGCI&S shows that it had not captured the imports of the subject goods, therefore data from IBIS has been relied upon in the findings.

(ix) Information was sought from the applicant and other domestic producers also The Non-injurious Price based on the optimum cost of production and cost to make and sell the subject goods in India based on the information furnished by the domestic industry on the basis of Generally Accepted Accounting Principles (GAAP) was worked out provisionally so as to ascertain whether Anti-Dumping duty lower than the dumping margin would be sufficient to remove injury to Domestic Industry;

(x) Investigation has been carried out for the period starting from 1st April 2007 to 31st March 2008 (12 months) i.e. the period of investigation (POI). The examination of trends in the context of injury analysis covered the period from April 2004 - March 2005, April 2005 – March 2006, April 2006 – March 2007 and the POI.

(i) xviii) \*\*\* in this notification represents information furnished by an interested party on confidential basis and so considered by the Authority under the Rules.

## **B. Product under Consideration and Like Article**

4. The product under consideration in the present petition is “Tyre Curing Presses” also known as Tyre Vulcanisers or Rubber Processing Machineries for tyres. Tyre Curing Press is a machine used for curing tyre during manufacturing of a tyre. Tyre curing press is a machine where tyres get their final shape and tread pattern. Hot molds shape and vulcanize the tyres. The molds are engraved with the tread pattern, the sidewall markings of the manufacturer and those required by law. After curing, the tyres are removed from their molds and taken to final finish and inspection.

5. The size of the Tyre Curing Press is normally indicated in inches by the internal diameter of the Dome or the diameter of the platen. This in turn determines the maximum size of the mold that can be used in the press. The mold diameter is the critical parameter that determines the maximum size of a tyre that can be cured in that press. Generally as the press size increases it can accommodate a bigger diameter mold and hence it can cure bigger tyres. The broad classification of press sizes for various tyre segments are as shown below:

24”-36” – Scooter tyres

40” -52” – Passenger car and LCV tyres

55”- 65.5” – Truck tyres

78” – Tractor and agricultural equipment tyres

85”-185” – OTR tyres (Mining and special equipment)

Optional Add ons such as vertical chuck loader, segmented mould operator and post cure inflators which help the press in terms of automation better productivity and better product handling capacity etc. are added depending upon the requirement of the customers.

6. Tyre Curing Presses is classified under Chapter 84 of the Customs Tariff Act, 1975 under subheading 8477.51 under subheading 8477.5100 under the Indian Trade Classification (Based on Harmonized Commodity Description and Coding system).

7. The applicant has claimed that there is no known difference between the products manufactured by them and the subject goods imported from the subject country, which can have any impact on price, usage, quality etc. The applicant also claims that the technology and primary production process employed by them and the foreign

producers are comparable; however, every producer fine-tunes its production process based on available facilities and necessities.

8. Guilin Rubber Machinery Factory, co-operating exporter from China PR, has submitted that the product concerned is not a kind of volume-produced product, and is produced according to the order of client with special requirements. The construction of product concerned can normally be divided into two segments, one is the basic construction mainly made of steel and copper and the other is the designed parts. For same product type, the basic constructions of product concerned are same, but the designed parts such as electric parts and metal parts of the product concerned are highly different according to different orders.

9. M/s Luthra & Luthra Law Offices on behalf of M/s Automotive Tyre Manufacturers' Association, M/s Apollo Tyres Ltd. and M/s JK Tyres Ltd. made the following argument on the scope of product under consideration or like article:

a) While every tyre curing press is made of the same raw materials, uses similar technology and is distributed to the same set of customer, it should be understood that presses of different sizes and specification are not "like" products.

b) Prices differ greatly depending on the exact specification of the press. Each press is ordered for a very specific function and one press cannot be replaced by another that is not exactly alike in all respects such as the size, type or accessories.

c) The quality, the ability of a TCP manufacturer to honour delivery schedules and its ability to even manufacture the specific press required are critical deciding factors that play a major role in the purchasing decisions.

d) L&T and other domestic manufacturers are not known to have the capability to produce presses of a larger size. They generally supplied presses in the range of 45" to 65.5" and upto 78" presses and in the rare instance they have supplied presses above these sizes.

e) We strongly urge the Hon'ble DGAD to limit the scope of this investigation to only those sizes that were produced by L&T from the base year to the POI.

## **Examination by the Authority**

10. The authority examined the issue in details and in this regard it has been noted that all sizes of presses (whether or not imported during POI) are manufactured in the manufacturing facility of the domestic industry. It has been further noted that facility available for bigger sizes of presses can also be used for smaller sizes of presses. The technical requirement however differs depending upon the size of press. Regarding objection of the interested parties about comparability of presses, it has been noted that for all sizes of presses, manufacturing is comparable upto bare mechanical construction and it is a salable commodity. The press is however incomplete without electrical panels, the pneumatic panel and valve battery, etc. Depending upon the requirement of the customers, the press can be customised by adding extra features such as vertical chuck loaders segmented mould operator and post cure inflators, etc. which help the press in terms of automation better productivity and better product handling capacity etc.

11. In view of the submissions made by the domestic industry and other interested parties, the authority notes that for same size of presses imported product can be substituted with the presses manufactured by the domestic industry as add ons features are only optional requirement of the customers. Therefore the authority holds that the presses made by domestic industry is 'like article' of the product imported from the subject countries. Regarding limiting the scope of products to sizes imported during POI, the Authority notes that the presses can be made in the same facility irrespective of their sizes, though higher sizes presses would require higher technical skills and know- how. The domestic industry has capability to produce all sizes and their variation of presses. Therefore the authority holds that there is no reason to restrict the scope of product under consideration to the sizes of presses imported during POI only.

