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Government of India
MINISTRY OF COMMERCE & INDUSTRY
DEPARTMENT OF COMMERCE
(DIRECTORATE GENERAL OF ANTI-DUMPING & ALLIED DUTIES)
NOTIFICATION
NEW DELHI, Dated the 15th October 2009
Final Findings

Sub: Anti-Dumping Investigation involving import of “Tyre Curing Presses” also known as Tyre Vulcanisers or Rubber Processing Machinerics for tyres from China PR.

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

A. Background and Procedure

2. The procedure described below has been with regard to the investigation:

- a) M/s Larsen and Toubro Limited, Chennai, Tamil Nadu, (herein after referred to as the applicant) filed an application before the Designated Authority (hereinafter referred to as this Authority), in accordance with the Act, and the Rules, alleging dumping of all kinds of tyre curing presses, used for curing tyres during manufacturing of a tyres (hereinafter referred to as the subject goods), originating in or exported from the China PR (herein after also referred to as subject country) and requested for initiation of an investigation for levy of anti dumping duties on the subject goods. The subject country was informed about receipt of application in accordance with the Rule 5(5).
- b) The Authority on the basis of sufficient evidence submitted by the applicants issued a public notice dated 16th October 2008, published in the Gazette of India, Extraordinary, initiating Anti-Dumping investigations concerning imports of the subject goods, originating in or exported from the subject country, to determine the existence, degree and effect of alleged dumping and to recommend the amount of antidumping duty, which, if levied would be adequate to remove the injury to the domestic industry.

- c) The Embassy of the subject country in New Delhi was informed about the initiation of the investigations in accordance with Rule 6(2).
- d) The Authority provided copies of the non confidential version of the application to the known exporters and the Embassies of subject country in accordance with Rules 6(3) supra. A copy of the non-confidential application was also provided to other interested parties, wherever requested.
- e) The Authority forwarded a copy of the public notice to the known exporters (whose names and addresses were available with the authority) and gave them opportunity to make their views known in writing within forty days from the date of the letter in accordance with the Rules 6(2) & 6(4). Response to exporter's questionnaire has been received from the following only one producer/ exporter of the subject goods from the subject country:

Guilin Rubber Machinery Ltd., China PR

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

J.K. Tyres Ltd.
Appolo Tyres Ltd.

- g) The Authority kept available non-confidential version of the evidence presented by various interested parties in the form of a public file maintained by the Authority and kept open for inspection by the interested parties as per Rule 6(7).
- h) Other exporters, producers and other interested parties who have not supplied information in this investigation have been treated as non-cooperating interested parties.
- i) A Market Economy Treatment (MET) questionnaire was forwarded to all the known exporters and Embassy of China PR. While for the

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

- j) Request was made to the Directorate General of Commercial Intelligence and Statistics (DGCI&S) to arrange details of imports of subject goods for the past three years, including the period of investigations. The information received from DGCI&S shows that it had not captured the imports of the subject goods, therefore data from IBIS has been relied upon in the findings.
- k) Information was sought from the applicant and other domestic producers also The Non-injurious Price based on the optimum cost of production and cost to make and sell the subject goods in India based on the information furnished by the domestic industry on the basis of Generally Accepted Accounting Principles (GAAP) was worked out so as to ascertain whether Anti-Dumping duty lower than the dumping margin would be sufficient to remove injury to Domestic Industry;
- l) The Authority notified its preliminary findings vide Notification dated 5th March 2009 recommending provisional anti-dumping duty on import of subject goods from the subject country.
- m) After preliminary findings, all interested parties were asked to file their comments on preliminary findings.
- n) The Authority held a public hearing on 8.07.09 to hear the interested parties orally, which was attended by representatives of interested parties. The interested parties were asked to file written submissions and rejoinder. The written submissions and rejoinders received from interested parties to the extent considered relevant have been considered in the findings;
- o) On the spot verification of the data of exporter was carried out to the extent necessary.
- p) In accordance with Rule 16 of the Rules supra, the essential facts/basis considered for the findings have been disclosed to known

interested parties and comments received on the same have been considered in Final Findings.

- q) Investigation has been carried out for the period starting from 1st April 2007 to 31st March 2008 (12 months) i.e. the period of investigation (POI). The examination of trends in the context of injury analysis covered the period from April 2004 - March 2005, April 2005 – March 2006, April 2006 – March 2007 and the POI.
- r) *** in this notification represents information furnished by an interested party on confidential basis and so considered by the Authority under the Rules.

B. Product under Consideration and Like Article

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

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

24"-36" – Scooter tyres

40" -52" – Passenger car and LCV tyres

55"- 65.5" – Truck tyres

78" – Tractor and agricultural equipment tyres

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

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

5. Tyre Curing Presses is classified under Chapter 84 of the Customs Tariff Act, 1975 under subheading 8477.51 under subheading 8477.5100 under the

Indian Trade Classification (Based on Harmonized Commodity Description and Coding system).

6. The applicant has claimed that there is no known difference between the products manufactured by them and the subject goods imported from the subject country, which can have any impact on price, usage, quality etc. The applicant also claims that the technology and primary production process employed by them and the foreign producers are comparable; however, every producer fine-tunes its production process based on available facilities and necessities.

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

8. After the preliminary findings, it has been submitted by GRM that:

- a) The Domestic Industry did not actually prove that they can manufacture or sell larger size of TCP in domestic market, and the larger sizes of TCP is not like product and shall be excluded from the product scope of investigation.
- b) As the major domestic purchaser of TCP, JK and Apollo's opinion can reflect the real situation of domestic market and the actual capacity of Domestic Industry. Also, per GRM's information regarding the market situation of Indian domestic industry and feedback from Indian importers, the petitioner has not the ability to manufacture larger size [up to 104') of TCP during the POI.
- c) As the Domestic Industry has not the ability to supply larger sizes of TCP in domestic market, where is the injury suffered regarding the larger sizes of TCP claimed by Domestic Industry? The larger sizes of TCP above 104' should be excluded from the product scope.
- d) A TCP of one size cannot replace a TCP of another size. Thus, an imported TCP of size 130" cannot replace a domestic TCP of 48". Further even within TCPs of a certain size, DGAD must examine the exact specifications because variations in specifications lead to significant price changes.

- e) In Ann 1 of the Domestic industry NCV Petition, domestic industry has admitted it cannot make the larger machines and did not do so in the POI.
- f) As the kind of designed product, that whether a machine is imported or domestically purchased the most important consideration for purchase is “technical ability”. Thus buyers like JK or Apollo will provide their required technical specifications to both LTM and GRM and the company that can manufacture machines as per the technical specification is given the order.
- g) DGAD will have to examine if the imported and domestic TCP had different accessories/modules/features etc as these factors significantly affect the price of the TCP. In this case, the adjustment for differences in physical characteristics may be carried out for the comparable models.

9. In their comments to the disclosure statement, GRM stated that the differences in features are critical in TCP with such high customization and GRM is unable to concur that its exports are like articles with Indian produce. GRM stated that they are unaware of any evidence on record indicating that the Domestic Industry commercially produced presses of 104-129” sizes during the POI. GRM requested for exclusion of sizes of 130” and above as these were admittedly not manufactured by the Domestic Industry during the POI.

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

- a) While every tyre curing press is made of the same raw materials, uses similar technology and is distributed to the same set of customer, it should be understood that presses of different sizes and specification are not “like” products.
- b) Prices differ greatly depending on the exact specification of the press. Each press is ordered for a very specific function and one press cannot be replaced by another that is not exactly alike in all respects such as the size, type or accessories.
- c) The quality, the ability of a TCP manufacturer to honors delivery schedules and its ability to even manufacture the specific press required are critical deciding factors that play a major role in the purchasing decisions.
- d) L&T and other domestic manufacturers are not known to have the capability to produce presses of a larger size. They generally supplied presses in the range of 45” to 65.5” and upto 78” presses

and in the rare instance they have supplied presses above these sizes.

- e) It has been stated that DGAD should limit the scope of this investigation to only those sizes that were produced by L&T from the base year to the POI.

