Order No. 14/19/2008--DGAD
Department of Commerce
(Directorate General of Anti Dumping & Allied Duties)

10th April 2012

Subject: Post-Decisional Oral Hearing on Anti-Dumping Investigations concerning imports of 'Front Axle Beam and Steering Knuckles meant for heavy and medium commercial vehicles' originating in or exported from China PR- Final findings

In pursuance of the Hon'ble Tribunal (CESTAT's) Final order No. AD/31-51/2011-AD dated 11th August, 2011, a Post-decisional hearing was held on 23rd January, 2012 on the captioned subject, wherein the interested parties that had participated in the instant investigation were requested to participate.

2. Upon conclusion of the said hearing, the interested parties that had made their oral submissions were advised to file the written submissions within the stipulated time as per the AD Rules. They were also advised to file the rejoinders thereafter.

3. The written submissions and rejoinders filed by the interested parties, to the extent considered relevant, have been duly considered in this order. Submissions made by interested parties have been examined by the Authority as follows:

Written Submissions made on behalf of M/s. Hubei Tri-Ring Auto Axle Co. Ltd., China PR; M/s. Hubei Tri-Ring Forging Co. Ltd., China PR; M/s Hubei Tri-Ring Motor Steering Gear Co. Ltd, China PR; M/s TATA Motors Ltd, India and M/s Ashok Leyland Ltd, India

4. The following submissions, in brief, have been made on behalf of these interested parties:

Submissions by Hubei Group concerning issues specific to them

A.1. Participation in the hearing was under protest and without prejudice to the SLPs pending before the Hon'ble Supreme Court.

A.2. Denial of market economy treatment is unjustified for the following reasons:

(i) Mere share-holding by the Government cannot be regarded as dis-qualify the exporter from operating under Market Economy conditions - Court of First Instance of the European Communities (Fourth Chamber) in Zhejiang Xinan Chemical Industrial Group Co., Ltd. v. Council for the European Union (17 June 2009)

(ii) The Authority itself has granted MET to LISCO, a Chinese producer in the AD investigation concerning imports of Cold Rolled Flat Products of Stainless Steel inter alia from China PR and to Chinese exporters in Ball Bearings case. The previous decisions of the Authority clearly show that steel prices in China PR do reflect their true market value.

A.3. AD Duty cannot be imposed to remedy injury alleged to have been caused due to subsidies alleged to have been provided by Chinese Government.

A.4. Normal value determination cannot be kept confidential - Names of major inputs and its international prices cannot be considered confidential.

B Submissions made by TATA Motors

B.1. The petitioner does not constitute domestic industry as its total share in production is a mere 28.17% as against the share of TATA Motors amounting to 64.23%.

B.2. The application was not made by the domestic industry as required under Explanation to Rule 5(3)(b)

B.3. TATA Motors/ HVAL is in fact a domestic producer – The Authority cannot disregard TATA Motors/ HVAL as a producers because:

(i) HVAL and TATA Motors are two different legal entities. There cannot be Captive consumption amongst two different legal entities.

(ii) Mere procurement of entire produce of one Company by another Company cannot be termed as captive consumption. HVAL can supply FABs and SKs to any vehicle manufacturer if suitable orders are received.

(iii) To treat procurement of TATA Motors/HVAL as separate market is clearly against the provisions of Rule 2(b) of the AD Rules as the second condition mentioned therein for considering a market to be a separate market is not satisfied.

(vi) CESTAT ruling in Pig Iron Mfrs Assn's case cannot be applied in present case as in that case the same party has captively consumed the product. In the instant case, FAB and SK have been produced by HVAL and sold to TATA Motors.WTO Panel ruling in US: Cotton Yarn [DS 192R] relied upon

B.4. The petitioner is related to an exporter of subject goods in China PR - As noted by the Authority in para 17.2 of the final finding, Automotive Axles Ltd a related company of BFL, had exported FAA to India. FAAs are nothing but FABs and SKs and a few other components assembled together. The petitioner becomes ineligible for being regarded as domestic industry as the related exported has exported the product under consideration in the investigation. Other proclaimed Domestic Producers do not have any standing in the light of the decision of Designated Authority in the case of seamless tubes and pipes is merged with the judgment of the Hon'ble High Court of Bombay [ISMT Limited v. UOI 2011 (270) E.L.T. 19 (Bom.)].

C Submissions by Ashok Leyland on certain specific issues

Models imported by Ashok Leyland are unique articles which cannot be used anyone else. Further, imports by Ashok Leyland did not lead to a decline in their purchases from the applicant industry and therefore the imports have not injured the petitioners

D Submissions by all the five respondents on common issues

D.1. Entire investigation is biased in favour of the domestic industry:

a. by recommending duty on forged products not imported into India,
b. in determining duty at a rate in a manner not revealed in the Final Finding.
c. in determining 'like article' for the exporter to compare with its normal value and for determining the domestic industry by examining the imported article.