## **C. Domestic Industry and Standing**

12. The application has been filed by M/s Larsen & Toubro Ltd., Chennai, and the applicant is one of the major producers of the subject goods in India. The Authority notes that there are other producers of the subject goods in India i.e., M/s Devon Machines Pvt. Limited, Chennai; M/s Trimac Machinery Manufacturing Pvt Limited, Navi Mumai; Alfred Herbert (India) Limited, Kolkata and Specific Engineering Corporation Pvt. Limited, Navi mumbai.

13. M/s Luthra & Luthra Law Offices on behalf of M/s Automotive Tyre Manufacturers' Association, M/s Apollo Tyres Ltd. and M/s JK Tyres Ltd. submitted that the Petitioner has not analyzed the impact of the imports on other important producers in the TCP manufacturing market.

14. Subsequent to Initiation, No domestic producer of the subject goods other than the applicant provided any information relevant to the investigation.

15. After taking into account the production of all the known producers (as estimated by the applicant) of the subject goods in the Country, the Authority notes that the applicant commands more than 50% of the production of the subject goods in India and holds that for the purpose of this investigation the applicant M/s Larsen & Toubro Ltd., Chennai commands the standing in terms of Rule 5(3) and constitutes the domestic industry in terms of Rule 2(b).

#### **D. De Minimis Limits**

16. As per the import data received by the Authority from IBIS, as well as the data furnished by the cooperating Chinese exporter and co-operating importers, the imports of the subject goods from the subject country constitute total imports. Therefore, the imports from subject country are above the de minimis level.

#### **E. Confidentiality**

17. The Authority has examined the confidentiality claims of the interested parties. In this regard, the data of domestic industry in respect of customers, cost and prices have been kept confidential. The confidential information provided by co-operating exporter and importers as confidential have been kept confidential for the purpose of preliminary findings. The interested parties may make submissions in this regard.

#### **F. Other submissions and issues raised**

18. The Authority notes that the a producer/ exporter of the subject goods in China PR have submitted their responses to the exporter's questionnaire as listed out in para 3(iv) above. The consumers or importers in India as mentioned in para 3(v) have also responded to the Designated Authority and provided the information relevant to the present investigation.

19. M/s Luthra & Luthra Law Offices on behalf of M/s Automotive Tyre Manufacturers' Association, M/s Apollo Tyres Ltd. and M/s JK Tyres Ltd. have made the following submissions other than those dealt with at relevant places in this findings:

- a. L&T and other domestic manufacturers are not meeting delivery deadlines that have caused delays in the project schedule of the Importers.

b. Data submitted by the petitioner regarding import of presses, allegedly as per IBIS data, does not even remotely match the exact imports made by the importers either during POI or before the POI. Except for the 91” press imported by JK in 2004-05 and 48” imported by Apollo in 2005-06 all other import data is incorrect.

c. There is major discrepancy between Annexure 1.2 on “Imports of TCP’s into India”, Annexure 1.6 on “Lost orders of TCPs by Petitioner” and Annexure 1.4 on “IBIS import data”.

d. The data on lost orders is totally baseless. The premises on which the so called list of lost orders has been drawn up is not evident at all.

e. The Petitioner has kept certain information confidential which does not deserve confidential treatment, such as the data on so-called “lost orders” and the information about the Petitioner on its expansion plans.

f. Being a public listed company, L&T is required to disclose the information on its expansion plans to the public and investors.

### **Examination by the Authority**

20. Regarding issues raised by interested parties in respect of injury, the Authority notes that injury have been analysed on the basis of verified data of the domestic industry. The other issues have been dealt with in the relevant portion of the findings.

### **G. Determination of Dumping Margin**

#### **G.1 Examination of Market economy claims**

21. At the stage of initiation, the Authority proceeded with the presumption by treating China PR as a non-market economy country as per para 8(2) of Annexure 1 of the Rules, for purposes of an anti dumping investigation. Upon initiation, the Authority advised the producers/Exporters in the country to respond to the notice of initiation and provide information relevant to determination of their market economy status.

22. The Authority sent copies of the MET questionnaire to all the known exporters for rebutting presumption of non market economy in accordance with criteria laid down

in para 8(3) of Annexure-I to the Rules. The Authority also requested Government of China to advise producers/exporters in their country to provide information.

23. As per Paragraph 8, Annexure I to the Anti Dumping Rules as amended, the presumption of a non-market economy can be rebutted if the exporter(s) from China PR provide information and sufficient evidence on the basis of the criteria specified in sub paragraph (3) in Paragraph 8 and prove to the contrary. The cooperating exporter/producer of the subject goods from People's Republic of China PR are required to furnish necessary information/sufficient evidence as mentioned in sub-paragraph (3) of paragraph 8 in response to the Market Economy Treatment questionnaire to enable the Designated Authority to consider the following criteria as to whether:-

- a) the decisions of concerned firms in China PR regarding prices, costs and inputs, including raw materials, cost of technology and labour, output, sales and investment are made in response to market signals reflecting supply and demand and without significant State interference in this regard, and whether costs of major inputs substantially reflect market values;
- b) the production costs and financial situation of such firms are subject to significant distortions carried over from the former non-market economy system, in particular in relation to depreciation of assets, other write-offs, barter trade and payment via compensation of debts;
- c) such firms are subject to bankruptcy and property laws which guarantee legal certainty and stability for the operation of the firms and
- d) the exchange rate conversions are carried out at the market rate.

