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F.No.15/11/2006-DGAD  
Government of India  
Ministry of Commerce & Industry  
Department of Commerce  
(Directorate General of Anti-Dumping & Allied Duties)

**NOTIFICATION**

New Delhi; Dated the 8<sup>th</sup> April 2008

**Final Findings**

**(New Shipper Review)**

**Subject: New Shipper Review (under Rule 22 of AD Rules) of anti-dumping duty imposed on imports of Nylon Tyre Cord Fabrics (NTCF) requested by M/s Junma Tyre Cord Co. Ltd., China PR.**

**15/11/2006-DGAD.** Having regard to the Customs Tariff Act, 1975 as amended in 1995 and the Customs Tariff (Identification, Assessment and Collection of Anti Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, thereof,

**A. PROCEDURE**

2. The procedure described below has been followed:

(i) The Designated Authority received a request from M/s Junma Tyre Cord Co. Ltd., China PR (hereinafter referred to as New shipper) to initiate under Rule 22 of above mentioned Rules a review of notification No.14/20/2003-DGAD dated 9.3.2005 for determination of individual dumping margin. The applicant submitted declarations that they are not related to any of the exporters and producers in China PR subject to the anti dumping measures in force with regard to the product concerned.

Furthermore, they declared that they have not exported the product concerned during the period of investigation of the original investigation. The Authority examined the information submitted by the applicants and considered prima-facie sufficient to justify the initiation of a review in accordance with the provisions of the Rule 22 of Anti-dumping Rules.

(ii) The Authority initiated the New Shipper Review on the basis of request made by /s Junma Tyre Cord Co. Ltd., China PR (producer and exporter) under Rule 22 of AD Rules, vide notification No. 15/11/2006-DGAD, dated 11.7.2006.

(iii) The aforesaid New Shipper Review was initiated in the matter of import of Nylon Tyre Cord Fabrics (NTCF) falling under Chapter 59 of the Customs Tariff Act, 1975 originating in or exported from China PR where the Designated Authority vide its Final Findings No.14/20/2003-DGAD dated 9.3.2005 had come to the conclusion that:

(a) NTCF of all types, originating in or exported from the subject country has been exported to India below normal value, resulting in dumping;

(b) The domestic industry has suffered material injury;

(c) Material injury has been caused by dumped imports from the subject country.

(iv) The Central Government imposed anti-dumping duty vide Notification No. 36/2005-Customs dated 27.4.2005, in the original investigation on imports of Nylon Tyre Cord Fabrics (NTCF) from China PR falling under Chapter 59 of Customs Tariff Act;

(v) The Authority recommended provisional assessment of all exports of Nylon Tyre Cord Fabrics (NTCF) made by M/s. Junma Tyre Cord Co. Limited ,China P.R. (producer and exporter) till the completion of the New Shipper review in accordance with Rule 22 of AD Rules and having regard to the Notification no.36/2005-Cus dated 27/4/2005;

(vi) Ministry of Finance issued Notification No. 84/2006-Customs, dated 29th August, 2006, which inter-alia provided that pending the outcome of the review by the Designated Authority, exports of Nylon Tyre Cord Fabrics (NTCF), falling under Sub-heading 590210 of the first scheduled of the said Customs Tariff Act. by M/s. Junma Tyre Cord Co. Limited, People's Republic of China, when imported into India would be subjected to provisional assessment till the review was completed. It was further provided that the provisional assessment may be subject to security or guarantee as the proper officer of the Customs deems fit for payment of the deficiency, if any, in case a definitive anti dumping duty is imposed retrospectively, on completion of the investigation by the Designated Authority. In case of

recommendation of Anti-Dumping Duty after completion of the said review by the Designated Authority, the importer shall be liable to pay the amount of such duty recommended on review and imposed on all imports of subject goods into India, exported by M/s Junma Tyre Cord Co. Limited, People's Republic of China, and imported into India, from the date of initiation of the said review.

(vii) The Authority sent a copy of exporter's questionnaire and Market Economy Treatment (MET) questionnaire to M/s. Junma Tyre Cord Co. Limited, China P.R. (producer and exporter). The Authority sought information it deemed necessary for the purpose of determination of dumping margin. The Authority conducted verification of the data furnished by M/s. Junma Tyre Cord Co. Limited, (producer and exporter) at their premises.

(viii) The period of investigation in this new shipper investigation is for 12 months i.e., 1st April, 2005 to 31st March, 2006 for dumping determination.