After the preliminary findings, it has been submitted that:

- f) TCPs of varying sizes are not “like products” in as much as each TCP differs from the other in numerous aspects and one cannot really say that 48” TCP is similar to a 91” TCP.
- g) Keeping in mind the fundamental differences between individual TCPs, the dumping margin and price undercutting should be arrived at for individual TCPs of different sizes, and the cases for levy of anti-dumping duty should be considered accordingly.
- h) Product under consideration should be limited to sizes actually produced and sold during the period of investigation (POI) as only those sizes that have actually been manufactured by the petitioners during POI can be said to have been injured by imports. The DGAD by presuming a purported and untested future capability of the petitioners to manufacture such products has provided the petitioners duty protection for sizes they have to date not manufactured to the serious detriment to the users in India.
- i) Attention has been drawn to Tribunal judgment in the matter of Magnet Users Association Vs. Designated Authority, wherein it has been stated to be held that the grades of magnet rings (subject goods) which are not manufactured by the Domestic Industry during POI are subject to be excluded from the anti-dumping investigations.
- j) The DGAD’s observation that facilities available for bigger sizes of press can also be used for smaller sizes of press shall not prove to be correct.
- k) Further assuming that the DGAD’s observations are factually correct then also the inverse of DGADs findings can never be correct. L&T and other domestic manufacturers are not known to have the capability to produce presses of a larger size. They generally supplied presses up to 78” and in rare instances, presses above these sizes.
- l) The DGAD has not provided any evidence to show that TCP’s of size higher than 104” have actually been manufactured by the Domestic industry during POI.
- m) The DGAD has not given any finding as to why the time delays in the delivery schedule, one of the aspects which us kept in mind by the buyers while placing an order, should not be considered while determining the injury to the domestic industry.

- n) It has been requested that DGAD should re-consider its findings on the issue of “like articles” of TCPs of different sizes and restrict the present investigation only to the TCP sizes which have been imported into India during POI keeping in mind the restricted capacity of the domestic industry to manufacture TCP beyond a specified size.

11. After the disclosure statement, M/s Luthra & Luthra Law Offices stated that DGAD should specifically exclude TCPs of 130” and above from the scope of product under consideration and the findings should clearly state that the duty recommended is only for TCPs upto 104”.

12. Submissions of Domestic industry after preliminary findings

- a) The size of the Tyre Curing Press is normally indicated in inches by the internal diameter of the dome or the diameter of the platen. This in turn determines the maximum size of the mold that can be used in the press. The mold diameter is the critical parameter that determines the maximum size of a tyre that can be cured in that press.
- b) Optional Add Ons such as vertical chuck loader, segmented mould operator and post cure inflators which help the press in terms of automation and better productivity and better product handling capacity etc. are added depending upon the requirement of the customers.
- c) It was argued by interested parties that different types of tyre curing press cannot be interchangeably used and are therefore not like product. Neither the Designated Authority nor the domestic industry has considered various sizes of tyre curing press can be interchangeably used.
- d) Tyre curing press produced by the domestic industry and imported from China PR are like article in terms of Product characteristics, Production technology and production process, Raw materials, Functions & uses, Pricing, Distribution & marketing, Customs classification, Production.
- e) Domestic industry has already manufactured and supplied presses upto 130”, details of which are on record. The present facility both in terms of design and manufacturing can produce presses beyond 130”.

13. In response to the disclosure statement, domestic industry made the following submissions:

- a. Under the law, there is nothing which permits restriction of the scope of the product under consideration attracting anti dumping duty. It is established that TCP beyond 104” have not been imported into India so far. There is therefore no legal & factual basis to conclude that TCP above 104” cannot be imported in future.
- b. In the matter relating to Acrylonitrile Butadiene Rubber from Korea, the Designated Authority held that it would not be appropriate to exclude a product from the scope of the present investigation in case it has not been exported to India, as the fact of dumping can neither be proved nor disproved. It would be more appropriate for the Authority to accept a specific request by any exporter for exclusion in case it is not being manufactured by the petitioner. The authority, therefore, confirms, for the purpose of these findings, that the scope of the present findings covers all types of NBR from these countries.
- c. if a new higher size press is required in the market, the domestic industry can either supply or not supply. If the domestic industry can supply, as admitted in the disclosure statement, there is no legal & factual basis for its exclusion. In fact, given proposed exclusion, the domestic industry would not be able to compete fairly with the Chinese product in the event of such exclusion.
- d. With regard to the option for review suggested, it is not clear how the domestic industry can seek inclusion of such presses, when the Designated Authority has interpreted Rule 23 to mean only “full review” and the Designated Authority has held in the past [albeit, contrary to the decision of the Supreme Court] that partial interim reviews on product scope are not permissible.
- e. It is submitted that proposed restriction of duty to TCP upto 130” is without any legal & factual basis.

Examination by the Authority

14. The authority examined the issue in details and in this regard it has been noted that all sizes of presses (upto 130”) (whether or not imported during POI) are manufactured in the manufacturing facility of the domestic industry. It has been further noted that facility available for bigger sizes of presses can also be used for smaller sizes of presses. The technical requirement however differs depending upon the size of press. Regarding objection of the interested parties about comparability of presses, it has been noted that for all sizes of presses, manufacturing is comparable up to bare mechanical construction and it is a salable commodity. The press is, however, incomplete without electrical panels, the pneumatic panel and valve battery, etc. Depending upon the requirement of

the customers, the press can be customised by adding extra features such as vertical chuck loaders segmented mould operator and post cure inflators, etc. which help the press in terms of automation better productivity and better product handling capacity etc.

15. In view of the submissions made by the domestic industry and other interested parties, the authority notes that for same size of presses imported product can be substituted with the presses manufactured by the domestic industry as add on features are only optional requirement of the customers. Therefore the authority holds that the presses made by domestic industry is 'like article' of the product imported from the subject countries. Regarding limiting the scope of products to sizes imported during POI, the Authority notes that the presses can be made in the same facility irrespective of their sizes, though higher sizes presses would require higher technical different skills and know-how. The domestic industry has capability to produce different sizes and their variation of presses. Therefore the authority holds that there is no reason to restrict the scope of product under consideration to the sizes of presses imported during POI only. It has also been argued that the product under consideration should be restricted to the sizes manufactured by the domestic industry as there cannot be an injury to the sizes not produced by the domestic industry. The Authority has examined the issue and note that the imports have been made for the presses up to 104 inches. The domestic industry is producing not only this size of press but also higher sizes of presses (130 inch). At this stage, it has been established that domestic industry can manufacture presses up to 130 inches. The domestic industry is yet to manufacture higher sizes of presses, though there is no indication that the domestic industry is not in position to manufacture higher sizes of presses. The product under consideration is the Tyre Curing Press of all sizes, therefore, it is not possible to restrict the scope of product under consideration as imports can be of any size (higher or lower), similarly the domestic industry may also manufacture higher sizes of presses. The Authority, however, in view of the fact that the domestic industry is yet to manufacture higher size of press, is recommending the duty on the presses of the maximum size that has been produced by the domestic industry so far so that buyer may not be put to disadvantage, in case domestic industry is not in position to manufacture higher size of press. The domestic industry may, however, seek the review of the findings in future depending upon the capacity/ facility available to manufacture the higher size of press. The Anti-dumping Rules provide for the Changed Circumstances Review and the same will be followed on receipt of the application for review.

C. Domestic Industry and Standing

16. The application has been filed by M/s Larsen & Toubro Ltd., Chennai, and the applicant is one of the major producers of the subject goods in India. The Authority notes that there are other producers of the subject goods in India i.e., M/s Devon Machines Pvt. Limited, Chennai; M/s Trimac Machinery

Manufacturing Pvt Limited, Navi Mumai; Alfred Herbert (India) Limited, Kolkata and Specific Engineering Corporation Pvt. Limited, Navi mumbai.

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

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

19. After preliminary findings, Alfred Herbert (India) Limited has supported the investigation. However it did not supplied the information for injury analysis .

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

D. De Minimis Limits

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

E. Confidentiality

22. In response to disclosure statement, M/s Luthra & Luthra Law Offices submitted that the domestic industry should not be allowed to keep its expansion plans / activities confidential. They further stated that constituents of the constructed normal value of TCPs and the adjustments made for determination of CNV for the subject country should have been revealed.