24. The Authority notes that M/s Guilin Rubber Machinery Factory, a producer/exporter of the subject goods from the subject country, has submitted information on prescribed format to rebut non-market economy presumption.

25. The Authority notes from the response that M/s Guilin Rubber Machinery Factory (Guilin) is subsidiary of China National Chemical Equipment Corporation and its management is selected by China National Chemical Equipment Corporation. It has also been stated that 'Guilin' and China National Chemical Equipment Corporation are state contributed enterprises and there is a no Board of Directors and Board of Shareholders for 'Guilin'. The legal representative of 'Guilin' is a factory director who is appointed by China National Chemical Equipment Corporation.

26. In view of the above facts, the Authority notes that 'Guilin' is a state owned enterprise and it is not possible to rule out significant interference by State concerning critical business decisions. Therefore, the Authority is not granting market economy treatment to exporter for the purpose of preliminary findings. However, the matter would be examined in detail further after notification of preliminary findings.

### **G.3 Normal Value for China PR**

27. As recorded earlier, market economy treatment has not been granted to Guilin for the purpose of preliminary findings. Therefore, the authority has provisionally constructed the normal value for China PR on the basis of Para-7 to Annexure-I to the Rules.

28. In this connection Para 7 of Annexure I of the Anti-dumping Rules provide that:

In case of imports from non-market economy countries, normal value shall be determined on the basis if 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.

29. In the Initiation Notification, it was informed that domestic industry has suggested India as surrogate country for determining normal value for China PR in terms of the above provision. However, no submissions have been made by co-operating exporter or other interested parties in this regard.

30. As no information about prices has been made available in respect of market economy third country and also prices from such third country to other countries, the Authority has therefore determined normal value on basis of ' Any other reasonable basis'.

31. The Normal Value has been constructed for those subject goods with similar features which have been exported to India during POI as per information available in IBIS data.

32. The Normal Value has been constructed taking into account domestic price of all the major inputs duly adjusted to reflect international prices due to non-availability of international price for various components separately for machines for different sizes. Consumption norms, conversion cost, and SGA expenses of the domestic industry have been adopted for determination of the normal value. After adding a reasonable profit margin of 5% constructed normal value works out as under:

TCP Size	Material Cost (Rs. In lacs)	Other manufacturing Cost (Rs.)	SGA & Finance cost (Rs. )	Profit margin @ 5 %	Constructed Normal Value (CNV)	Exchange Rate @ Rs. 40.75/US\$ (USD)
78" TCP	***	***	***	***	***	***
78" TCP+VCL	***	***	***	***	***	***
91" TCP	***	***	***	***	***	***
91" TCP+VCL	***	***	***	***	***	***
93" TCP	***	***	***	***	***	***
93" TCP+VCL	***	***	***	***	***	***
104" TCP	***	***	***	***	***	***
104" TCP+VCL	***	***	***	***	***	***
78" TCP+VCL without controls	***	***	***	***	***	***

#### G.4 Export Price

33. The Guilin Rubber Machinery Factory, the exporter from China PR provided transaction-wise details of exports made during POI. However, it was noticed that some exports were made to India from 'Guilin' which was not reflected in export transactions disclosed by the exporter. Guilin was provided details of 10 machines not reflected in the export transactions and was asked to offer their comments. It was replied that Guilin has "reported its sales shipped by it to India during POI and negotiated directly with Indian customers. Apart from these Guilin has sales within China including also to unrelated traders, sometimes even delivered to China ports. Guilin has no idea of the final customer of such unrelated traders. Guilin reports such sales as its domestic sales since goods were delivered by it or collected from it in China and it has no knowledge of the final customer in China, India or elsewhere and since no VAT refund has been claimed or received by Guilin in respect of such sales as can be verified". It has also been stated that "nonetheless Guilin are looking into it to see if they can identify this transaction from domestic sales

reported and will revert it in a couple of days". No further information has been received from the exporter. The consultant of the exporter was also given opportunity to explain the position. However, he did not avail the opportunity to explain the matter further.

34. In view of the above, the Authority cannot rely on the transaction-wise details of export provided by the exporter as the information has not captured all transactions of exports to India. Therefore, for the purpose of preliminary findings, the data of imports as reported in India in IBIS have been relied upon. Consequently, separate dumping margin for Guilin has not been determined. The matter would be further examined after notification of the preliminary findings on receipt of further information/evidence from the exporter.

35. In the imports data, the information has been provided on CIF value basis. The expenses incurred in export transactions have been deducted on the basis of information provided by Guilin to determine the ex-factory export price. No expenses have been disclosed in respect of the VAT differential and the bank transactions. Therefore, the same has also been adjusted to arrive at the ex-factory export price. The ex-factory export price has been determined size-wise of the TCP by taking into account the description of the product disclosed in the imports data. By this methodology, the ex-factory export price per TCP has been determined as \$ \*\*\* (78 inches), \$ \*\*\* (91 inches), \$ \*\*\* (93 inches) and \$ \*\*\* (104 inches).