(ix) The Authority officially intimated the authority of the exporting country of the initiation of the New Shipper Review and gave opportunity to all the interested parties concerned to make their views known in writing within 40 days from the date of issue of notification i.e. 11.7.2006.

(x) The Authority provided an opportunity to all interested parties to present their views orally in the public hearing held on 30.11.2006. All parties presenting their views orally were requested to file written submissions of the views expressed verbally.

(xi) The Authority made available the public file as per Rule 6(7) to all interested parties containing non-confidential version of all evidence submitted by various interested parties for inspection, upon request.

(xii) In accordance with Rule 16 of Rules Supra, the essential facts/basis considered for these findings were disclosed to known interested parties and comments received thereon have also been duly considered in the findings.

(xiii) \*\*\* in the Notification represents information furnished by interested parties on confidential basis and so considered by Authority under the Rules. The information concerning prices and costing filed by the applicant were claimed confidential and these were treated as confidential by the Authority;

## **B. PRODUCT UNDER CONSIDERATION**

3. This being a Review for determination of individual dumping margin under Rule 22 of the Rules, therefore, the product under consideration as described in the original investigation No.14/20/2003-DGAD dated 8.3.2005 will remain same. No issue in this regard has been raised by any of the interested parties. In the original investigation, the product under consideration has been described in para 3 of the findings as under:-

*“The product under consideration in the present case is Nylone Tyre cord Fabric (NTCF) originating in or exported from Peoples Republic of China. The subject good is a fabric of nylone, meant largely for tyre cord. NTCF finds application in different kinds of automotive tyres such as bus & truck tyres, two wheeler tyres, cycle tyres, light commercial vehicles tyres, animal driven vehicles, etc.*

*Nylone Tyre Cord Fabric is produced using different deniers of yarn. The fabric is used for reinforcement of tyres. The product is sold as “Grey fabric” and also “Dipped fabric”. The Indian tyre industry is buying both Grey and dipped fabric. Dipped fabric being sold to cycle tyre manufacturers is described by the petitioner as “cycle tyre fabric”. However, the authority notes that cycle tyre fabric is also nothing but dipped fabric, though having higher cost and price as compared to other dipped fabric being sold to tyre producers other than cycle tyre manufacturers. Dipped fabric meant for cycle tyre applications has been described as cycle tyre fabric (CTC) in this notification and all other dipped fabric has been stated as “dipped fabric”. Irrespective of the categorisation, tariff classification of NTCF is common to both. All types of NTCF are within the scope of the product under consideration and are classified under Chapter 59, Custom sub-heading No.5902.10.00 of the Customs Tariff Act. The classification is however indicative only and in no way binding on the scope of the present investigation.”*

4. The new shipper has stated that they have exported NTCF of types Greige and Dipped. From the records it was noted that the new shipper has exported mainly NTCF greige i.e. 91% and NTCF dipped was only balance 9%.

## **C. Other Issues**

### **C.1 Issue of Normal Value**

5. The Indian exporters on behalf of M/s. SRF Ltd., M/s Century Enka Ltd., and M/s NRC Ltd. have stated that the investigation cannot proceed in the present form and manner in view of the decision of Supreme court in matter of M/s Reliance Industries Ltd. Vs. The Designated Authority [(2006(202)ELT 23 (SC)] as the Supreme Court

has held that normal value is country-specific and clearly lays down that normal value shall not be for the exporter.

6. The New Shipper in this regard has pointed out that as per Annexure 1 of the Anti-dumping Rules, the normal value is to be determined on the basis of the records kept by the exporter or producer under investigation. In this investigation, the new shipper is the exporter under investigation. It has also been submitted that jurisprudence on interpretation of statutes clearly state that the intention of legislature is primarily to be gathered from the language used; thus stating that unless otherwise warranted, the plain language of the statute must be given effect to.

7. The Authority has examined the issue and notes that the CESTAT in Order dated 27.8.2007 in appeal No.01 of 2007 in case of M/s H & R Johnson (India) Ltd. Vs. Ministry of Finance and Designated Authority has observed that the observation of Supreme court concerning normal value “*are not intended to apply to the scheme of provisions of rule 22 under which the individual dumping margin of the new shipper is required to be determined*”. In view of the observation of the CESTAT, the Authority holds that the argument of the domestic industry concerning normal value in context of new shipper review under Rule 22 is not valid.