D.2. Product under consideration shall not cover products not imported into India - Section 9(A) (1) of the Customs Tariff Act empowers the Central Government to impose AD Duty only on 'an article' being exported to India. But the investigation covers products that are not imported also, namely:

(i) Forged FAB and Machined FAB are not 'like article' as there is wide fluctuation in their cost and they are not substitutable - Only machined FABs have been imported into India and hence AD Duty cannot be imposed on FABs not machined

(ii). Unique models of FAB and SK are not substitutable or interchangeable with other models. This has been accepted by the Authority also. When only unique models of FAB and SK have been imported, investigation shall cover only these models imported.

D.3. Dumping margin and injury margin calculations are incorrect for the following reasons:

(i). There have been no imports of FABs 'as forged'. Hence, no dumping margin or injury margin can be determined for the grade and so no Anti-Dumping Duty should have been recommended for this product.

(ii). When individual dumping margins and injury margins have been determined separately for forged and machined FABs and SKs, a single weighted average rate of dumping margin and injury margin cannot be recommended. That will be against the decision of the Designated Authority in catalyst case which merged with the judgment of the Hon'ble Supreme Court [DA v. Haldor Topsoe A/S 2000 (120) E.L.T. 11 (S.C.)].

D.4. The domestic industry has any way undertaken during the public hearing to file a separate injury statement for these models alone. We request the Authority to determine injury and causal link analysis taking into account the data meant for the models imported into India based on the revised statement.

D.5. Causal link analysis is highly deficient for the following reasons:

(i). Sales of the petitioner to Ashok Leyland increased many fold during the same period when the alleged dumped imports happened.

(ii). Merely because domestic industry lost sales volumes of other models which resulted in deterioration of profits, return on investment and cash profits cannot be held to be a reason for causing injury.

(iii). No explanation has been given to explain as to how an increase in imports of FAB by 1,456 MT could have led to a fall in sales by 11,892MT.

(iv) No explanation has been given to explain as to how an increase in imports of SK by a mere 30 MT could have led to a fall in sales by 2,080 MT

(v) Other vehicle manufacturers not procuring from the petitioner, which has been the sole causal factor for the alleged injury to the domestic industry. This can in no way be attributed to the alleged dumped imports.

(vi) If at all the Authority concludes that the alleged imports have also caused injury to the domestic industry, it is prayed that the injury margin be segregated into injury caused by contraction in demand and alleged imports and AD Duty be recommended only to that portion of injury caused by dumped exports to India.

D.6. Post-POI data shall not be used for select indices to arrive at certain illogical conclusions. If at all it is used, it must be used for Post-POI second quarter also.

D.7. Return on capital employed considered for calculating NIP is unreasonable –Indian Spinners Association vs. DA (2004) 170 ELT 144 relied upon.

Rejoinder Submissions on behalf of M/s. Hubei Tri-Ring Auto Axle Co. Ltd., China PR; M/s. Hubei Tri-Ring Forging Co. Ltd., China PR; M/s Hubei Tri-Ring Motor Steering Gear Co. Ltd, China PR; M/s TATA Motors Ltd, India and M/s Ashok Leyland Ltd, India to the submissions of the domestic industry.

5. The following rejoinder submissions, in brief, have been made on behalf of these interested parties**:**

- 100% procurement done from China PR**:** Considering the 15-19 months period involved in selection of an exporter, it has been contended that *'there is establishment of injury that dumping is causing and is likely to cause.* However, the decision to start sourcing from a second supplier is a move to reduce dependency on one source of raw material. The procurement from the petitioner has in fact seen a tremendous increase in POI showing that the imports have not injured the petitioner. The claim of the petitioners that Ashok Leyland has planned almost 100% purchases from China PR is incorrect. It can be noted that procurement of FABs and SKs from the petitioner has increased by 113% and 226% respectively during the POI.

- Product under investigation and like article: The petitioner has claimed that all models of FABs and SKs manufactured by it are like products to the imported models. The same claim of the exporters in determining normal value has been rejected by the Authority stating that there are 'notable difference' between the models. Hence, the claim of the domestic industry should also be rejected.