23. GRM submitted that there has been excessive confidentiality in respect of the data filed by the Petitioners and especially in respect of various estimates relied on by them. Even sources of data relied on by the Hon'ble Authority for constructing the respective CNV and NIP has not been disclosed at any stage and this is contrary to the established practices of reputed AD jurisdictions including the EU/EC.

24. The Authority has examined the confidentiality claims of the interested parties. In this findings, the data of the domestic industry concerning capacity, production and sales and imports data have not been kept confidential. The other information has not been considered as confidential unless the responding party has given sufficient justification for keeping the information as confidential. The data of domestic industry in respect of customers, cost, prices and the data that would give competitive advantage to their competitors have been kept confidential. The confidential information provided by co-operating exporter and importers as confidential have been kept confidential as claimed by them.

F. Submissions and issues raised

25. The Authority notes that the a producer/ exporter (Guilin Rubber Machinery Ltd., China PR)of the subject goods in China PR have submitted their response to the exporter's questionnaire. The consumers or importers (J.K. Tyres Ltd. and Appollo Tyres Ltd.) have also responded to the Designated Authority and provided the information relevant to the present investigation. M/s Luthra & Luthra Law Offices on behalf of M/s Automotive Tyre Manufacturers' Association, M/s Apollo Tyres Ltd. and M/s JK Tyres Ltd. have made the submissions that have dealt with at relevant places in this findings.

G. Determination of Dumping Margin

G.1 Examination of Market economy claims

26. At the stage of initiation, the Authority proceeded with the presumption by treating China PR as a non-market economy country as per para 8(2) of Annexure1of the Rules, for purposes of an anti dumping investigation. Upon initiation, the Authority advised the producers/Exporters in the country to respond to the notice of initiation and provide information relevant to determination of their market economy status.

27. The Authority sent copies of the MET questionnaire to all the known exporters for rebutting presumption of non market economy in accordance with criteria laid down in para 8(3) of Annexure-I to the Rules. The Authority also requested Government of China to advise producers/exporters in their country to provide information.

28. As per Paragraph 8, Annexure I to the Anti Dumping Rules as amended, the presumption of a non-market economy can be rebutted if the exporter(s) from China PR provide information and sufficient evidence on the basis of the criteria specified in sub paragraph (3) in Paragraph 8 and prove to the contrary. The cooperating exporter/producer of the subject goods from People's Republic

of China PR are required to furnish necessary information/sufficient evidence as mentioned in sub-paragraph (3) of paragraph 8 in response to the Market Economy Treatment questionnaire to enable the Designated Authority to consider the following criteria as to whether:-

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

29. **Submissions of Domestic industry on MET and export price of the Guilin**

- a) Having regard to the nature of the product and activities involved in producing and selling the product under consideration, the fact that whether Guilin sold material directly or through some other company does not vitiate the position that the company has suppressed vital information from the Authority.
- b) Following is the process of sales purchase in this industry - Establishment of capacity and capability to produce and supply, Floating an enquiry, Technical proposal, Price offer, Negotiations, Revised offer by Supplier, Offer acceptance, Placement of purchase order, Technical approvals, Commercial production, Installation & commissioning, on site" training on operation and maintenance of the machine. Such being the case, A producer is always aware of the eventual buyer of a press, the producer/seller is always aware of the market competition
- c) Gulian is non cooperative exporter producer. No separate dumping margin should be determined because of - Claims made by Guilin in its initial questionnaire response; Claims made by ATMA in their response to initiation; Claims made by Guilin in response to the Designated Authority's letter before the Preliminary Findings; Claims made by Guilin after the Preliminary Findings; Claims made by ATMA at the time of oral hearing.
- d) Considering the process involved and legal provisions, date of arrival of goods in India in any case cannot become the basis for determination of export price. The export price in the present case must be established on the

basis of the date of order acceptance or date of purchase order, as the same establishes material terms of sale.

- e) M/s Guilin Rubber Machinery Factory is a producer of the subject goods in China is a subsidiary of China National Chemical Equipment Corporation and its management is selected by China National Chemical Equipment Corporation.
- f) 'Guilin' and China National Chemical Equipment Corporation are state contributed enterprises and there is a no Board of Directors and Board of Shareholders for 'Guilin'. The legal representative of 'Guilin' is a factory director who is appointed by China National Chemical Equipment Corporation.
- g) Thus, it cannot be ruled out the significant state interference concerning critical business decisions.
- h) Steel as a major input for product concern. In different cases, Authority has already held that the prices of steel do not substantially reflect market values in China. The present case is no exception.
- i) The extent to which cost of steel can have an influence of the cost of production of the product under consideration can be gauged from the fact that steel constitute for about 45% of cost of production.
- j) China has the world's largest steel industry and has established itself as one of the world's leading exporters. This explosive growth in production and exports of steel would not have been possible without the support of the Chinese government.
- k) The structure of the Chinese steel industry reflects the Chinese government's ongoing role. The Chinese steel industry continues to be primarily state-owned. The Chinese government intervenes directly and extensively in the steel industry, and retains a high degree of decision-making authority over its development.
- l) China's new Steel Policy specifically provides for continued direct subsidization of the steel industry in the form of tax refunds, discounted interest rates, and other preferential policies. The policy also provides various forms of indirect support, such as restrictions on foreign investment. The policy makes consolidation of the industry a priority, and in fact, there have been several well-publicized mergers of state-owned producers in the last year.
- m) The ways in which the Chinese government provides direct and indirect benefits to the steel industry include: Cash grants, Land grants, Transfers of

ownership interest on terms inconsistent with commercial considerations, Conversion of debt to equity in steel companies, Debt forgiveness and inaction regarding non-performing loans, forgiven billions of dollars in bad debts owed by Chinese steel producers, Preferential loans and directed credit, Tax incentives, including a variety of income tax exemptions and reductions, targeted infrastructure development, Manipulation of raw material prices, Import license schemes and intervention in price negotiations to control prices for imported iron ore, Manipulation of the value of the Chinese RMB.

- n) After the disclosure statement, the domestic industry made the following submissions on MET claim of the exporter:
- I. Since the company is State owned company, possibilities of State interference are not ruled out. Even if it has been established by the company that there was no interference in its operations in the past, the possibility of State interference in future has not been ruled out by the company.
 - II. Since the company does not have an independent Board of Directors and further since the Factory Director is appointed by another State owned enterprise, possibility of state interference in the appointment of Chief Executive and key management personnel is not ruled out.
 - III. Being a State owned enterprise, the company is not required to maintain its books of account in line with Chinese accounting standards and as are required to be maintained by limited liability companies. Above all, it has not been able established that the books of accounts of the company are independently audited in accordance with International Accounting Standards. The reliability of income and expenses, assets and liabilities therefore, cannot be established.
 - IV. The company has failed to establish that price of key inputs substantially reflect market values – one of the vital conditions for market economy treatment. Steel is a basic input in production of the product under consideration. Petitioner has provided voluminous evidence to show that the prices of Steel in China are a result of State directed policy. It was all the more relevant and important for the exporter to establish that its steel prices reflected reasonably the market values. Not only nothing significant has been provided in this regard by the exporter; but also, available evidence suggests that the prices of steel in China are not reflective of market values;
 - V. The company has not established that it obtained all finances independently and without any State interference.

- o) In response to Disclosure Statement, M/s Guilin Rubber Machinery Factory stated that the critical issue disclosed by the Hon'ble Authority for denying MET is State ownership. In this respect it is submitted that the Indian Rules do not specifically provide for State ownership as a ground to deny MET and this is also India's known stand at WTO.
- p) Some interested parties have suggested that the authority should use data/information pertaining to Chinese affiliate of the L&T. The petitioner submits price of major inputs i.e. Steel in China do not substantially reflect market values. The argument is true for petitioner's related company also.