### G..5 Dumping Margins

36. For the purpose of determination of dumping margin the ex-works normal value and export prices so determined provisionally have been compared at the same level of trade and dumping margin has been provisionally determined for the exporters from the subject country as follows:

	Weighted average Normal Value (USD per Machine)	Weighted average Export Price (USD per Machine)	Weighted average dumping margin (USD per Machine)	DM %
All exporters from China PR	***	***	***	33.55

### H. INJURY DETERMINATION

#### Views of domestic industry

37. The domestic industry has claimed that they have suffered material injury as a result of dumping from China PR. They have submitted that the imports of the product under consideration have increased in absolute terms and in relation to production and consumption in India. Imports are undercutting the prices of the domestic industry. Continued presence of the Chinese suppliers in the Indian market forced the domestic industry to reduce its prices not only in those orders where the Chinese were present, but also in those orders where the Chinese suppliers were not present. It has been stated that mere presence of the low priced product in the market in an industry like this would force all the suppliers to quote a lower prices on fears of loss of sales. Performance of the domestic industry deteriorated, as a consequence, in terms of market share, profits, return on investment and cash flow. Even though the performance of the domestic industry improved in terms of production and sales volumes, performance deteriorated in terms of associated prices. Moreover, improvement in performance in terms of production and sales is of economic consequence when the performance in terms of profits and return on investments is not in tandem with the performance in terms of production, and sales volumes. It can thus be concluded that the domestic industry suffered material injury.

38. In respect to threat of injury, it has been submitted the following:

(a) imports have increased significantly. In fact, from almost negligible, the volume of imports increased to 24 machines during the proposed POI itself, representing 08% of demand in India.

(b) The prices being quoted by the Chinese suppliers are significantly lower than prices being quoted by the Indian Producers. Given the overall cost advantages to the tyre industry, it is evident that the imports are entering at a present that is likely to increase demand for further importation of the product in the market.

(c) Chinese producers are holding significant unutilized capacities. This is established by the fact one Chinese producer alone has obtained an order for supply of 64 machines where delivery schedule was less than 12 months. The company would not have obtained the order, had it not been having unutilized capacities to execute the order.

### 39. Views of Importers & Users

M/s Luthra & Luthra Law Offices on behalf of M/s Automotive Tyre Manufacturers' Association, M/s Apollo Tyres Ltd. and M/s JK Tyres Ltd. have made the following submissions on injury to domestic industry:

- a. The Antidumping Rules reproduce Article 4.1 of the Antidumping Agreement and also require that injury be conducted for the "major" proportion of domestic manufacturers.
- b. The petitioner has not analyzed the impact of the imports on other significant and important producers on any aspect of injury and presented an injury analysis based solely on their own data, which in itself inconsistent and incorrect.
- c. A comprehensive injury analysis requires that impact of imports be evaluated for a "major" proportion of the total domestic production and the Petitioner was required to conduct an injury analysis taking into account not just their company specific data but also data pertaining to the other domestic manufacturers. The present injury analysis by the petitioner amounts to an incomplete and flawed analysis of the impact of imports on the entire domestic industry and for this reason alone should be rejected by the DGAD.
- d. Petitioner has manipulated the volume and value figures of import data just for the purpose of antidumping proceedings.
- e. There is an error in IV-A with respect to indexed data on total salary and wages.
- f. The Petitioner has, in violation of the WTO Agreement on Antidumping and the Indian Antidumping Rules, tried to include supposed sales/ orders for Chinese presses placed by Indian and delivered after the POI in conducting the injury analysis for the POI.
- g. The unsubstantiated data submitted by the Petitioner as lost orders should be rejected outright by the Hon'ble DGAD.
- h. Based on L&T's data, L&T shows no injury or negative growth for most of the injury parameters. All injury parameters integral to a showing of injury have registered positive year to year growth by L&T own admission.
- i. L&T has not been able to establish a "casual link" between the alleged dumping and the supposed injury caused to it during the POI.

j. The steady increase of capacity, capacity utilization, production and sales of TCPs' does not support a conclusion that there has been or that there is potential for decline in capacity, capacity utilization, production or sales of TCPs in India.

k. All three critical factors, i.e., domestic production, domestic sales and domestic sales realization have all seen increases, and these increases are not marginal or insignificant but demonstrate the largest increase for the company during the POI compared to any period prior to it.

l. The company went on to produce more, sell more, divert larger export sales to the domestic market and earn its highest domestic sale revenue during the POI. This in itself should be ground for the DGAD to terminate the investigation as the first and foremost indicators of injury namely actual or potential decline in production, sales and sales realization have not been proved by L&T.

m. L&T's market share also has been consistently increasing in comparison to other domestic producers. Both in terms of volume as well as value of domestic sales, L&T has secured the monopoly share of the market.

n. Productivity, employment, salary & wages have increased which is in contradiction to its claim of injury.

o. The Hon'ble DGAD must investigate the downward trend in profits and the Petitioner must be made to disclose the manner in which profits have been calculated especially in light of the fact that figures on sales, production and sales realization do not support such a drastic fall in profits.

p. The expansion projects undertaken by the petitioner also are a major cause for reduced profits and not imports as the petitioner is contesting.

q. The fall in profits during the POI can be solely be attributed to the fall in exports volumes and export sales realization which in themselves have been adversely affected by exchange rate fluctuations.

r. L&T has not even analysed the factor of injury "Ability to raise capital". Its injury analysis is thus incomplete, flawed, manipulated and severely lacking in any proof injury and alleged dumped imports.

s. L&T has not examined whether there has been price depression or suppression. DGAD must undertake price analysis of "like products" and must find injury only if there is significant price undercutting, price depression or suppression.

t. The Petitioner have raised a false claim of 'threat of injury' in view of its ability to show negative results on various on various economic parameters as required by the Antidumping Rules.

u. Positive growth in the antithesis of injury and for this reason the DGAD should terminate this investigation both on present material injury basis as well as for threat of material injury.

v. Petitioner has failed to establish a clear causal link between imports and fall in profits (other factors have not suffered any injury) and for this reason alone, the investigation should be terminated.

w. In the event MET treatment is denied to the Chinese exporters, then L&T costing data for its Qingdong factory should be used for the purpose of surrogate value.

x. While arriving at the export price, DGAD should not allow any deduction on account of commission of traders as the products have been imported directly. As regards the deduction on account of VAT, the Petitioner have to establish that product in question gets a VAT refund.

y. Hon'ble Authority must compel L&T to atleast disclose the method of allocating and apportioning costs to the LTM division so that the reasonableness of the same may be examined.