## **C.2 Qualification of Junma as a New Shipper**

8. Submissions made by Indian producers on behalf of M/s. SRF Ltd., M/s Century Enka Ltd., and M/s NRC Ltd.

9. It has been submitted that Junma does not qualify as a new shipper as the company has provided no evidence that company qualifies as a new shipper. All that the petition shows in this regard is mere claim on behalf of the company. However, no supporting evidence has been presented by the applicant in this regard.

10. Even considering the practice of the Designated Authority, it is evident that present application did not meet the requirements being considered necessary by the Designated Authority. The company has filed only authorisation letter, business licence of the company, audited financial statement for 2005, company’s brochure and declaration of ‘no exports’ in the period of investigation in the original investigation. This information cannot constitute evidence to establish that they did not export during the previous dumping investigation period. It has also been stated that information on production facilities has been suppressed in the application.

11. It has been stated that Indian producers understand that Junma had exported the subject goods to India either during or prior to the investigation period. Junma, however, provided no details of these exports either at the time of original

investigation or in the current application. Thus, while the company was non-cooperating in the previous investigations, the company has filed insufficient/incomplete information in the present application.

12. It has also been stated that unless all entities who have been involved in the production or sale or activity connected therewith respond to the Designated Authority, the investigation cannot be continued.

### **Submissions made by New Shipper**

13. It has been submitted that the new shipper has filed the certificate of incorporation having the date of commencement of business. The intention of initiation of new shipper which has been recorded by the Authority and the change in the name of the company. The exports of the subject goods were clearly outside the period of investigation fixed in the original investigation. The applicant in their response to the questionnaire also have certified that they had no affiliated/related company engaged in production or sale of the product concerned who were subjected to anti-dumping duties either. It has also been submitted that new shipper has clearly responded to all the queries/clarification of the Authority prior to initiating the investigation. The Authority has looked into these issues and has rightly initiating the investigation within the framework of the applicable rules and the practice followed by the Authority from time to time.

14. On issue of separate questionnaires responses from each related entity, it has been submitted that there is no related party involved in the production or sale of the subject goods or any companies involved who have a job work arrangement, therefore, the question of filing separate questionnaires does not arise.

### **EXAMINATION BY THE AUTHORITY**

15. The Designated Authority initiated new shipper review keeping in view the provisions of the anti dumping rules, which are reproduced below:

(a) *“Rule 22: (1) If a product is subject to anti-dumping duties, the designated authority shall carry out a periodical review for the purpose of determining individual margins of dumping for any exporters or producers in the exporting country in question who have not exported the product to India during the period of investigation, provided that these exporters or producers show that they are not related to any of the exporters or producers in the exporting country who are subject to the anti dumping duties on the product.*

*(b) The Central Government shall not levy anti dumping duties under sub-section (1) of section 9A of the Act, on imports from such exporters or producers during the period of review as referred to in sub-rule (1) of this rule:*

*(c) Provided that the Central Government may resort to provisional assessment and may ask a guarantee form the importer if the designated authority so recommends and if such a review results in a determination of dumping in respect of such products or exporters, it may levy duty in such cases retrospectively from the date of initiation of the review”.*

16. Rule 22 clearly specifies the circumstances under which a new shipper investigation can be carried out for the purpose of calculating individual dumping margin. Individual dumping margin in respect of any exporter or producer from the exporting country in question can be determined provided the following two conditions are satisfied;

(a) that the exporter or producer has not exported the product under consideration during the period of investigation and,

(b) that exporter or producer shows that they are not related to any of the exporter or producer in the exporting country who are subject to the anti dumping duties on the product concerned.

17. The Designated Authority in the present case on the basis of information filed by the applicant found that the exporter or producer has not exported the product under consideration during the period of investigation in the original investigation and provided certification that they are not related to any of the exporters or producers in the exporting country who are subject to anti dumping duties. The Authority before initiating the investigation called documents like Article of Association and Annual Reports, etc. which could have revealed the relationship of the applicant with the other entities and exports made by them so that the veracity of the declaration could be checked. At the time of initiation the Authority did not find any information/evidence indicating that declarations filed by the applicant were false. In absence of any credible information no adverse inference could be drawn against the applicant.

18. During the investigation the Authority neither found any evidence of relationship with any of the exporters and producers in China PR who are subjected to anti-dumping duty nor any material evidence in this regard was brought before the Authority by any interested parties. The Authority, therefore, holds that the New Shipper Review investigation was initiated and conducted as per provisions laid down

in Rule 22 of the anti-dumping rules which is in conformity with article 9.5 of the WTO AD Agreement.