30. Submissions by M/s Automotive Tyre Manufacturers' Association, Apollo Tyres Ltd. & JK Tyres & Industries after Preliminary Findings

- a) CNV should be accurate for correct dumping margin analysis. Some sizes of presses like 48" has not been analyzed for Dumping Margin, even though they were imported during POI. Normal value for 48" and 65.5" should be included in the table.
- b) Since there is an adjustment in constructing the Normal Value of Press, it has been pointed out that any adjustment will have an error and a significant error will lead to a grossly wrong normal value. Authority should clarify the error in this adjustment.
- c) Authority has adjusted the CIF value (taken from IBIS) to take care of VAT and bank transaction, to arrive at ex-works export price. The error in adjustment should be clarified because a significant error would lead to an incorrect ex-works export price and incorrect dumping margin. Ex-works export price for 48" press and 65.5" press should also be included here.
- d) In the Preliminary Findings, the volume of imports in 2005-06 is given as 2 Nos. from China PR, which is not correct, as Apollo has imported 4 Nos. of 48" press in 2005-06.
- e) The DGAD has not revealed the basis on which the domestic prices of major inputs has been adjusted for arriving at the Constructed Normal Value.
- f) The DGAD has not taken any efforts to arrive at CNV of 48" and 65.5" TCP, which was actually imported during the POI.
- g) The DGAD should have arrived at separate dumping margin for each TCP keeping in mind the difference in technical specifications and price of individual TCP.

Examination by Authority

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

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

33. In view of the above facts, 'Guilin' is a state owned enterprise and is not possible to rule out significant interference by State concerning critical business decisions. Since the exporter has not been able to establish its claim of market economy status on this account, it has not been considered necessary to record findings on other requirements of market economy treatment. Therefore, the Authority is not granting market economy treatment to exporter for the purpose of this findings.

G.3 Normal Value for China PR

34. As recorded in Para 33 above, market economy treatment has not been granted to Guilin for the purpose of this findings. Therefore, the authority has constructed the normal value for China PR on the basis of Para-7 to Annexure-I to the Rules.

35. After the disclosure statement, M/s Guilin stated that it is not clear whether there has been any adjustment for differences in physical characteristics between the lighter and simpler presses exported by GRM compared to the domestic product.

Examination by the Authority

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

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

reasonable profit margin. An appropriate market economy third country shall be selected by the designated authority in a reasonable manner, keeping in view the level of development of the country concerned and the product in question, and due account shall be taken of any reliable information made available at the time of selection. Accounts shall be taken within time limits, where appropriate, of the investigation made in any similar matter in respect of any other market economy third country. The parties to the investigation shall be informed without any unreasonable delay the aforesaid selection of the market economy third country and shall be given a reasonable period of time to offer their comments.

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

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

39. The Normal Value has been constructed for the like articles, i.e., those subject goods with similar features which have been exported to India during POI as per information available in IBIS data, the direct exports revealed by Guilin and imports details provided by importers.

40. The Normal Value has been constructed taking into account domestic price of all the major inputs duly adjusted to reflect international prices due to non-availability of international price for various components separately for machines for different sizes. Consumption norms, conversion cost, and SGA expenses of the domestic industry have been adopted for determination of the normal value. After adding a reasonable profit margin of 5% constructed normal value has been worked out. As regard the claim of M/s Guilin for adjustment of differences in physical characteristics between the lighter and simpler presses exported by GRM compared to the domestic product, the Authority notes that no such duly substantiated claim of price difference for such difference has been made by the exporter.

TCP Size	Material Cost (Rs. In lacs)	Other manufacturing Cost (Rs.)	SGA & Finance cost (Rs.)	Profit margin @ 5 %	Constructed Normal Value (CNV)	CNV @ Exchange Rate @ Rs. 40.75/US\$ (USD)

48" TCP+VCL+S MO	***	***	***	***	***	***
65.5 TCP+VCL+S MO	***	***	***	***	***	***
78" TCP+VCL without controls	***	***	***	***	***	***
91" TCP	***	***	***	***	***	***
93" TCP	***	***	***	***	***	***
104" TCP	***	***	***	***	***	***

G.4 Export Price

41. In response to the disclosure statement, the exporter, M/s Guilin Rubber made the following submissions:

- i. As per law reflected in numerous findings of the Indian Authority and other Authorities GRM is not required to furnish export data of unrelated traders. The only basis for rejecting individual determination following the on-spot exporter determination is if the data furnished was found at verification to be incorrect. This is contrary to fact and reflected in the fact that there is no disclosure nor mention in verification report either that data furnished by GRM was inconsistent with its records verified.
- ii. In a transaction between trader and its final customers, such service can be conducted by trader itself as it also has the technical ability. The Authority has not any evidence to prove that GRM know the final customers in the export transactions through traders in advance. There is no reason for the Authority to refuse GRM's claim for individual margin.

42. Further, M/s Luthra & Luthra made the following submissions after disclosure statement:

- i. The DGAD has arrived at the export price of subject goods by deducting certain expenses and making few adjustments. However it has not been explained in the disclosure statement as to what all deductions have been made by the DGAD.
- ii. Without prejudice, it is submitted that while arriving at the export price the DGAD has not taken into account the fact that TCP with add-ons / controls are different from bare press.

43. Post disclosure, the domestic industry made the following submissions:
- (a) The argument that the company has now, post preliminary findings, contacted its customers to identify transactions where material was exported to India, at the least, deserves to be rejected. If the company claims that it had no knowledge of the customer at the time of sale, how are they able to identify exports now.
 - (b) If the company says that they now collected confirmation from their customers, how do they satisfy the Authority that they have exhaustively collected the information.
 - (c) If the company who has actually shipped the goods has not come before the Designated Authority, how the Designated Authority would establish export price, particularly when the producer was not even aware of the customer at the time of sale. The eventual price to India may be higher or lower than the price at which the company has sold domestically.
 - (d) If the company claims no knowledge of the consumer, who did commissioning, installation and post sales services. Can a trader possess requisite technical expertise to undertake these services.
 - (e) In a situation where the number of machines exported to India itself has progressively increased during the course of the investigations, how is the credibility of the current information established.
 - (f) Since the company claims that it was not aware of the customer at the time of sale, how records would now suffice for establishing export price.
 - (g) Once the company claims ignorance on exports to India, verification of records of such company becomes insufficient. The company itself has admitted that its records do not identify exports to India. Therefore, there is no way the Designated Authority can now establish that all exports to India have been fully disclosed.
 - (h) Once it is established that some other trader has invoiced the goods to India, the Designated Authority cannot determine dumping margin, unless such other trader cooperates with the Authority. In fact, the price at which goods have been sold to a customer in India itself cannot be determined in such situations. It is quite likely and indeed appears to be the situation that Gulian has reported only

those transactions where the price was favorable [i.e., higher] to them. The Authority has no mechanism to know whether Gulian has reported all [those low] priced transactions where material has been exported to India. It is Gulian's own claim that it had to rely upon a confirmation from its purchaser in order to identify its export sales to India. Gulian's records were insufficient to identify and establish transactions relevant to exports to India. This fact alone is also sufficient to reject individual dumping margin to the company.

- (i) While relevance of technical ability cannot be undermined, the same is only starting point for a customer to consider a supplier. It cannot become end point. In other words, the Indian consumer/purchaser of TCP cannot place an order on a Chinese company merely based on technical ability.

Examination by the Authority

44. The Guilin Rubber Machinery Factory, the exporter from China PR provided transaction-wise details of exports made during POI. However, it was noticed that some exports were made to India from 'Guilin' which was not reflected in export transactions disclosed by the exporter. The exporter was asked to clarify and it was replied that Guilin has "reported its sales shipped by it to India during POI and negotiated directly with Indian customers. Apart from these Guilin has sales within China including also to unrelated traders, sometimes even delivered to China ports. Guilin has no idea of the final customer of such unrelated traders. Guilin reports such sales as its domestic sales since goods were delivered by it or collected from it in China and it has no knowledge of the final customer in China, India or elsewhere and since no VAT refund has been claimed or received by Guilin in respect of such sales as can be verified". After the Preliminary Findings, it was informed that the exporter has contracts with the trader and asked them to confirm whether they have re-sold the presses to India. It has also been intimated that the traders refuse to cooperate however they have confirmed that presses were re-sold to India and the names of customers have also been provided. In the revised information, the exporter has given the transaction-wise details of export directly made to India and exports made to India through one of the trader. No information has been provided about the export sales made to other countries or exports made to India through other traders. During the verification, the exporter was asked to show the delivery documents, in this regard it was stated that they were not aware of the final destination though they have delivered the presses at the direction of the trader on China's port. The exporter however could not explain satisfactorily that how the TCP which require technical inputs, for manufacturing and installation from final customer's place, could be sold to trader without knowing the final customer. It was also informed that they are not aware of final destination of the TCP sold to other traders. In the submissions, the exporter has stated that most

important consideration is “technical ability”. The Authority in view of the nature of the product, is unable to accept the explanation of the exporter and cannot rely on the transaction-wise details provided for exports to India. Since the exporter has not been able to correctly establish its export price claims, which is most vital for determination of individual dumping margin the Authority has not been able to determine separate individual dumping margin for the exporter ‘Guilin’.