#### Examination by the Authority

40. Rule 11 of Antidumping Rules read with Annexure-II provides that an injury determination shall involve examination of factors that may indicate injury to the domestic industry, "... taking into account all relevant facts, including the volume of dumped imports, their effect on prices in the domestic market for like articles and the consequent effect of such imports on domestic producers of such articles..." In considering the effect of the dumped imports on prices, it is considered necessary to examine whether there has been a significant price undercutting by the dumped imports as compared with the price of the like article in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree.

41. For the examination of the impact of the dumped imports on the domestic industry in India, indices having a bearing on the state of the industry such as production, capacity utilization, sales volume, stock, profitability, net sales realization, the magnitude and margin of dumping, etc. have been considered in accordance with Annexure II of the rules supra.

A) Volume Effects of Dumped Imports: Import volumes and market shares

a) Import volumes and share of subject countries:

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

43. The Authority received transaction-wise information from DGCI&S. On perusal of the data it was noted that the data has not captured any transaction of TCP imports under relevant custom tariff head. The Authority therefore examined the volume of imports of the subject goods from the subject country and other countries based on the transaction-wise import data provided by IBIS data for the purpose of the preliminary determination:

Quantity in Nos.				
Period	2004-05	2005-06	2006-07	POI
Country	Quantity	Quantity	Quantity	Quantity
CHINA PR	1	2	4	24
Others	0	0	0	0
Trend	-	-	-	-
Total	1	2	4	24

Share of subject country	100%	100%	100%	100%	
	Unit	2004-05	2005-06	2006-07	2007-08
Imports	Nos.	1	2	4	24
Imports	MT	54	109	76	1225
Indian Production volumes	Nos.	257	316	355	417
Indian Production volumes	MT	4980	6600	8626	9685
Indian Demand	Nos.	162	204	224	338
Indian Demand	MT	2,386	3,556	5,015	8,006
Imports in relation to Indian production on number basis	%	0.39%	0.63%	1.13%	5.76%
Imports in relation to demand on number basis	%	0.62%	0.98%	1.79%	7.09%
Imports in relation to Indian production- on wt basis	%	1.09%	1.65%	0.88%	12.65%
Imports in relation to domestic consumption- on wt basis	%	2.28%	3.06%	1.52%	15.30%

44. The imports data has provided units in number. The same has been converted into unit of weight depending upon size of machines for the purpose of calculating ratios.

45. The above data indicates that imports of the subject goods from the subject country have increased substantially during the injury examination period. The imports increased from 1 number in 2004-05 to 24 in POI. There was no imports from other countries during the injury period. In relation to production, imports increased, in number, to 5.76% in POI from 0.39% in 2004-05. In terms of weight, it increased from 1.09% to 12.65%. In relation to demand, it increased, in number, from 0.62% to 7.09%; in terms of weight, it increased from 2.28% to 15.30%.

b) Actual and potential effect on production and capacity utilization:

46. The volume of domestic production and effects of dumped imports on the domestic operation of the domestic industry have been examined in terms of total production, capacity utilization and domestic sales of the domestic industry.

		2004-05	2005-06	2006-07	2007-08
<b><u>In terms of Numbers</u></b>					
Production volumes	Nos.	117	162	183	217
	Index	100	138	156	185

Domestic sales volumes	Nos.	59	89	95	150
	Index	100	151	161	254
<b><u>In terms of Weight</u></b>					
Production volumes	MT	3032	4309	6046	6793
	Index	100	142	199	224
Domestic sales volumes	MT	1403	2256	3422	4787
	Index	100	161	244	341

#### Capacity Utilization

47. The Authority notes that in this case capacity to manufacture TCP depends on number of factors, such as technical manpower, equipments in fabrication, machining and assembly shops, etc. The actual production may vary depending on size of machine produced and add on required by customers. It has been stated by the domestic industry that depending upon requirements, it is possible to outsource some manufacturing processes. Therefore, it is not possible to correctly assess capacity and capacity utilization.

48. The Authority, however, has examined the overall equipment efficiency based on records of the company and notes that the equipment utilization was in the range of 70-80%. In this regard, Authority notes that equipments have been added by Domestic Industry by making further investments. The Authority notes that in view of submissions of domestic industry, it is possible to manufacture machines without any further addition of capacity, as the capacity to manufacture is not contingent upon only one aspect, i.e., equipment utilization.

c) Actual and potential effect on market share:

49. Effects of the dumped imports on the domestic sales and market shares have been examined as follows:

Demand – number basis		2004-05	2005-06	2006-07	2007-08
Sales of Domestic industry	Nos.	59	89	95	150
	Index	100	151	161	254
Sale of Other Indian Producers	Nos.	102	113	125	164
	Index				
Imports from China	Nos.	1	2	4	24
	Index	100	200	400	2400
Demand	Nos.	162	113	125	338
	Index	100	126	138	209
Demand – weight basis					
Sales of Domestic industry	MT	1403	2256	3422	4784
	Index	100	161	244	341
Sale of Other Indian Producers	MT	929	1191	1516	1995
	Index	100	128	163	215
Imports from China	MT	54	109	76	1225
	Index	100	202	141	2268
Demand	MT	2386	3556	5015	8006