#### **D. Issues on Non-Market Economy**

19. Submissions made by Indian producers on behalf of M/s. SRF Ltd., M/s Century Enka Ltd., and M/s NRC Ltd.

a. All companies engaged in production whose product has been exported to India are not before the Designated Authority.

b. All plants for production of NTCF were owned or controlled by the Govt. of China. These State owned/controlled plants have been acquired by private entities – in some cases completely in others partially. Such being the case, it is required to be established by the applicant that the ownership of such plant has been transferred to private parties on market price and is not influenced with the erstwhile non-market economy system.

c. The applicant has a related company supplying power to the company, yet, the reply of the exporter does not seem to have disclosed this. Further, the applicant is buying the product under consideration as also inputs from other related companies, details of which are not disclosed to the Designated Authority.

d. Indian producers submit that State-owned entity Zhangjiagang Nylon Tyre Cord Factory is still producing tyre cord fabric and selling its entire production to the applicant. The company is setting tyre cord fabric produced on job work basis from Village Cooperative owned company M/s Zhangjiagang Luming Welfare Factory. The company is selling its own product as also such purchased/job work production in the domestic or export market. Therefore, market economy status cannot be granted due to intermingled business operations between the applicant and State-owned/controlled entities.

e. The applicant has purchased a plant which was with State owned entity. Such being the case, it has been submitted that the process of purchase of the plant by the company from the State owned entity is one of the most fundamental parameter to be examined by the Authority. The exporter is required to establish that the assets were sold freely and at a market price during the transfer of the company to the private ownership.

f. The applicant is a complex web of related entities. It would appear that these entities are private entities. It would also appear that these entities are unrelated to each other. In this regard it has been stated that the companies are directly or indirectly related to the applicant and the ownership and control is intermingled thus leading to a situation where these entities are nothing but one collective commercial entity.

g. The applicant is a collectively owned enterprise. The issue of collectively owned enterprise not being entitled to market economy status was debated at length and decided by the Hon'ble Tribunal also. The Hon'ble Tribunal has upheld the decision of the Designated Authority that collectively owned enterprises are not entitled for market economy status.

h. Huge investments in the company have been made by employees of the company. The Designated Authority is requested to examine (a) sources of the funds invested by the employees, (b) terms and conditions under which such shares were offered to employees.

i. The applicant has added such massive capacities for the product under consideration, far too disproportionate to not only Chinese but also global present and potential demand that the decision of the company regarding cost of technology and investment cannot be said to be in response to market signals reflecting supply and demand. These investments wholly disproportionate to the present and potential demand of NTCF not only in Chinese market but also in the global market. Evidently, the Chinese market is now saddled with huge surplus material. Thus, not only that the decision of the company to invest in capacity creation is not in response to market demand and supply, but also that the resultant situation in the Chinese market should be one where the NTCF prices are abnormal. The source of fund of the company for the huge disproportionate investments undertaken by the company should be investigated by the Designated Authority in detail. It is required to be established that there is no state interference or support in these investments.

j. The selling price of NTCF in the Chinese market is not free from State interference for the reasons that (a) the majority NTCF suppliers in China were owned or controlled by the State, (b) cost of acquiring the plants are not reflective of fair market values and these plants have not been offered freely, (c) investment decisions are disproportionate to the existing and potential demand and supply, (d) huge surplus created by

the Chinese producers is leading to extreme pressure on the suppliers, (e) caprolactam prices for the majority Chinese producers is not reflective of fair market values, (f) power is one of the basis inputs, prices of which significantly vary from producer to producer depending upon State ownership or control in these plants, (g) Designated Authority has established that an ad-hoc system of support and subsidies exist in the Chinese NTCF market, (h) financial situations of the NTCF producers are highly distorted. All these parameters individually and collectively have led to a situation where NTCF prices in the Chinese market are highly distortive and wholly unreliable.

k. The export price of applicant is lower than other Chinese exporters and dumping margin in fact has increased.

l. Selling price of the company in Chinese market was constant for almost 18-21 months – not possible for a market economy company that too when the inputs are volatile.

m. The company's prices responded to Caprolactam prices only when the prices of the later declined. When prices of Caprolactam increased, the company did not increase the prices. The company does not have advantage on Caprolactam, yet, export price is so low. As a result of its business decision, the exporter is forced to a situation of huge financial losses, which is evident from its Annual Report. This will only mount, should the exporter continue to export at these prices.

n. It has been submitted that the expenses on account of ocean freight claimed by the company should not be considered in case the carrier is a Chinese carrier.