45. For the purpose of findings, export price has been determined separately for comparable types by taking into account the data of imports as reported in India by IBIS data, the direct exports revealed by Guilin and imports details provided by importers in their responses.

46. In the imports data, the information has been provided on CIF value basis. The expenses incurred in export transactions have been deducted on the basis of information provided by Guilin to determine the ex-factory export price. The company has claimed the adjustments on account of export packing expenses, inland transportation, handling, bank charges and non-refundable VAT. No expenses were disclosed in respect of commission. The same was disclosed during the verification and has now been adjusted to arrive at the ex-factory export price. The ex-factory export price has been determined size-wise of the TCP by taking into account the description of the product disclosed by the Guilin and in the imports data of the IBIS and importers. By this methodology, the ex-factory export price per TCP has been determined as under:

TCP size	Ex-factory export price (USD/Machine)
48” TCP+VCL+SMO	****
65.5” TCP+VCL+SMO	****
78” TCP+VCL without controls	****
91” TCP	****
93” TCP	****
104” TCP	****

G.5 Dumping Margins

47. After the disclosure statement, M/s Luthra & Luthra submitted that Dumping margin is inaccurate in as much as the TCPs of different sizes are not like product and will have separate dumping margin depending on whether they are bare presses or whether they are imported with certain add-ons and additional features.

Examination by the Authority

48. For the purpose of determination of dumping margin, for all exporters, the ex-works normal value and export prices as determined above have been compared for the same comparable sizes and description. The weighted dumping margin has been determined by taking into account the volume of imports disclosed in IBIS data, importers responses and direct export of Guilin as follows:

	Weighted average Normal Value (USD per Machine)	Weighted average Export Price (USD per Machine)	Weighted average dumping margin (USD per Machine)	DM %
All exporters from China PR	****	****	****	31.85

H. INJURY DETERMINATION

Views of domestic industry

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

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

- (a) Imports have increased significantly. In fact, from almost negligible, the volume of imports increased to 24 machines during the proposed POI itself, representing 08% of demand in India.
- (b) The prices being quoted by the Chinese suppliers are significantly lower than prices being quoted by the Indian Producers. Given the overall cost advantages to the tyre industry, it is evident that the imports are entering at a present that is likely to increase demand for further importation of the product in the market.
- (c) Chinese producers are holding significant unutilized capacities. This is established by the fact one Chinese producer alone has obtained an order for supply of 64 machines where delivery schedule was less than 12 months. The company would not have obtained the order, had it not been having unutilized capacities to execute the order.

51. After preliminary findings, the domestic industry has made following submissions:-

- (d) ATMA claimed presses imported by its members do not appear to be included in the import volumes considered by the Authority. The Authority should consider these imports as well for determination.
- (e) Various types of Tyre Curing Presses have significantly different associated weights, costs and prices. Therefore, assessment of various volume parameters using numbers as a unit of measurement may not appropriately reflect the performance of the domestic industry with regard to these parameters.
- (f) Petitioner has provided evidence to show that Chinese competition is not new in the Indian market and that the Indian Producers have been forced to compete with low priced Chinese imports for quite some time. Price list floated by a Chinese producer in the Indian market offering to sell Chinese tyre curing press. Chinese supply of tyre curing press to third country used by a consumer as evidence to force the domestic industry to offer low prices.
- (g) Value of a single order is in general quite high and might even go to couple of crores. Such being the case, every purchaser buys and every producer sells the material after lot of market research.
- (h) The imports of the subject goods from the subject country have increased substantially during the injury period. The imports increased from 1 in number in 2004-05 to 24 in POI. In relation to the production, imports increased (in Nos.) to 5.76% in POI from 0.39% in 2004-05. In weight, it

increased from 1.09% to 12.65% and in value from 1.07% in 2004-05 to 8.95% in POI.

- (i) In relation to demand, import increased, (in number) from 0.62% to 7.09%; in weight, from 2.28% to 15.30% and in value from 1.09% to 8.53% in POI.
- (j) Production and sales of the domestic industry increased, the profitability declined significantly, market share declined, domestic industry had available capacities which could be better utilized for production and sale of the product concerned in the domestic market, the tyre industry is expanding in a significant manner, which is resulting in robust growth in demand for the product in the Country; significant volume of orders are expected in due course. Availability of dumped imports in the market would result in loss of this business opportunity to the domestic industry.
- (k) Even when petitioner has reported above capacity and capacity utilization in various possible manners, having regard to the nature of the product under consideration, capacity and capacity utilization may not appropriately reflect the position with regard to utilization of various facilities required for production of the product under consideration.
- (l) Over the years, petitioner has developed a number of parties who can undertake some of the processing activities on behalf of the product. Given the nature of the production process and depending upon the workloads on various machines at any point of time, petitioner undertakes lot of activities by sub contracting part-processing activities.
- (m) The demand has increased by 109% in terms of numbers; however, in terms of weight the demand has increased by 226%.
- (n) The petitioner submits that for the accurate determination of price undercutting, the presses with same size should be compared.
- (o) Price underselling is to be determined by comparing the weighted average landed price of imports of a particular size of the machine from subject country with the Non-injurious selling price of the same size and add on of machine produced by the domestic industry during the POI.
- (p) Cost of sales increased by 221% in POI as compared to base year, sales value increased by 156% only. This clearly indicates that domestic industry could not increase sales value in proportion to increase in cost indicating the suppression of prices.
- (q) The domestic sales realization of the domestic industry has not increased in line with the increase in cost of production. The profit of the domestic

industry has declined over the injury investigation period. As compared to 100 (indexed) of the base year, profit before interest declined to 34 in POI.

- (r) Performance of the domestic industry deteriorated significantly. Profitability declined from above 29% (of cost of sales) to 3% in POI.
- (s) Even when sales increased by more than 150%, profits before tax declined. Return on investments and cash flow declined over the injury period.
- (t) Number of employees and wages paid indicates that employment has increased. Domestic industry has lost substantial orders due to Chinese dumping.
- (u) The demand of goods increased significantly over the injury period. Volume of dumped imports increased significantly in absolute terms as also in relation to production & consumption in India. Imports have been undercutting the prices of the domestic industry. Consequently, the domestic industry has been forced to offer sub-optimal prices to such an extent that the profitability, return on capital employed and cash profits started suffering significantly. Performance of the domestic industry deteriorated in terms of market share, profits, return on capital employed and cash profits, even though the same improved in terms of production & sales. The deterioration in market share, profits, return on capital employed and cash profits clearly outweigh the improvements in production & sales volumes. The purpose of production & sale is to earn profits and the same got defeated when the increase in production & sales led to decline in profits and return on investments due to dumping.
- (v) Imports have increased significantly. From almost negligible, the volume of imports increased to 24 machines during the proposed POI itself, representing 8% of demand in India.
- (w) The prices being quoted by the Chinese suppliers are significantly lower than prices being quoted by the Indian Producers.
- (x) Chinese producers are holding significant unutilized capacities. This is established by the fact one Chinese producer alone has obtained an order for supply of 64 machines where delivery schedule was less than 12 months.
- (y) Inventories of the articles with the suppliers is not relevant consideration in the present case, given that the goods are produced only against confirmed orders and shipped within the stipulated/committed period.