- Constitution of Domestic Industry**:** The petitioners claim that Tata Motors has not made any claim that HVAL to be regarded as a domestic producer is incorrect. Letter filed by Tata Motors in this regard is available in the public file. The petitioner has relied upon the finding of the Authority in the case of Metallurgical Coke from China PR to substantiate its claim that production of HVAL shall be regarded as a separate

market. However, the finding of the Authority is not applicable to the facts of this case. As observed in para 27 of the finding, RINL which sought to be regarded as domestic producer in that case was not producing the subject goods at all. Therefore, the entire analysis of proviso to the definition of domestic industry by the Authority becomes an *'obiter dicta'* which cannot be regarded as precedence. Reliance placed on Mohandas Issardas v. A.N. Sattannathan 2000 (125) E.L.T. 206 (Bom.) and Municipal Corporation of Delhi vs GurnamKaur 1989 AIR 38 (SC). Even otherwise, in Metallurgical Coke case, RINL's production was regarded as a captive consumption as their production was consumed internally within their process of production of other articles. However, in the case of Tata Motors/ HVAL, FABs and SKs produced by HVAL is consumed by Tata Motors which are two different legal entities. Hence, the facts before the Authority now completely different from the earlier case. The ruling of the CESTAT in the case of Pig Iron Manufacturers Association case is not on the point that has been now raised in this case that proviso to Rule 2(b) is not satisfied in the given facts. Hence, the legal issue raised before the Authority now is not completely new.

- Exports of FABs and SKs by a related party of petitioner in China**:** The petitioner has contended that it has not imported FABs or SKs. But, a related exporter of the petitioner in China PR has exported Front Axle Assemblies which are nothing but import of FABs and SKs along with other components. Therefore, the petitioner becomes ineligible to be treated as domestic industry within the meaning of Rule 2(b) of the AD Rules.

- Granting of MET to Hubei Group: The petitioner has stated that Hubei Group cannot be granted MET as there exists significant share holding by the Government. However, significant state share-holding by itself does not mean that there exists Government control. Reliance placed on the recent ruling of the Appellate Body in the case of United States - Definitive Anti-dumping and Countervailing Duties on Certain Products from China, WT/DS379/AB/R, 11th March, 2011 which observed as under

> *"the mere fact that a government is the majority shareholder of an entity does not demonstrate that the government exercises meaningful control over the conduct of that entity, much less that the government has bestowed it with governmental authority"*

- The petitioner has also contended that the exporter have not provided any evidence to establish that the prices of basic inputs substantially reflect market values. But, steel, the basic raw material has always been available in the Chinese Market only at the prices at which they are available in the international market. India itself has granted MET to producers of Cold Rolled Flat Products of Stainless Steel inter alia from China PR and in the case of Ball Bearings from China PR who use steel as the primary raw material. Therefore, there is no question of the raw material not being available at a price not reflecting the international market price. Therefore MET to Hubei group cannot be denied.

- Concealment of data by exporters and imports: The petitioner has contended that the exporter and the importer have not fully disclosed the volume of trade between them.

This contention is factually incorrect and uncalled for. The Authority has verified the export details and no variation whatsoever was noticed.

- Orders pending supplies are to be considered: The petitioner has claimed that the order placed by the importer that was pending supplies were also to be regarded as imports for the purpose of the investigation. Hubei Group and Ashok Leyland submit that there were no orders which were pending delivery after November 2009.

- Injury and causal link: The petitioner has rightly pointed out that decline in demand for the product is because of decline in production of medium and heavy commercial vehicles. However, it has contended that within the available demand, the domestic industry has lost its market share, thus establishing injury to the domestic industry. This statement of the petitioner only hides more than what it reveals. The petitioner has been supplying FABs and SKs to all the vehicle manufacturers in India including Ashok Leyland. But Ashok Leyland is the only vehicle manufacturer that has imported the subject goods. Had the imports impacted the petitioners, it is only the procurement by Ashok Leyland that should be impacted. On the contrary, sales of subject goods to Ashok Leyland has increased by 113% and 226% respectively during the POI, establishing the clear absence of any link between the imports and the alleged injury.

- Price undercutting: The petitioner has claimed that there is significant price undercutting of the selling price of the domestic industry by the imports. Considering the 113% and 226% increase in procurement of the FABs and SKs from the petitioner by Ashok Leyland, it is abundantly clear that the price undercutting has in no way impacted the petitioner.

- Economic parameters of domestic industry: The petitioner has claimed that all the economic parameters of the domestic industry have shown deterioration. However, all the negative parameters shown by the petitioner is only due to fall in demand and not due to imports. The reduced production due to fall in demand resulted in increased costs and thereby resulting in losses to the petitioner. The imports have in no way caused injury to the domestic industry.

- Threat of material injury**:** The petitioner has claimed that the case clearly establishes the domestic industry is threatened with material injury to dumped imports, by claiming the following parameters:

  a. Steep increase in imports in relatively short period – There has been a steep increase in procurement from the petitioner – 113% in the case of FAB and 226% in the case of SK, all within a period of 6 months.
  b. Ashok Leyland has shifted to 100% import from China PR –Frivolous claim in completely contrary to facts.
  c. Ashok Leyland has a long term procurement plan from China PR – In today market scenario, holding more than one source for raw material is not unusual. This has in no way impacted the procurement from the petitioner whatsoever as procurements from the petitioner have not seen afall.
  d. Imports increased in a relatively short period – Repetitive claim, already addressed above.

e. Price undercutting is significant – This has in no way impacted the procurement from the petitioner and therefore has not impacted the petitioner. Prices for procurement of goods by user industry were mutually arrived based on cost plus reasonable profit to the applicant, so the applicant cannot claim injury.
f. Capacities of Hubei group are more than the domestic demand – A frivolous claim unsubstantiated with evidences. In fact the exporter is operating at more than its optimal capacity.
g. Significant share in domestic market held by the exporters –It is only Ashok Leyland that has imported the subject goods. But the petitioner has been selling them to every other vehicle manufacture in India. With only Ashok Leyland importing the goods, how can significant market be held by the exporters! The loss of market share is only virtual situation due to contraction in demand.