### **Submissions made by M/s Junma Tyre Cord Co. Ltd. (New Shipper)**

20. It has been alleged that the new shipper is buying the product under consideration from Zhangjiagang Luming Welfare Factory and Zhangjiagang Nylon Tyre Cord Co. And they are located in the same premises. Firstly, the new shipper submits that they are not related to any of these companies listed herein nor were concerned in the production or sale of the subject goods. As per Junma's market intelligence, Zhangjiagang Nylon Tyre Cord Co. have ceased to file any documents with government authorities since 1991. According to China law, any company not filing with government authorities shall not carry any operation, thus will not have the authority or the power to issue invoices, receipts or annually reviewed business license necessary for business operation. As regards the other company i.e.

Zhangjiagang Luming Welfare Factory, this company is not located in the same premise of the new shipper. They have their own factory and facilities which is around two kilometres away from the factory of the new shipper.

21. Regarding issue of majority of tyre cord fabric plants in China were with the State and number of state owned plants are now with private authorities, it has been submitted that M/s Junma Tyre Cord Co. Ltd. (formerly known as Steed Chemical Fibre Co. Ltd.) is a joint stock limited company based in the Jiangsu province of China. The company was incorporated in China on 12th June, 1998 as a limited liability company. The company was converted into a joint stock company on 19th July, 2000. The company was listed on 25th November 2004 at the Singapore Stock Exchange. The new shipper is an independently owned and managed company and has also been awarded the ISO 9001 certification, an internationally recognised industry accreditation for companies with sound documentation control, good quality management systems and adherence to good manufacturing practices on 28th September, 2002.

22. On issue of related entities, it has been stated that the new shipper at relevant places has provided all the related parties information in the Exporter's questionnaire and the NME questionnaire and to support the same annual reports and auditor's certificates have also been furnished. In fact, the highest levels of transparency been followed in the said investigation to the extent of furnishing month-wise supplier details of the raw material CPL has been provided in the NME questionnaire.

23. On issue of intermingled business operations between the applicant and state-owned/controlled entities, it has been submitted that on purchase of the power plant does not supply directly any power to the company. The audited documents as disclosed in the prospectus filed with the Singapore Stock Exchange has examined and reported the related party transactions, none of the power companies have been shown to be related to the new shipper. The stringent examination of listed companies by the Singapore Stock Exchange and the involvement of an international auditing firm such as KPMG have also not named any Luming Welfare Factory, Zhangjiagang Yuxing Polyester Products Co. Ltd. Or the above power plants as related company of Junma, which is a clear indication that the allegations made by the domestic industry is unsubstantiated and uncalled for.

24. The prices and quantities of Junma's products are solely determined by Junma and its business partners solely based on the market rates prevalent during that period as also with the purchases of the raw materials and other inputs used for the subject goods. Also, no local or regional authority or state has been involved in setting prices or deciding the quantities of any trade or production in relation to Junma.

25. Concerning issue that Junma Tyre Cord was a state owned plant now in the hands of private entities, it has been submitted that the information as to the creation of the company has been disclosed in the exporter's questionnaire and also in the public documents such as prospects of the company at the time of listing on the Singapore Stock Exchange and the Annual Report. It has also been submitted that there is no State enterprise or collectively owned company involved in this expansion. The borrowings for the expansions as disclosed in the audited financial report clearly explain the source of funds.

26. Concerning issue of the price at which the plant was sold and justification thereof, it has been submitted that prices at which investments have been made on the plant can be verified from the auditor's certificate certifying the same. As regards the justification is concerned, the internal documents on the basis of which these investments were made would serve the only logical and commercial basis, as these investments are not commodity sales which are made on a daily basis that the transaction value can be justified on the basis of identical sales made in the market during the same period.

27. Concerning issue of investment by employees, it has been submitted that all 50 shareholders were individual Chinese persons working for the new shipper and the investment company was originally set up only to facilitate the Employee Stock Ownership Scheme for the employees.