- (z) The export sale of the domestic industry is significant. In respect of production and capacity, the domestic industry is improving its performance as overall equipment utilization was in range of 80%. However, the analysis of financial performance has been done for domestic sales only.
- (aa) Sub-optimal prices offered by the domestic industry directly affected the profits, cash flow and return on investments of the company.
- (bb) Significant price undercutting resulted in increase in market share of imports from the subject country inspite of sub-optimal prices offered by the domestic industry.
- (cc) Given the low prices offered by the Chinese producer, the domestic industry has been forced to offer low prices while responding to the enquiries from the customers.
- (dd) Regarding difference in production – In the published annual report, production is given for rubber processing machinery and tyre-curing press is a part of rubber processing machinery. Following are rubber processing machinery - Tyre Curing Press, Accessories of TCP (VCL, SMO, PCI), Band Building Machine, Tyre Building Machine, Tube heater, Drum, Tube Press, Belt Building Drum, Tube Splicer, Bati Mandrin
- (ee) Footnote '7' of the Anti Dumping Act provides that date of sale can vary from date of order to date of shipment to date of arrival of the goods in India.
- (ff) The dumping margin and injury margin has been determined separately for each TCP. However, the Authority is required to determine weighted average injury margin and dumping margin for the product under consideration. The decision of the WTO in the matter of Bed linen is referred to and relied upon
- (gg) There is steep deterioration in the performance of the domestic industry in terms of market share, profits, and return on investment and cash profits. Imports are significantly undercutting prices of the domestic industry, which is leading to price suppression/depression.
- (hh) The rules do not state that injury occurs only when the domestic industry is suffering loss. The rules required an examination of whether the performance of the domestic industry deteriorated. The rules do not require an examination of whether the domestic industry is leading to a situation of BIFR Company.

- (ii) Not only that the petitioner is not the sole producer of the product under consideration in India, but also petitioner faces competition from other domestic producers as also unfair pricing by Chinese manufacturers.
- (jj) Export sales and domestic sales are different and hence the figures pertaining to domestic do not have any influence on the losses, if any, on exports. Claimed injury is not on account of exports. The claimed injury is on account of domestic operations
- (kk) L&T is an engineering conglomerate with a turnover of over Rs.35,000 Cr. Hence the AR statement by the CFO of L&T is more on the general business scenario and not anything specific to Rubber Processing Machinery.
- (ll) The cannot be taken as the basis that RPM is doing well with regard to the profit parameter and ROCE. The consolidated report results need not reflect the actual ground reality for each & every product and the Honorable DGAD has all the details with respect to LTMs profitability and ROCE.
- (mm) Sufficient evidence has been provided to show that price is the primary consideration for placing orders on Indian and Chinese producers.
- (nn) Technical parameters are important criteria. It is only when technical parameters are met, the price comparisons are made and negotiations are held.
- (oo) The email and price list in fact establish that Chinese competition existed as early as in 2002.
- (pp) No evidence provided of any alleged lost order to date. L&T can give details like date, name, type of TCP and number ordered without divulging confidential information like value.
- (qq) There is no justification for restricting the product under consideration to 104”.
- (rr) Incorrect understanding appears on the part of ATMA and not the Designated Authority. What the Authority has stated is that TCP plant having facilities to produce a particular press can produce a size lower than such size. The Designated Authority has nowhere stated a plant can produce any size.
- (ss) A statement showing delays in supplies and identifying therein the reasons for such delay is enclosed with these submissions. It would be

seen that the customers have delayed finalization of detailed design and drawing. A number of times, the payment have been significantly delayed.

- (tt) Email copy from customer/data of accessories being procured by JK has been submitted to DGAD, which is a proof that LTM has been supporting customers on issues, which are not related to their presses

Views of Importers & Users

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

- a. L&T and other domestic manufacturers are not meeting delivery deadlines that have caused delays in the project schedule of the Importers.
- b. Data submitted by the petitioner regarding import of presses, allegedly as per IBIS data, does not even remotely match the exact imports made by the importers either during POI or before the POI. Except for the 91" press imported by JK in 2004-05 and 48" imported by Apollo in 2005-06 all other import data is incorrect.
- c. There is major discrepancy between Annexure 1.2 on "Imports of TCP's into India", Annexure 1.6 on "Lost orders of TCPs by Petitioner" and Annexure 1.4 on "IBIS import data".
- d. The data on lost orders is totally baseless. The premise on which the so called list of lost orders has been drawn up is not evident at all.
- e. The Petitioner has kept certain information confidential which does not deserve confidential treatment, such as the data on so-called "lost orders" and the information about the Petitioner on its expansion plans.
- f. Being a public listed company, L&T is required to disclose the information on its expansion plans to the public and investors.
- g. The Antidumping Rules reproduce Article 4.1 of the Antidumping Agreement and also require that injury be conducted for the "major" proportion of domestic manufacturers.
- h. The petitioner has not analyzed the impact of the imports on other significant and important producers on any aspect of injury and presented an injury analysis based solely on their own data, which in itself inconsistent and incorrect.
- i. A comprehensive injury analysis requires that impact of imports be evaluated for a "major" proportion of the total domestic production and the Petitioner was required to conduct an injury analysis taking into account not just their company specific data but also data pertaining to the other domestic manufacturers. The present injury analysis by the petitioner amounts to an incomplete and flawed analysis of the impact

- of imports on the entire domestic industry and for this reason alone should be rejected by the DGAD.
- j. Petitioner has manipulated the volume and value figures of import data just for the purpose of antidumping proceedings.
 - k. There is an error in IV-A with respect to indexed data on total salary and wages.
 - l. The Petitioner has, in violation of the WTO Agreement on Antidumping and the Indian Antidumping Rules, tried to include supposed sales/orders for Chinese presses placed by Indian and delivered after the POI in conducting the injury analysis for the POI.
 - m. The unsubstantiated data submitted by the Petitioner as lost orders should be rejected outright by the Hon'ble DGAD.
 - n. Based on L&T's data, L&T shows no injury or negative growth for most of the injury parameters. All injury parameters integral to a showing of injury have registered positive year to year growth by L&T own admission.
 - o. L&T has not been able to establish a "casual link" between the alleged dumping and the supposed injury caused to it during the POI.
 - p. The steady increase of capacity, capacity utilization, production and sales of TCPs' does not support a conclusion that there has been or that there is potential for decline in capacity, capacity utilization, production or sales of TCPs in India.
 - q. All three critical factors, i.e., domestic production, domestic sales and domestic sales realization have all seen increases, and these increases are not marginal or insignificant but demonstrate the largest increase for the company during the POI compared to any period prior to it.
 - r. The company went on to produce more, sell more, divert larger export sales to the domestic market and earn its highest domestic sale revenue during the POI. This in itself should be ground for the DGAD to terminate the investigation as the first and foremost indicators of injury namely actual or potential decline in production, sales and sales realization have not been proved by L&T.
 - s. L&T's market share also has been consistently increasing in comparison to other domestic producers. Both in terms of volume as well as value of domestic sales, L&T has secured the monopoly share of the market.
 - t. Productivity, employment, salary & wages have increased which is in contradiction to its claim of injury.
 - u. The DGAD must investigate the downward trend in profits and the Petitioner must be made to disclose the manner in which profits have been calculated especially in light of the fact that figures on sales, production and sales realization do not support such a drastic fall in profits.
 - v. The expansion projects undertaken by the petitioner also are a major cause for reduced profits and not imports as the petitioner is contesting.

- w. The fall in profits during the POI can be solely be attributed to the fall in exports volumes and export sales realization which in themselves have been adversely affected by exchange rate fluctuations.
- x. L&T has not even analysed the factor of injury “Ability to raise capital”. Its injury analysis is thus incomplete, flawed, manipulated and severely lacking in any proof injury and alleged dumped imports.
- y. L&T has not examined whether there has been price depression or suppression. DGAD must undertake price analysis of “like products” and must find injury only if there is significant price undercutting, price depression or suppression.
- z. The Petitioner have raised a false claim of ‘threat of injury’ in view of its ability to show negative results on various on various economic parameters as required by the Antidumping Rules.
- aa. Positive growth in the antithesis of injury and for this reason the DGAD should terminate this investigation both on present material injury basis as well as for threat of material injury.
- bb. Petitioner has failed to establish a clear causal link between imports and fall in profits (other factors have not suffered any injury) and for this reason alone, the investigation should be terminated.
- cc. In the event MET treatment is denied to the Chinese exporters, then L&T costing data for its Qingdong factory should be used for the purpose of surrogate value.
- dd. While arriving at the export price, DGAD should not allow any deduction on account of commission of traders as the products have been imported directly. As regards the deduction on account of VAT, the Petitioner have to establish that product in question gets a VAT refund.
- ee. Hon’ble Authority must compel L&T to atleast disclose the method of allocating and apportioning costs to the LTM division so that the reasonableness of the same may be examined.