- Causal Link: The specific reference of the petitioner towards Annexure 2 to the Rules and Article 3.5 of the WTO Agreement in fact strengthens the case of the exporters. These regulations cast the following requirements on the Authority that the DA shall examine any known factor other than dumping causing injury to the domestic industry and that injury caused by these other factors must not be attributed to the dumped imports. Admittedly, injury to the domestic industry has been caused due to contraction in demand, competition between domestic producers and alleged dumping. Without prejudice to the submission that the imports have not caused any injury to the petitioner, if at all there is any injury to the domestic industry, only that part of injury that is caused due to dumping should be attributed to imports and duty shall be recommended only to such an extent.

- Reliance placed on EC decisions: The petitioner has relied upon a few EC decisions to show that in the case of contraction of demand, the fall in volume of sales to the domestic industry must be in proportion to the rate of fall in demand and anything over and above should be attributed to dumped imports. The petitioner has in fact increased the sales of its models that have been imported. The increase in sales to Ashok Leyland is despite the fact that the FAB and SK market as a whole had seen a fall of 21% and 25% respectively during the POI as noted by the Authority. Thus, despite a fall in the entire market, the petitioner was able to increase the sales of the models that were imported into India.

Written Submissions made by the domestic industry

6. The following written submissions, in brief, have been made on behalf of the domestic industry**:**

1. The process of buying and selling in this industry requires Vendor Development which involves the following steps - establishment of capacity and capability to produce and supply, price offer, offer acceptance, Placement of purchase order and Commercial production.

2. Chinese producers have offered materially lower prices and have taken away a very significant share of Indian market.

3. The Chinese companies must establish that they are operating under market economy environment. What the Chinese companies claim as "cheap" may in fact, be an issue of "non market economy symptom".

4. The raw material in the products under consideration is steel, prices of which in China do not substantially reflect market values.

5. The exporters have not provided any evidence to establish that prices of basic inputs substantially reflect market values.

6. Capacities created by the producers in China PR are more than their domestic demand.

7. FAB and SK have been considered as two dislike articles. FAA (front axle assembly) is entirely a different product.

8. TML production is entirely for captive consumption and therefore cannot be considered for the present purpose.

9. Orders pending supplies are required to be considered.

10. Within the available demand, the domestic industry has lost its market share due to dumping.

Rejoinder submissions on behalf of the domestic industry

7. The following rejoinder submissions, in brief, have been made on behalf of the domestic industry**:**

1. The prices of inputs in China do not substantially reflect market values. When prices in Chinese market are low, it follows that the Chinese producers get the inputs at such artificially low prices, regardless of their relationship with the suppliers. Appropriateness of price because of relationship between the buyer & seller and appropriateness of price because of non-market economy situation are two altogether different situations.

2. In a situation where a number of companies in the Group are involved in production and/or sale of the product under consideration, market economy status of all such companies are required to be examined before market economy treatment can be granted. Admittedly, the group as a whole has not filed questionnaire response.

3. The key management personnel in the company are under direct supervision and control of Govt. of China. Thus, state interference cannot be ruled out.

4. The raw material in the products under consideration is steel, prices of which in China do not substantially reflect market values. Steel forms 70-80% of the cost of production. Further, prices of coal and coke used in the production of steel do not reflect market values in China.

5. While subsidies granted to the producers of the product under consideration are a subject matter of subsidies investigations, ad-hoc administration of subsidies, supports

to the raw material producers or in turn to their input suppliers is not a subject matter of subsidies investigations.

6. TML production is entirely for captive consumption and therefore cannot be considered for the present purpose. The captive production of TML is required to be excluded for the purpose of standing. Notwithstanding, the share of petitioner in production constitutes "a major proportion".

7. Injury to the domestic industry is more aggravated if the information in respect of activities relating to ALL alone are considered. The Designated Authority is required to determine injury by considering all types and all buyer.

8. The fact that imports have increased in a situation where demand has declined, at the least, establishes intensified injury to the domestic industry because of increased imports. While the industry was already facing lack of demand, the difficulties of domestic industry have been compounded by increased imports.