28. On issue of additional capacity without proportionate increase in the demand, it has been submitted that the new shipper has been selling substantial quantities of the subject goods in the domestic market and thus freely decides the output and the sales depending upon the market demand as can be ascertained from the records of the company. It has also been submitted that the submissions made by the domestic industry on this issue is clearly without any factual evidence as regards Chinese demand or global demand, thus issue of capacity addition is being stressed out of proportion and is clearly the baseless fear or threat which is preventing the domestic industry from allowing the new shipper to be competitive and fair trade.

29. Concerning investigation on issue of source of funds used for expansion, it has been submitted that an extreme case of serious prejudice is being made out by the domestic industry against the operations of the company, as the allegations doubt the operations of the company which is one of the largest producers of the subject goods in China but at the same time is a responsible and a listed company at the Singapore Stock Exchange on the basis of which stringent regulations apply to the company both by the stock exchange and also by its own government.

30. Regarding issue of selling price and cost of production being artificially low due to significant state interference and support in cost of plants, technology, labour, investments and supply of the product, it has been submitted that there is no state interference as already been explained in the submissions.

31. On the issue of company making significant losses, it has been submitted that it should not be linked to allegations of dumping, as there may be certain business decisions and business risks due to which company may face losses during that period and also there is no intention of any management or its company to plan for the same.

32. On the issue of selling price in the Chinese market remaining constant for 18-21 months and no change of prices when Caprolactam prices increased, it has been submitted that information in this regard has been submitted.

33. On the issue of ocean freight, it has been submitted that until or unless there is a related party, which is not so in the instant case as regards the freight company is concerned, the Designated Authority in the normal case should accept the expenses for the same.

#### **EXAMINATION BY THE AUTHORITY**

34. The Designated Authority, as per para 8(2) of Annexure I of the AD Rules for the purpose of determination of Normal Value, proceeded with 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 years period preceding the investigation is a non-market economic country. In the past three years WTO members such as EU and USA have treated China PR as a non-market economy country in anti- dumping investigations. In the instance case, China PR was proposed to be investigated as non-market economy Country.

35. The Authority sent Market Economy Treatment (MET) questionnaire and exporter's questionnaire to M/s. Junma Tyre Cord Co. Limited, China PR (New Shipper). They filed the response in support of their claim of market economy treatment and requested for determination of normal value on the basis of domestic sales of subject goods in their home market. In view of their claim of MET treatment, verification was carried out at the premises of the responding producer and exporter. The new shipper has claimed individual treatment on the grounds that they are operating under market economy condition irrespective of prevailing economy situation in the country without any direct or indirect State interference or influence in their business activity.

36. The Authority notes that para 7 of Annexure 1 of AD Rules provides that:

*“In case of imports from non-market economy countries, normal value shall be determined on the basis of the price or constructed value in the market economy third country, or the price from such a third country to other countries, including India or where it is not possible, or on any other reasonable basis, including the price actually paid or payable in India for the like product, duly adjusted if necessary, to include a reasonable profit margin.”*

37. Further Para 8 of Annexure 1 of the AD Rules (as amended) provides that:

*(1) “8 (1) The term “non-market economy country” means any country which the designated authority determines as not operating on market principles of cost or pricing structures, so that sales of merchandise in such country do not reflect the fair value of the merchandise, in accordance with the criteria specified in sub-paragraph(3)*

*(2) 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 economic country;*

*(3) 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).”*

38. It is noted that the new shipper furnished information/evidence as mentioned in para 8(3) of Annexure 1 of AD Rules to enable the Designated Authority to consider the following criteria as to whether

- a) the decision of concerned firms in such country 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; 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;

e) Provided, however, that where it is shown by sufficient evidence in writing on the basis of the criteria specified in this paragraph that market conditions prevail for one or more such firms subject to anti-dumping investigations, the Designated Authority may apply the principles set out in paragraphs 1 to 6 instead of the principles set out in this paragraph.

39. Detailed questions regarding ownership, management, control, determination of commercial and business policies and on financial situation etc. were addressed to the applicant. Responses filed by the new shipper were analyzed to determine whether the applicant exercised a degree of independence from the Chinese Government comparable to what would prevail in a market economy country. The Authority sought general and certain specific information with regard to the following parameters from the applicants:-

- Ownership details
- Shareholding patterns
- Information on promoter/holding company/companies
- Constituents of Board of Directors, their legal status and person/party being represented by them.
- Raw Material Inputs and Costs
- Production Facilities and Costs
- Loans and subsidies
- Barter Trade/ Counter Trade
- Profit Distribution
- Bankruptcy and property laws
- Exchange rates conversions

40. In order to examine whether there was any degree of State influence or interference over the allocation of resources and decisions of the applicant, whether directly or indirectly, the ownership pattern of the petitioner was examined. The claims/ counter claims made by the interested parties were taken into account and details in this respect were verified.