53. Submissions by Apollo Tyres Ltd., on Preliminary Findings

- a) The petitioner has displayed the monopolistic practices. Anti-dumping duty on TCP will further strengthen the Monopoly of Petitioner and hurt the Domestic Tyre Industry severely.
- b) TCP are customized capital goods, made to customer’s specific requirements. Prices vary significantly based on the scope of supply agreed between supplier and customer. Before calling any two presses as ‘Like Presses’, one should have adequate information about its size, type, VCL, SMO, Surge Conveyor, Centre mechanism, Piping module, Control System. Thus before attempting DM analysis or IM analysis for price we should ensure that the Presses being compared are ‘Like’
- c) It is clear from the price comparison of 48” imported press and 48” domestic press that the imported press from China has a higher landed

price than the net price of press from Domestic Press Producer (LTM). Therefore, there is no injury to the Petitioner.

- d) DI has not manufactured certain sizes of presses during the POI and even today some sizes are not being manufactured. There is no basis for injury analysis of press sizes, which petitioner has not made or lacks manufacturing capability.
- e) Correct source of data must be used for injury analysis, when the same is available on record. Data for imports must be taken from 'Bill of Entry' and invoices. Price and quantity given in IBIS and Petition are not reliable, hence must not be considered for any analysis.
- f) There is no injury as most parameters have shown growth be it Sales by Nos. (154%), Production (114%), Market Share (22%). Cash profits also increased. It cannot be seen as a sign of injury.
- g) In the current environment of unfavourable exchange rates, anti-dumping duty will make the imports more expensive and will further hurt the domestic tyre manufacturing industry severely.
- h) LTM shall give evidence to prove the Capacity Utilization of 30% in 2006-07 and 36.67% in 2007-08 as stated in the petition.
- i) As the petitioner has increased its market share by 8% approx., there is no injury to the petitioner on this ground. It should be investigated that other producers have lost 15% market share, but have not shared their data with the Authority in the Investigation.
- j) For determining price undercutting, Authority has used a conversion factor of 1.086% (Customs duty & handling charges) to convert the Assessable value to landed price. The conversion factor used is not correct. The correct conversion factor should be in the range of 1.14 to 1.19 depending upon customs duty and the other related taxes. Using these factors will increase the landed price by 5 to 10%, thus reducing the price undercutting from 5-20% to 0-10%.
- k) In case of 91% press, all the transactions have not been considered for price undercutting. Some transactions have a higher value and they would significantly reduce the price-undercutting % further.
- l) It has been requested to disclose the basis for arriving at Non-injurious prices and the error in the estimation process.
- m) The ineffective management of resources and in-efficient raw material purchase by Domestic industry is the cause of price suppression and depression. This could not be analysed due to lack of access to the correct absolute financial data.
- n) With so many products being manufactured in the same division, the accuracy and authenticity of the financial data cannot be relied upon. A

thorough audit of records by a competent Authority would be required to confirm the correct financial data.

54. Submissions by M/s Automotive Tyre Manufacturers' Association, Apollo Tyres Ltd. & JK Tyres & Industries after Preliminary Findings

- a) Various fallacies, which were brought in light during preliminary investigations, in the domestic industry's petition have not been considered by the DGAD while proposing to levy provisional anti-dumping duty @ 15% ad valorem.
- b) The DGAD has erred in its examination of the instant anti-dumping investigation, and is incorrect in holding that the import of TCPs from China PR has caused material injury to the domestic industry.
- c) The data furnished by the Domestic Industry is not authentic and unreliable and the DGAD should not have initiated the present investigation at all.
- d) The data so provided by IBIS does not even remotely match with the actual import data of the importers. It is submitted that DGAD ought to have relied on the primary data submitted by us, in the form of bills of entry, invoices, etc. rather than relying on the secondary source data from IBIS.
- e) The preliminary findings do not whisper anything about our objection as to discrepancy of data in Annexure 1.2 on "Imports of TCPs into India", Annexure 1.6 on "Lost orders of TCPs by Petitioner" and annexure 1.4 on "IBIS import data".
- f) Tyre curing presses are capital goods whose quality and availability at competitive price are critically important to the procuring industry, namely tyre manufacturers.
- g) The petitioners' own data state that the share of other manufacturers was higher than the domestic industry on value-basis, i.e., to say in value terms other domestic manufacturers claim higher status than L&T alone.
- h) The anti-dumping proceedings are not the proceedings whereunder one domestic industry should be allowed to create monopoly situation in the market. The main objective of anti-dumping investigations to look beyond one industry and should take into account the impact of alleged dumping on all players in the domestic TCP manufacturing industry.
- i) The DGAD ought not to have allowed the confidential treatment to the data pertaining to "lost orders" in as much as the said orders must have been placed by the user industry only and when the said data is based on market intelligence of the domestic industry. This has denied an

- opportunity to verify the authenticity of the Petitioner's claims and resulting in a gross violation of their right to a fair hearing.
- j) There seems to be an inherent fallacy in the preliminary findings wherein despite all injury parameters showing upward trend, provisional anti-dumping duty has been recommended.
 - k) The impugned injury has been decided on merely one factor, i.e., profitability of the domestic industry. Thus, the DGAD has not adopted a comprehensive approach to determine injury.
 - l) If the profitability is re-calculated on Earning before Interest, Tax, Depreciation & Amortisation (EPITDA) basis rather than Profit before Interest and Tax (PBIT) basis, even the profits parameter might yield different results, in view of capital expansion.
 - m) There are various other factors, which would have had an adverse impact on the profitability of the petitioners. The fall in profits during the POI can be solely attributed to the fall in exports.
 - n) The exchange rate fluctuations have also had an effect on profits of domestic industry.
 - o) The DGAD has erred in holding PBIT has fallen merely because of imports as the above displayed data has clearly established that this contention is entirely untenable and insupportable.
 - p) The findings pertaining to price undercutting and underselling effects faced by the domestic industry are incorrect and miscalculated. The data employed by the DGAD is limited in scope and the resultant analysis cannot be universally applied for the purpose of determining the alleged margin of injury.
 - q) Owing to the peculiar nature of TCPs machines of different specifications cannot be termed as "like" products, the price undercutting and underselling ratio arrived at by the DGAD during the course of the Preliminary Findings is largely insufficient and also incorrect. Further, price undercutting and underselling effect of various TCP machines imported by the user industry during POI has not been analysed.
 - r) Owing to the above submissions, there is no suggestion or any imminent threat of material injury faced by the domestic industry. Moreover, the DGAD in its preliminary findings has not discussed the existence of "threat of material injury". Failure to evaluate the "threat of material injury" raises serious doubts on the bona fides of the present investigation.
 - s) The injury margin computed by the Authority is incorrect as the data employed by the DGAD for computing the same is misleading and capable of being manipulated.

- t) The DGAD in its examination has not commented on the reservations put forward by the importers on the data supplied by the Petitioner.
- u) The share of domestic industry has increased and the share of other producers has declined. This factors merits due consideration before imposing provisional duty is the monopolistic position enjoyed by the petitioners in the domestic market, since such imposition would further strengthen this monopolistic position.

55. Post disclosure, no fresh injury submissions have been made by the interested parties.

Examination by the Authority

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

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

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

a) Import volumes and share of subject countries:

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

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

purpose of the findings (though data of IBIS has also not captured all imports), however, the Authority has relied on one set of data for injury analysis.