9. Consumer has consumed significant volumes of the imported material in the post period of investigation. To that extent, the domestic industry lost opportunities to sell the material in the post POI even when the consumer was engaged in production.

10. Imports have continued even after 2008-09. The imports have continued even till now, albeit with varying volumes.

Examination by the Authority

8. The issues raised by the interested parties during the course of the public hearing as reflected in their written submissions and rejoinders submissions thereof have been examined as follows:

- The Authority notes that the Chinese exporters' claim of MET status was duly examined by the Authority but was not accepted for the reasons recorded in paras 25-42 of the final findings and the same are being relied upon. The interested parties have also claimed that significant 'State share holding' does not translate into 'State interference' in a Company. However, it is noted that the interested parties did not discharge the onus that lies upon it to prove that regardless of the significant State holding in its company, it is entitled for market economy treatment. The Authority further notes that it has not opined whether the subsidies are being provided by Chinese Government; rather the Authority has based its findings in terms of AD Rules and regulations on the subject, which, inter alia, provide that there shall be a presumption that any country that has been determined to be, or has been treated as, a non-market economy country for purposes of an anti-dumping investigation by the designated authority or by the competent authority of any WTO member country during the three year period preceding the investigation is a non-market economy country. Provided, however, that the non-market economy country or the concerned firms from such country may rebut such a presumption by providing information and evidence to the designated authority that establishes that such country is not a non-market economy country on the basis of the criteria specified in sub-paragraph (3). It is noted that Chinese exporters failed to rebut the presumption in the instant matter.

- It has also been contented that the Authority has ignored the provisions of Section 9A (6A). The interpretation given to Section 9A (6A) by the Chinese exporters cannot be accepted as such a contention is not supported by the basic rules of Interpretation of statutes. Section 9A (6A) is a general provision which merely states that the margin of dumping in relation to an article exported by an exporter or producer shall be determined on the basis of records maintained by such exporter or producer and on the basis of information available in the case of non-cooperating exporter or producer. Paragraph 7 & 8 of Annexure I of the AD rules, on the other hand, deals specifically with calculation of normal value and export price in case of a "Non-market economy". It is an accepted rule of interpretation that a special provision overrides a general one. Hence, the Authority considers that it has correctly calculated the normal value and export price in case of a non-market economy as stipulated by the AD rules.

- As regards the issue regarding confidentiality, as the Normal value was constructed, inter alia, based on confidential information of the domestic industry, the same could not have been disclosed. The claims of confidentiality made by the domestic industry were duly examined by the Authority and upon its satisfaction were accepted in terms of para 7 of the AD Rules.

- As regards the contention that M/s Bharat Forge Limited does not constitute domestic industry as its total share in production is a mere 28.17% as against the share of TATA Motors amounting to 64.23%; the Authority notes that the issue was duly examined while issuing the findings in the instant matter. The Authority relies upon Para 17 of its Final findings on the subject wherein its has been noted that (a) production of each of the subject goods by the applicant constitutes a major proportion of the Indian production (b) Production of each of the subject goods by the applicant along with that of the supporters constitute more than 50% of the Indian production (c) that the application has been made by or on behalf of the domestic industry in terms of the AD Rules. Thus, M/s Bharat Forge Limited constitutes domestic industry for each of the products under consideration within the meaning of the Rule 2(b) read along with Rule 2(d) of the AD Rules.

- As regards the contention that models imported by Ashok Leyland are unique articles which cannot be used anyone else and that the imports by Ashok Leyland did not lead to a decline in their purchases from the applicant industry and therefore the imports have not injured the applicant industry; the Authority notes that contention is devoid of any merit as the domestic industry lost orders of the subject goods, ostensibly due to the cheaper prices of the subject goods offered from the subject country. It has not been a claim of M/s Ashok Leyland that the domestic industry is incapable of supplying the goods in question to them.

- As regards the contention that product under consideration should not cover products not imported into India and that the dumping margin and injury margin calculations are incorrect; the Authority notes that the contention is misleading. It may be pertinent to point out herein that the AD investigation was conducted in respect of PUCs viz. 'front axle beam and steering knuckles meant for heavy and medium commercial

vehicles' and as a matter of fact it was found that the subject goods were being dumped and consequently causing injury to the domestic industry. Therefore, the Authority recommended duty on the PUCs in terms of the relevant rules and regulations on the subject. It is incorrect to state that the investigation is restricted to a particular type of the PUC that has been incidentally dumped during the POI. If such an argument is to be accepted, it will lead to circumvention of the AD measures that has been put in place and would negate the entire exercise that has been undertaken to redress the injury caused to the domestic industry due to the dumping of the products under consideration.