	Index	100	149	210	336
Market Share in Demand on number basis					
Domestic industry	%	36.47%	43.71%	42.45%	44.33%
	Index	100	120	116	122
Other Indian Producers	%	62.91%	55.31%	55.76%	48.58%
	Index	100	88	89	77
China	%	0.62%	0.98%	1.79%	7.09%
	Index	100	159	289	1147
Market Share in Demand on Weight basis					
Domestic industry	%	58.78%	63.44%	68.24%	59.79%
	Index	100	108	116	102
Other Indian Producers	%	38.94%	33.49%	30.24%	24.91%
	Index	100	86	78	64
China	%	2.28%	3.06%	1.52%	15.30%
	Index	100	134	67	671

50. The domestic demand has been assessed by taking into account sales by domestic industry, sale of other producers (estimate provided by domestic industry) and imports from all countries. The Authority notes that demand has increased by 109% in terms of numbers, however, in terms of weight the demand has increased by 226%.

#### Production

51. From the data, the Authority notes that the production has increased by 85% in terms of numbers; however, in terms of weight, the production has increased by 124% in POI as compared to base year.

#### Sales

52. The domestic sales of domestic industry has increased by 154% in terms of numbers from base year to POI. In terms of weight, the sales has increased by 241% during the same period.

53. The Authority notes that with the increase in imports in absolute terms, the share of imports have gone up from just 0.6% to 7% on volume basis and from 2% to 15% on weight basis.

54. The domestic industry has increased the share in demand from 36.47% to 44.33% whereas share of other producers have declined from 62.91% to 48.58% in terms of numbers. In terms of weight, the share of domestic industry has increased from 58.78% to 59.79% whereas the share of other Indian producers declined from 38.94% to 24.91%. The share of the subject country increased from .62% in 2004-05 to 7.09% in POI in terms of number whereas it increased from 2.28% to 15.3% in terms of weight.

#### B) Price Effect of the Dumped imports on the Domestic Industry

55. With regard to the effect of the dumped imports on prices, the 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.

i) Price undercutting and underselling effects

56. To determine price undercutting, the comparisons have been made by comparing the presses with same size. For this purpose landed value of imports has been calculated by adding 1% handling charge and applicable basic customs duty to the value reported in the IBIS data of import prices from the subject country.

57. In determining the net sales realization of the domestic industry, the rebates, discounts and commissions offered by the domestic industry and the central excise duty paid have been rebated.

58. Price undercutting has been determined while making comparison of sizes of machines imported during POI. Weighted average price undercutting is as under:

Price undercutting

TCP with dia size	Net Selling price – Domestic (Rs./No.)	Landed Value (China PR)	Price undercutting (Rs./No)	Price undercutting (%)
78" TCP+VCL W/o Controls	***	5810501	***	***
91"	***	7840805	***	***
93"	***	8760739	***	***
104"	***	11382027	***	***
Price undercutting range in %				5-20%

59. Price underselling has been determined by comparing the weighted average landed price of imports of size of the machine from subject country with the Non-injurious selling price of the same size and add on of machine produced by the domestic industry during the POI. Weighted average price underselling is as under:

Price underselling

TCP with dia size	Non-injurious price (Rs./ No.)	Landed Value (China PR)	Price underselling (Rs./No)	Price underselling (%)
78" TCP+VCL W/o Controls	***	5810501	***	***
91"	***	7840805	***	***
93"	***	8760739	***	***
104"	***	11382027	***	***
Price underselling range in %				15-20%

60. The above data shows that the landed value of the dumped imports is significantly were below the net sales realization of the domestic industry and were undercutting in the range of 5-20% of the selling prices of the domestic industry depending upon the sizes of the press. The landed values were also below the non-injurious prices of comparable seizures of presses, resulting in underselling in the range of 15-20%.

ii) Price suppression and depression effects of the dumped imports:

Particulars	Unit	2004-05	2005-06	2006-07	POI	Increase in POI over 2004-05
Cost of Sales	Rs. Lacs	***	***	***	***	***
Trend	Index	100	191	190	321	221%
Selling Price	Rs. Lacs	***	***	***	***	***
Trend	Index	100	137	155	256	156%

61. Cost of sales has increased by 121% in POI as compared to base year. In terms of rupees, cost has increased by Rs. 7532 lacs, corresponding sales value has increased by 56%, in terms of Rs. It increased by Rs. 6871 lacs. This indicates that domestic industry could not increase sales value in proportion to increase in cost indicating the suppression of prices.

#### Examination of other injury factors

62. After examining volume and price effect in the previous section, the Authority has examined the other mandatory injury parameters as follows:

a) Profits/Loss and Return on investments

63. Profits earned by the domestic industry from the sales of the subject goods in the domestic market were as follows: -

Particulars	Unit	2004-05	2005-06	2006-07	POI
Domestic Cost of Sales	Rs. Lacs	***	***	***	***
Trend	Index	100	191	190	321
Domestic Sales Value	Rs. Lacs	***	***	***	***
Trend	Index	100	137	155	256
Profit/ Loss before Tax	Rs. Lacs	***	***	***	***
Trend	Index	100	-44	35	34

Interest	Rs. Lacs	***	***	***	***
Profit/ Loss before Tax & Interest	Rs. Lacs	***	***	***	***
Trend	Index	100	-38	38	38
Capital Employed for domestic sales					
Net Fixed Assets	Rs. Lacs	***	***	***	***
Net Working Capital	Rs. Lacs	***	***	***	***
Total Capital Employed for domestic sales	Rs. Lacs	***	***	***	***
Return on capital employed	%	***	***	***	***
Trend	Index	100	-28	16	9
Return on capital employed without considering additions during POI	%	***	***	***	***
Trend	Index	100	-28	16	10

64. The Capital Employed has increased during POI as compared to base year on account of increase in net fixed assets as well as working capital. To discount the effect of increase in NFA, the same has been deducted to calculate the return on capital employed.