### **Ownership of the Company**

*41. The Authority notes that*

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*was changed to Jiangsu Junma Group Co. Ltd.*

*42. M/s Jun Ma Nylon was incorporated on 12.6.1998 (Registered Capital RMB \*\*\*) in which Junma Group held share holding of 20% in form of assets, labour union 71.96%, Mr. Chen Zufu 4.44% and Mr. Liu Zhenfeng 3.6%. Subsequently, on 24.7.1999 Jun Ma Group Co. transferred its entire interest (20%) in Jun Ma Nylon to other existing shareholders. On 1.8.1999, there was change in capital structure and shareholding. The shareholding became as Labour Union (54.8%), Chen Zufu (8%), Liu Zhenfeng (8.2%), Yang Peixing (20%), Jiang Jianping (4.5%) and Liu Yaoxiang (4.5%). On July 2000, Jun Ma Nylon was converted into joint stock company with change of name to Zhangjiagang Junma Tyre Cord Co. Ltd. On 7.8.2002, the name was further changed to Junma Tyre Cord Co. Ltd. The labour union which was holding 54.8% of the shareholding was replaced as Buole.*

*43. On 12.12.2003, capital structure of the company was further changed (registered capital RMB \*\*\*) with shareholding as Buole (41%), Chen Zufu (6%), Liu Zhenfeng (6.1%), Yang Peixing (15%), Jiang Jianping (3.4%), Liu Yaoxiang (3.4%) and “S shares” (25.1%).*

***The Role of Buole***

*44. The labour union comprised 121 individuals who were mainly management and production staff of Jun Ma Group company and became employees of the Jun Ma*

*Nylon. It was also explained that in Jun Ma Nylon, labour union held 71.96% of the shareholding and had contributed \*\*\* RMB in cash. The 20% shares were held by Jun Ma Group and had contributed in the form of assets. The shareholding of labour union was changed to 54.8%. The shareholding of the labour union which was held by 121 individuals was transferred and held by 53 individuals. Subsequently, the labour union become Buole, an investment company established by 50 of the 53 individuals. The exporter was asked to provide the Annual Reports of the Buole. In this regard, it was informed “there are not annual reports prepared by Buole, since it is a company only investing in JUNMA incorporated collectively by individual shareholders of JUNMA. The registration documents of Buole is registered as a 100% private company incorporated by individual shareholders. We also wish to clarify that the former name of Buole which was earlier known “Labor Union”. When JUNMA was incorporated, since there were too many shareholders who were individual investors. Since the year 2002, “Labour Union” modified itself in being called “Buole”. All the shareholders of Buole are individuals, without any State interference.”*

45. The Authority also notes that in 2004 and 2005, the bank loans of the exporter were guaranteed by ‘Buole’ Zhangjiagang Buole Investment Development Company Ltd. (ZBIDCL).

### **Senior Management**

46. Concerning senior management, the Authority notes that Yang Peixing, Executive Chairman, Liu Yaoxiang, Executive Director, Liu Zhenfeng, Executive Director, Zhou Zhidan, Executive Director, Chen Zufu, Non-Executive Director and Jiang Yuda, Non-executive Director i.e. senior management of the company continued to be associated with the company from the beginning i.e. they were senior management in Jun Ma Group and before formation of the Jun Ma group.

### **Jun Ma Group**

47. It has also been noted that Mr. Yang Renming and Mr. Xu Feng of the Supervisory Committee are employees of Jun Ma Group.

48. The Authority notes that ‘Buole’ which was earlier known as a labour union provided 72% of the capital at the time of establishment of the company and continued to play very important role in providing capital subsequently. The loan of the company has also been guaranteed by Buole’ (Zhangjiagang Buole Investment Development Company Ltd.) (ZBIDCL). Though it has been explained that Buole is only investment company and only investing in Junma, however, no information and evidence has been provided about the source of funds of the Buole who was earlier known as labour union. In absence of any transparent and credible evidence indicating