- As regards the Causal link analysis; the Authority notes that it has analysed the impact of dumping on the domestic industry by considering market share of various parties in the demand of the products in the country. It was then observed by the Authority the market share of domestic industry has significantly declined in the period of investigation. The data furnished by the domestic industry showed further decline in its market share in period October-December 2008 (post POI). It was noted in Para 95 of the Final findings that within the available demand the domestic industry has lost its market share. Accordingly it was concluded by the Authority that the domestic industry was already facing problem of declining demand, but the same was compounded by the dumped imports.

- The contention that the volume of import made during the year 2007-08 was meager is devoid of merits and not based on the facts. The Authority has examined the volume effect in paras 64 to 72 of the final findings, which are being relied upon.

- As regards threat of material injury, it is noted that in terms of Para vii of the Annexure II of the AD Rules, for the purposes of determination of a threat of material injury, the Authority is obliged to examine the factors stipulated therein which, *inter alia*, include the rate of increase of dumped imports into India indicating the likelihood of substantially increased dumped exports to Indian markets and also whether imports are entering at prices that will have a significant depressing or suppressing effect on the domestic prices, and would likely increase demand for further imports. The data as available on record, which is reflected in Para 94 of the Final Findings clearly showed a steep increase in imports in a relatively short period of time, which was also evident from the relative market share of imports of the subject goods. Moreover, it was noted that the capacities created by the producers in China PR were more than their domestic demand. Therefore, a likelihood of increased volume of dumped imports flowing into the country from China PR was seen to be clearly established.

- As regards the contention that there has been an incorrect determination of the NIP is devoid of merits as the Authority has computed the Non-Injurious Price as per its consistent practice being followed over a period of time.

- The Authority notes that injury analysis has been done with due application of mind by the Authority as required under Rule 11 read with Annexure II of the Anti-Dumping Rules, 1995.

Comments on disclosure statement by interested parties

9. **The Following comments, in brief, have been made on behalf of M/s. Hubei Tri-Ring Auto Axle Co. Ltd.; M/s. Hubei Tri-Ring Forging Co. Ltd.; M/s Hubei Tri-Ring Motor Steering Gear Co. Ltd; M/s TATA Motors Ltd, India and M/s Ashok Leyland Ltd, India**:

- A very short time has been given to respond to the Disclosure statement.
- It has been contended that the following issues raised by them have not been addressed:

    - It has been contended that the petitioner gave an undertaking during the public hearing to provide separate injury statement for the two models of FAB and three models of SKs that were imported into India. However, no such injury information is seen in the disclosure statement.

    - it has been contended that there are 2 different types of subject goods, i.e. machined and forged, which differ significantly in terms of their costs as well as weight and therefore separate dumping and injury margin as well as separate rate of AD Duty should be determined for them. Reference has been made to Hon'ble Supreme Court in Designated Authority v. Haldor Topsoe the decision in the Andhra Petrochemicals Ltd v. DA , it has been contended that models not imported into India should not be liable to AD Duty.

    - Referring to the decisions in Indian Spinners Association vs. Designated Authority and Bridgestone India Private Limited v. Designated Authority, it has been requested not to grant an exorbitant return on 22%. To the domestic industry while computing the NIP.

Market Economy Treatment

- It has been contended that all the directors are elected by the shareholders and there are around 43,000 shareholders. The huge number of shareholders and the fact that no raw material required for the production of subject goods are not purchased from any company with government control show that the directors are not influenced by the Government. The major raw material for the subject goods is steel. Indian Authority has in the past accepted the prices of Chinese steel to be at par with

international prices and therefore there is no specific infirmity in not substantiating the accepted fact.

Determination of normal value as per books of accounts

- Referring to Section 9A(6A) of the Customs Tariff Act, it has been contended that it is a settled principle of law that the provisions of an Act will override the provisions of the Rules made thereunder. The Customs Tariff Act, 1975 is a substantive statute and the Rule is a delegated legislation and hence in the case of conflict between the two, the substantive statute will prevail. It has therefore been contended that normal value should not be constructed for the exporter and the normal value be determined as per the books of accounts maintained by the exporter

Disclosure of normal value

- It has been contended that how can international prices of a product be kept confidential.

Constituents of domestic industry

- It has been contended that the applicability of first proviso to Rule 2(b) has not been discussed. Reference has been made to the WTO Panel report in the case of US: Cotton Yarn [DS 192R].

- It has been contended that the principle that an order that does not consider the legal provisions and the arguments raised by the interested party is a non-speaking order which only results in avoidable litigation. A mere 28% share-holding producer cannot be regarded as 'domestic industry' within the meaning of the statute. Reference has been made to Anti-Dumping Duty on imports of Seamless Tubes and Pipes from China [Termination Notification No. F.No. 14/55/2009-DGAD dated 18th November, 2010.

Causal Link

- It has been contended that the domestic industry has not lost any orders due to the imports made into India. Next, the loss of orders of any other vehicle manufacturer

cannot be attributed to the subject imports because none of the other vehicle manufactures have imported the subject goods. Therefore, the subject imports have not caused any injury to the domestic industry.