65. The above data shows that the domestic sales realization of the domestic industry has not increased in line with the increase in cost of production. The profit (PBIT) of the domestic industry has declined over the injury investigation period. As compared to 100 (indexed) of the base year; it declined to 38 in POI. Consequently, the return on the Capital Employed for domestic sales of the domestic industry has declined significantly during the POI as compared to the base year and during the POI the domestic industry had a return on domestic sales of just 9 (indexed) from 100 of the base year.

#### b) Cash Flow

66. Cash flow for the subject goods have not been worked out separately for the product under consideration. Therefore, cash profits of the domestic industry for the subject goods over the injury period have been shown as under:

Particulars	Unit	2004-05	2005-06	2006-07	POI
Profit/ Loss before Tax	Rs. Lacs	***	***	***	***

Depreciation on Domestic Sales	Rs. Lacs	***	***	***	***
Cash profit for domestic sales	Rs. Lacs	***	***	***	***
Trend	Index	100	-33	41	45

67. It is seen from the above that the cash profits of the domestic industry has significantly deteriorated over the injury period.

#### c) Employment and Wages

68. Number of employees and wages paid indicates that employment has increased. The wages have also increased compared to the base year.

Particulars	Unit	2004-05	2005-06	2006-07	POI
Employment	Nos.	***	***	***	***
Trend	Index	100	107	125	133
Wages	Rs. Lacs	***	***	***	***
Trend	Index	100	132	133	174
Average wages per employee	Rs.	***	***	***	***
Trend	Index	100	122	107	131

#### d) Inventories

69. Authority notes that Inventories of the product are not an appropriate parameter in the present case as the goods are produced against specific customer orders.

#### e) Loss of orders

70. It has been alleged by the domestic industry that they had lost the orders. The matter is under examination. However, on perusal of the evidence submitted by the domestic industry, it has been noted that there appears to be substance in the evidence submitted by the domestic industry as the negotiation about particular size of press with one particular buyer, later on imported from the China PR.

#### f) Productivity

71. The domestic industry produces the subject machines of different sizes and types and the requirement of labour hours vary from size to size and type to type. Authority therefore notes that the productivity per day or employee is not an appropriate parameter in the present case.

(g) Growth

72. The domestic industry has shown positive growth in terms of absolute volume of production and sales of the domestic industry over the injury period. However, the growth is negative when examined in terms of profitability, including return on investment and cash flow.

h) Ability to raise fresh Investment

73. The Authority notes that there is a healthy growth in domestic demand for the subject goods and the domestic industry has made fresh capital investments for expansion during the investigation period apparently keeping in view significant growth in demand for the product.

i) Magnitude of Dumping

74. The dumping margin determined for the subject country and the applicant exporter is above de minimis level.

j) Factors affecting prices

75. The cost of sales has increased during POI as compared to the base year whereas the selling price has not increase in proportion to the cost of sales. The undercutting of selling price by imports continued throughout injury period. It has also been noted that the basic custom duty also declined from 20% in 2004-05 to 7.5% in POI.

**Conclusion on injury**

76. The demand of goods in terms of numbers has increased from 162 in base year to 338 in POI, i.e., increase by 109%. In terms of weight also, it increased by 236%. The domestic sales have increased by 154% during the same period. As noted earlier, the equipment utilization is in the range of 70-80%. Therefore, the domestic industry continues to take advantage of increase in demand in the market. However, the domestic industry has lost orders to Chinese manufacturers. The under-cutting is in the range of 5-20%. The cost of sales increased by 221% and in terms of value by Rs. 7534 lacs, when selling value increased by 157% and in terms of value increased by Rs. 6871 lacs. Consequently, the profit (PBIT) declined to 38(indexed) as compared to 100 of base year. Similarly, the return on investment declined sharply from 100 (indexed) to 9 in POI.

77. The above analysis indicates that though domestic industry was in position to increase sales both in value and volume basis, however, there was sharp decline in profitability showing injury to the domestic industry.

78. The Authority has noted that on production and sales, the domestic industry has been able to show improvement in performance. However, for the purpose of profit and return on investment, margins have been declined for domestic sales of domestic industry indicating material injury to the domestic industry.

**I. Causal link and other factors**

79. Having examined the existence of material injury and volume and price effects of dumped imports on the prices of the domestic industry, in terms of its price undercutting, price underselling and price suppression, and depression effects, other indicative parameters listed under the Indian Rules and Agreement on Anti Dumping have been examined to see whether these any other factor, other than the dumped imports could have contributed to injury to the domestic industry. Accordingly, the following parameters have been examined:

i) Volume and prices of imports from other sources

IBIS data shows that the subject goods are not being imported from other countries not under investigation. Therefore, the imports from other countries do not affect the prices in the domestic market;

ii) Contraction in demand and / or change in pattern of consumption

Demand for the subject goods shows a healthy growth during the entire injury investigation period and therefore, the injury to the domestic industry has nothing to do with the lack of demand in the country. The data on consumption and demand does not show any change in the pattern of consumption of the product.

iii) Trade restrictive practices of and competition between the foreign and domestic producers

The goods are freely importable. The applicant is the one of the major producer of the subject goods and account for significant domestic production and sales. No other evidence of conditions of competition or trade restrictive practices has come to the knowledge of the Authority.

iv) Development in technology

There is no allegation of significant changes in technology, which could have caused injury to the domestic industry.

v) Export performance of the domestic industry

The Authority notes that the export sale of the domestic industry is significant. In respect of production and capacity, the Authority notes that domestic industry is improving its performance as overall equipment utilization was in range of 80%. However, the analysis of financial performance has been done for domestic sales only. Hence, export performance has not captured the injury to the domestic industry on its domestic sales. Therefore, the export performance cannot be considered as factor causing injury to the domestic industry.