that the investment made by individuals, as has been claimed, the Authority is not in a position to accept the claim that it is only an investment company of individuals who provided the capital. It is also not clear how the Buole without any assets can provide guarantee to banks for the loans taken by the Junma Tyre Cord Co. Ltd. In view of the fact, that the senior management of the company continue to be associated and had not undergone any change with the claim of transformation from State-owned company to private company and as noted from the Annual Report, two officials who are employees of the Jun Ma Group are on supervisory committee of the company, the claim of the new shipper that company has transformed from State-owned company to private company in which there is no State interference cannot be accepted. The company appears to be in state of transformation. The investment and guarantee of the loan by the Buole (erstwhile labour union) in non-transparent manner, the continuation of the senior management even after claim of transformation to the private company indicates that the new shipper is still working under the non-market conditions as significant State interference concerning decisions regarding investment and prices of the company cannot be ruled out. Therefore, the Authority holds that the new shipper has failed to rebut the presumption of non-market economy as per para 8(3) of Annexure 1 of the Anti-dumping Rules.

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## **E. METHODOLOGY FOR CALCULATION OF DUMPING MARGIN**

### **E.1 Normal Value**

49. The new shipper has provided transaction-wise details of home sales made during the period of investigation. To ascertain the type of home sales comparable to the export sales, the company was asked to provide the details of coding system used by the company. It was explained that the coding system refer to type of fabric, denier and type of sale (domestic and export). It was noticed that in the invoices of the domestic sales more than 100 codes have been used. The exporter was asked to explain the meaning of different codes and their classification. In this regard, no reasonable explanation has been provided, hence it was not possible to ascertain the type of the product in the home sales as comparable to the export sales. However, in view of the fact that new shipper has failed to rebut the presumption of the non-market economy, so, the normal value cannot be determined as per the principles set out in para 1 to 6 of Annexure 1. Therefore, the normal value has been determined by method 'on any other reasonable basis' as per para 7 of the said Annexure.

50. The normal value has been constructed by adopting the methodology used during the original investigations. For construction, the price of Caprolactum prevalent during the period of investigation based on average ICIS LOR prices for China PR has

been adopted. It has been seen that by adopting new shipper's Caprolactum procurement prices (inclusive of VAT and anti-dumping duty, where applicable), the final price exceeds that claimed by the domestic industry. The conversion cost adopted at the time of original investigation has been adopted by allowing a profit margin of 5%. Accordingly, the Constructed Normal Value (CNV) of Grey has been restricted to the claim of domestic industry. In case of Dipped Fabric, the comparative price increase based on the prices prevalent at the time of original investigation vis-à-vis present have been allowed.

51. As indicated above the company has exported two types (Dipped and Greige) of NTCF to India during the period of investigation. Based on the methodology explained above type wise the normal values for these types of NTCF have been determined as under:

Sl. No.	Description	Normal Value (US\$ per Kg.)
1.	NTCF Dipped	***
2.	NTCF Greige	***

#### **E.2 EXPORT PRICE**

52. In response to the questionnaire, the exporter has furnished invoice-wise/ type-wise details of exports made to India during the period of investigation in Appendix-2. The information provided by the exporter has been verified from the original records. Exports to India have been made at CIF basis. The exporter has claimed adjustments on account of expenses for internal freight, international freight, international insurance, commission. The ex-factory export price has been calculated after taking into account the verified data regarding adjustments. The type wise ex factory export price of subject goods comes to :-

Sl. No	Description	Export Price (US\$ per Kg.)
1.	NTCF Dipped	***
2.	NTCF Greige	***

#### **E.3 DUMPING MARGIN**

53. After determining dumping margins by considering above mentioned normal values and export prices for different types, the weighted dumping margin for Nylon Tyre Cord Fabric (NTCF) has been determined. It has been found that the exporter has exported the subject goods below its Normal Value and the weighted average dumping margin has been determined as US\$ \*\*\*/kg.

#### **F. Recommendations of the Authority**

54. After considering the foregoing the Authority concludes that

i) Export price of Nylon Tyre Cord Fabric (NTCF) produced and exported to India by M/s Junma Tyre Cord Co. Ltd., China PR is below its normal value during the period of investigation.

ii) The Authority, therefore, recommends that anti dumping duty INR 51.36 per kg. be imposed on imports of Nylon Tyre Cord Fabric (NTCF) falling under Chapter 59 of the Custom Tariff Act, 1975 produced and exported to India by M/s Junma Tyre Cord Co. Ltd., China PR

55. An appeal against this order shall lie before the Customs, Excise and Service tax Appellate Tribunal in accordance with the relevant provisions of the Act.

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