Rate of duty

- The product under consideration can be either 'forged' or 'machined'. The cost of production and export price for these two types are different. When selling prices of tow grades are different, it has been contended that that a single rate of AD Duty cannot be imposed.

Recurrence of dumping

- As rightly pointed out by the Authority, threat of injury has to be determined as per Para (vii) of Annexure II to AD Rules. With regard to the conclusions arrived at by the Authority regarding recurrence of injury, we request the Authority to disclose the following information and the sources from which they were obtained: capacity in China PR is higher than the demand: size of Chinese Market for the subject goods: capacity in China PR and the source of the data and its authenticity have not been examined or disclosed. When the co-operating exporter manufacturing Steering Knuckles was operating at 92% capacity utilization during the period of investigation and 94% capacity utilization during the immediately preceding year, the Authority could not have concluded that there is freely disposable capacity to cause injury to the domestic industry.

10. **The Following comments, in brief, have been made on behalf of the domestic industry:**

- Domestic industry has reiterated its submissions with regard to various issues concerning investigations and has further supplemented its views on the submissions made by opposing interested parties.

- It has been contended that under the Rules, the Authority is required to consider (a) whether there has been increase in imports in absolute terms or in relation to production & consumption; and (b) whether the imports of the product under consideration are causing price undercutting, or whether the impact of such dumped imports was to depress or suppress the prices. If so, the Authority is required to consider consequent impact of the dumped imports in terms of a number of economic parameters. Clearly, consequent impact of the dumped imports on the domestic industry has been adverse and significant.

- The domestic industry has claimed that sales of domestic industry to Ashok Leyland declined significantly and the same shows injury caused to the domestic industry.

- Injury to the domestic industry cannot be determined separately in respect of individual models. Injury is required to be determined in respect of like article. Existence of a number of different forms of the product only implies that the Authority shall consider the same for dumping margin and injury margin and undertake model by model analysis. The injury analysis in any case is required to be carried out for the like article. Even the eventual dumping margin and injury margin are required to be determined for the product as a whole. Existence of significant difference in the prices of different types/models of the product under consideration does not imply that they are dislike article. Only for the purpose of dumping margin and injury margin, the authority is required to consider model by model comparison.

- Sourcing of low-priced imports led M/s Ashok Leyland to source its increased requirement from China PR.

- Standing of the petitioner is required to be determined with reference to "Indian production" and not on the basis of "production for domestic market". Production of HVAL is required to be ignored even if it is considered that it is not a captive consumption and Tata Motors and HVAL are two different but related entities. Rule 2(b) proviso deals with the situation where the market is divided in two or more competitive markets.

- Front Axle Assembly is different from Front Axle Beam or Steering Knuckle. Authority has not considered Front Axle Beam or Steering Knuckle as one like article. Authority has considered these as distinctly dislike article being investigated through a combined investigation. Front Axle Beam or Steering Knuckle cannot be considered as the same article as Front Axle Assembly.

- The onus to establish market economy is on the responding company in a situation where more than one company is involved in production or sale. The Authority should accept questionnaire response only if group as a whole has filed the response. Since other group companies involved in production and sale have not filed questionnaire response, the Authority, in any case, should not accept the claim for market economy status. In a situation where the shareholding is by the State, the exporter has to establish absence of interference or control not only in the past action but also no possibility in future. No information has been given in this regard by the exporter. The exporter has not established that prices of inputs substantially reflected the market values.

- In a situation where demand for the product declined and market share of domestic industry declined and that of imports increased clearly establishes that the injury to the domestic industry is due to dumped imports. Under the rules, adverse consequent impact of dumped imports can be visible in any of the economic parameters listed under the law. Increase in imports despite recession itself and increase in market share of the domestic industry is sufficient to establish that the dumped imports caused injury to the domestic industry.

Examination by the Authority

11. The issues raised by the interested parties in response to the Disclosure statement have been examined as follows:

- The Authority notes that due to time constraints, a short time was provided to the interested parties to respond to the Disclosure statement. However, a number of opportunities have been provided to the interested parties to file their submissions from time to time during the course of this investigation. The interested partied have also not raised any significant new point and apparently no prejudice has been caused to them by providing them a short period to respond to the Disclosure statement.

- The Authority notes that the petitioner has given no undertaking to provide separate injury statement for the two models of FAB and three models of SKs that were imported into India.

- It is further noted that that there are 2 different types of subject goods, viz Front Axle Beam and Steering Knuckles and not as machined and forged as has been contended by the respondents. While the Authority may carry out its analysis of dumping margin and injury margin on PCN basis in a given case but the investigation is conducted to determine whether the product under consideration has been dumped and causing 'injury' to the domestic industry or not. Thus, contentions made by the respondents are devoid of any merit.