Exports	Unit	2004-05	2005-06	2006-07	POI
Export sales	Nos.	54	79	85	70
Trend	Indexed	100	146	157	130

vi) Productivity of the Domestic Industry

Productivity of the domestic industry has improved in terms of total output. Therefore, this cannot be attributed to the injury to the domestic industry.

80. The above non-attribution analysis shows that no other known factors, other than the dumped imports, appear to have affected the domestic industry.

**Factors establishing causal link**

81. Analysis of the performance of the domestic industry over the injury period shows that the performance of the domestic industry has materially deteriorated. Therefore, the causal links between dumped imports and the injury to the domestic industry is established on the following grounds:

a. The volume of dumped import from the subject country has sharply increased at significantly lower prices during the injury investigation period, resulting in significant price undercutting and underselling. As a direct consequence, the domestic industry could not increase its prices in line with increase in the cost of production resulting in financial losses.

b. Increase in import volumes and suppression of domestic prices adversely affected the profits, cash flow and return on investments of the company.

c. Significant positive price undercutting resulted in increase in market share of imports from the subject country. The domestic industry appears to have responded to decline in import prices by suppressing its prices and suffered financial losses.

82. Therefore, the Authority provisionally concludes that the domestic industry suffers material injury and the injury to the domestic industry has been caused by the dumped imports from the subject country.

#### I. Magnitude of Injury and injury margin

83. The non-injurious prices for TCP of different sizes produced by the domestic industry as determined by the Authority has been compared with the landed value of the exports from the subject country for determination of injury margin. The weighted average landed price of the exporters from the subject country and their injury margins have been worked out as follows:

#### Injury Margin

All exporters from China PR

\*\*\*

#### J. Conclusions

84. After examining the issues raised and submissions made by the interested parties and facts made available before the Authority, as recorded in this finding, the Authority provisionally concludes that:

ii) The subject goods have entered the Indian market from the subject country at prices less than their normal values in the domestic market of the exporting country;

ii) The dumping margins of the subject goods imported from the subject country are substantial and above de minimis;

iii) The domestic industry has suffered material injury and the injury has been caused to the domestic industry, both by volume and price effect of dumped imports of the subject goods originating in or exported from the subject country.

#### K. Indian industry's interest & other issues

85. 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 provisional anti-dumping measures would not restrict imports from the subject countries in any way, and, therefore, would not affect the availability of the products to the consumers.

#### L. Recommendations

86. 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 various aspects of dumping, injury and causal links. Having initiated and conducted a preliminary investigation into dumping, injury and causal links between dumping and injury to the domestic industry, in terms of the Rules laid down, and having provisionally established positive dumping margin against the subject countries, and having concluded that the domestic industry suffers material injury due to such dumped imports, the Authority is of the opinion that imposition of provisional measure is required to prevent injury being caused to the domestic industry during the investigation period.

87. Therefore, Authority considers it necessary and recommends imposition of provisional anti-dumping duty on imports of subject goods, from the subject country, in the form and manner described hereunder.

88. Having regard to the lesser duty rule, the Authority recommends imposition of provisional 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. The Authority further notes that there is a significant differentiation of the product in terms of its capacity and prices, hence, a provisional duty in terms of reference price or fixed duty would not be appropriate in this case. Therefore, the Authority recommends imposition of provisional measure as an ad valorem duty, to be worked out as a percentage of the CIF value of imports of the subject goods from the subject country. Accordingly, provisional antidumping duty equal to the amount arrived at by applying the percentage indicated in Col 9 of the duty table is recommended to be imposed from the date of issue of this findings, on imports of all types of Tyre Curing Presses originating in or exported from China PR.

#### Duty Table

Sl. No	Tariff Item	Description of Goods	Specification	Country of Origin	Country of Export	Producer	Exporter	% of CIF Value
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1.	8477.5100	Tyre Curing Presses	All sizes	China PR	China PR	Any	Any	15
2	8477.5100	Tyre Curing Presses	All sizes	China PR	Any	Any	Any	15
3	8477.5100	Tyre Curing Presses	All sizes	Any	China PR	Any	Any	15

#### M. Further Procedures

89. The following procedure would be followed subsequent to notification of the preliminary findings: -

- (a) The Authority invites comments on these findings from all interested parties and the same would be considered in the final finding;

(b) Exporters, importers and other interested parties known to be concerned are being addressed separately by the Authority, who may make their views known, within 40 days from the date of publication of the findings. Any other interested party may also make their views known within forty (40) days from the date of publication of the findings;

(c) The Authority would conduct further verification to the extent deemed necessary;

(d) The would hold hearing to hear the views of various interested parties orally;

(e) The Authority would disclose essential facts before announcing final findings.

**(R. Gopalan)**  
**Designated Authority**