- As regards the MET claim, the Authority reiterates that the Chinese exporters' claim of MET status was duly examined by the Authority but was not accepted for the reasons recorded in paras 25-42 of the final findings and the same are being relied upon. The interested parties have also claimed that significant 'State share holding' does not translate into 'State interference' in a Company. However, it is noted that the interested parties did not discharge the onus that lies upon it to prove that regardless of the significant State holding in its company, it is entitled for market economy treatment. The Authority further notes that it has not opined whether the subsidies are being provided by Chinese Government; rather the Authority has based its findings in terms of AD Rules and regulations on the subject, which, inter alia, provide that there shall be a presumption that any country that has been determined to be, or has been treated as, a non-market economy country for purposes of an anti-dumping investigation by the designated authority or by the competent authority of any WTO member country during the three year period preceding the investigation is a non-market economy country. Provided, however, that the non-market economy country or the concerned firms from such country may rebut such a presumption by providing information and evidence to the designated authority that

establishes that such country is not a non-market economy country on the basis of the criteria specified in sub-paragraph (3). It is noted that Chinese exporters failed to rebut the presumption in the instant matter.

- As regards Section 9A (6A); the Authority reiterates that the interpretation given to Section 9A (6A) by the Chinese exporters cannot be accepted as such a contention is not supported by the basic rules of Interpretation of statutes. Section 9A (6A) is a general provision which merely states that the margin of dumping in relation to an article exported by an exporter or producer shall be determined on the basis of records maintained by such exporter or producer and on the basis of information available in the case of non-cooperating exporter or producer. Paragraph 7 & 8 of Annexure I of the AD rules, on the other hand, deals specifically with calculation of normal value and export price in case of a "Non-market economy". Hence, the Authority considers that it has correctly calculated the normal value and export price in case of a non-market economy as stipulated by the AD rules.

- As regards the issue regarding confidentiality; the Authority reiterates its view that as the Normal value was constructed, inter alia, based on confidential information of the domestic industry, the same could not have been disclosed. The claims of confidentiality made by the domestic industry were duly examined by the Authority and upon its satisfaction were accepted in terms of para 7 of the AD Rules.

- As regards the constituents of domestic industry; the Authority notes that on the basis of facts available on record and in terms of the AD Rules, M/s Bharat Forge Limited constitutes domestic industry for each of the products under consideration within the meaning of the Rule 2(b) read along with Rule 2(d) of the AD Rules.

- As regards the injury and Causal link analysis; the Authority notes that it has analysed the impact of dumping on the domestic industry by considering market share of various parties in the demand of the products in the country; it is seen the market share of domestic industry has significantly declined in the period of investigation. The data furnished by the domestic industry showed further decline in its market share in period October-December 2008 (post POI). It was noted in Para 95 of the Final findings that within the available demand the domestic industry has lost its market share. Accordingly it was concluded by the Authority that the domestic industry was already facing problem of declining demand, but the same was compounded by the dumped imports. The analysis as reflected in the Final findings dated 5th March 2010 is being relied upon.

- As regards threat of material injury, it is noted that in terms of Para vii of the Annexure II of the AD Rules, for the purposes of determination of a threat of material injury, the Authority is obliged to examine the factors stipulated therein which, *inter alia*, include the rate of increase of dumped imports into India indicating the likelihood of substantially increased dumped exports to Indian markets and also whether imports are entering at prices that will have a significant depressing or suppressing effect on the domestic prices, and would likely increase demand for

further imports. The facts available on record showed a steep increase in imports in a relatively short period of time, which was also evident from the relative market share of imports of the subject goods. Moreover, it was noted that the capacities created by the producers in China PR were more than their domestic demand. Therefore, a likelihood of increased volume of dumped imports flowing into the country from China PR was seen to be clearly established. It is not imperative that all the factors as reflected in para vii of the Annexure II of the AD Rules must necessarily show an adverse impact.

- As regards the contention that there has been an incorrect determination of the NIP; the Authority reiterates that the contention is devoid of merits and that the Authority has computed the Non-Injurious Price as per its consistent practice.

12. After careful examination of the submissions made by interested parties on the subject and considering the legal provisions and facts of the case, the Authority notes that facts on record do not justify nay modification to the final findings dated 5th March 2010.

Conclusion:

13. Having given opportunity in terms of the orders of Hon'ble CESTAT to all the parties to make oral as well as written submissions, the Authority has examined the same in the paras given above. After having examined the submissions of all the parties, the Authority confirms the conclusions arrived at earlier and indicated in the final findings dated 5th March 2010.

14. The Authority therefore confirms its earlier recommendation of imposition of the definitive anti-dumping duties on the subject goods from the date of notification issued in this regard by the Central Government on all imports of the subject goods originating in or exported from the subject country. The Authority further concludes that no change to the relevant Government of India, Ministry of Finance's Notification is warranted.

(Vijaylaxmi Joshi)
Designated Authority