Quantity in Nos.				
Period	2004-05	2005-06	2006-07	POI
Country	Quantity	Quantity	Quantity	Quantity
CHINA PR	1	2	4	24
Others	0	0	0	0
Trend	-	-	-	-
Total	1	2	4	24
Share of subject country	100%	100%	100%	100%

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

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

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

in number, from 0.62% to 7.09%; in terms of weight, it increased from 2.28% to 15.30%.

Actual and potential effect on production and capacity utilization:

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

		2004-05	2005-06	2006-07	2007-08
In terms of Numbers					
Production volumes	Nos.	117	162	183	217
	Index	100	138	156	185
Domestic sales volumes	Nos.	59	89	95	150
	Index	100	151	161	254
In terms of Weight					
Production volumes	MT	3032	4309	6046	6793
	Index	100	142	199	224
Domestic sales volumes	MT	1403	2256	3422	4787
	Index	100	161	244	341

Capacity Utilization

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

64. The Authority, however, has examined the overall equipment efficiency based on records of the company and notes that the equipment utilization was in the range of 70-80%. In this regard, Authority notes that equipments have been added by Domestic Industry by making further investments. The Authority notes that in view of submissions of domestic industry, it is possible to manufacture

machines without any further addition of capacity, as the capacity to manufacture is not contingent upon only one aspect, i.e., equipment utilization.

Actual and potential effect on market share:

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

Demand – number basis		2004-05	2005-06	2006-07	2007-08
Sales of Domestic industry	Nos.	59	89	95	150
	Index	100	151	161	254
Sale of Other Indian Producers	Nos.	102	113	125	164
	Index				
Imports from China	Nos.	1	2	4	24
	Index	100	200	400	2400
Demand	Nos.	162	204	224	338
	Index	100	126	138	209
Demand – weight basis					
Sales of Domestic industry	MT	1403	2256	3422	4784
	Index	100	161	244	341
Sale of Other Indian Producers	MT	929	1191	1516	1995
	Index	100	128	163	215
Imports from China	MT	54	109	76	1225
	Index	100	202	141	2268
Demand	MT	2386	3556	5015	8006
	Index	100	149	210	336
Market Share in Demand on number basis					
Domestic industry	%	36.47%	43.71%	42.45%	44.33%
	Index	100	120	116	122
Other Indian Producers	%	62.91%	55.31%	55.76%	48.58%
	Index	100	88	89	77
China	%	0.62%	0.98%	1.79%	7.09%
	Index	100	159	289	1147
Market Share in Demand on Weight basis					
Domestic industry	%	58.78%	63.44%	68.24%	59.79%
	Index	100	108	116	102

Other Indian Producers	%	38.94%	33.49%	30.24%	24.91%
	Index	100	86	78	64
China	%	2.28%	3.06%	1.52%	15.30%
	Index	100	134	67	671

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

Production

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

Sales

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

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

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

Price Effect of the Dumped imports on the Domestic Industry

71. With regard to the effect of the dumped imports on prices, the Authority is required to consider whether there has been a significant price undercutting by the dumped imports as compared with the price of the like product in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree.

Price undercutting and underselling effects

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

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

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

Price undercutting

TCP with dia size	Net Selling price – Domestic (Rs./No.)	Landed Value (China PR)	Price undercutting (Rs./No)	Price undercutting (%)
48" TCP+VCL+SMO	***	***	***	***
65.5" TCP+VCL+SMO	***	***	***	***
78" TCP+VCL W/o Controls	***	***	***	***
91" TCP	***	***	***	***
93" TCP	***	***	***	***
104" TCP	***	***	***	***
Price undercutting range in %				(-)1 to (+)19%

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

Price underselling

TCP with dia size	Non-injurious price (Rs./No.)	Landed Value (China PR)	Price underselling (Rs./No)	Price underselling (%)
48" TCP+VCL+SMO	***	***	***	***
65.5"	***	***	***	***

TCP+VCL+SMO				
78" TCP+VCL W/o Controls	***	***	***	***
91" TCP	***	***	***	***
93" TCP	***	***	***	***
104"	***	***	***	***
Price underselling range in %				(-)7% to (+)18%

76. The above data shows that the landed value of the dumped imports is significantly were below the net sales realization of the domestic industry and were undercutting in the range of (-)1 to 19% of the selling prices of the domestic industry depending upon the sizes of the press. The landed values were also below the non-injurious prices of comparable seizures of presses, resulting in underselling in the range of (-) 7% to 18%.

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

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

77. Cost of sales has increased by 221% in POI as compared to base year. In terms of rupees, cost has increased by Rs. *** lacs, corresponding sales value has increased by 156%, in terms of Rs. It increased by Rs. *** lacs. This indicates that domestic industry could not increase sales value in proportion to increase in cost indicating the suppression of prices.

Examination of other injury factors

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

a) **Profits/Loss and Return on investments**

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

Particulars	Unit	2004-05	2005-06	2006-07	POI
Domestic Cost of Sales	Rs. Lacs	***	***	***	***
Trend	Index	100	191	190	321
Domestic Sales Value	Rs. Lacs	***	***	***	***
Trend	Index	100	137	155	256
Profit/ Loss before Tax	Rs. Lacs	***	***	***	***
Trend	Index	100	-44	35	34
Interest	Rs. Lacs	***	***	***	***
Profit/ Loss before Tax & Interest	Rs. Lacs	***	***	***	***
Trend	Index	100	-38	38	38
Capital Employed for domestic sales					
Net Fixed Assets	Rs. Lacs	***	***	***	***
Net Working Capital	Rs. Lacs	***	***	***	***
Total Capital Employed for domestic sales	Rs. Lacs	***	***	***	***
Return on capital employed	%	***	***	***	***
Trend	Index	100	-28	16	9
Return on capital employed without considering additions during POI	%	***	***	***	***
Trend	Index	100	-28	16	10

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

81. The above data shows that the domestic sales realization of the domestic industry has not increased in line with the increase in cost of production. The profit (PBIT) of the domestic industry has declined over the injury investigation period. As compared to 100 (indexed) of the base year, it declined to 38 in POI. However, as compared to base year, it declined to (-) 38 in 2005-06. Regarding losses in 2005-06, it has been explained that the domestic industry suffered financial losses in this period because of miscalculation of actual cost estimates in respect of hydraulic presses which was introduced for the first time in that year and the competition offered by Chinese suppliers. Thereafter, it improved to 38 in 2006-07 and POI. Consequently, the return on the capital employed (without considering addition during POI) for domestic sales of the domestic industry has declined significantly during the POI as compared to the base year. The return on capital employed declined to (-) 28 in 2005-06 as compared to 100 of base year. The negative return has also been attributed to loss made on the sale of hydraulic machines which was introduced in that year. The position improved in 2006-07 to 16 and declined again in POI to 10 (indexed). However, as compared to base year, the performance of the domestic industry declined significantly in POI which cannot be attributed to the losses due to introduction of hydraulic presses introduced in 2005-06.

82. It has been argued that the domestic industry continues to be in profits. The Authority however considers that the Rules do not provide that the domestic industry must suffer financial losses before a positive finding of injury can be recorded. The Rules instead requires the Authority to consider whether the performance of the domestic industry deteriorated in respect of profits and return on investment. Further, the investigation has shown that whereas the production & sales of the domestic industry have improved (a natural consequence of which should have been improvement in profits and return on capital employed), the profits and return on capital employed has declined.

b) Cash Flow

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

Particulars	Unit	2004-05	2005-06	2006-07	POI
Profit/ Loss before Tax	Rs. Lacs	***	***	***	***
Depreciation on Domestic Sales	Rs. Lacs	***	***	***	***
Cash profit for domestic sales	Rs. Lacs	***	***	***	***
Trend	Index	100	-33	41	45

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

c) Employment and Wages

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

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

d) Inventories

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

e) Loss of orders

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

f) Productivity

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

(g) Growth

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

h) Ability to raise fresh Investment

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

i) Magnitude of Dumping

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

j) Factors affecting prices

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

Conclusion on injury

93. The demand of goods in terms of numbers has increased from 162 in base year to 338 in POI, i.e., increase by 109%. In terms of weight also, it increased by 236%. The domestic sales have increased by 154% during the same period. As noted earlier, the equipment utilization is in the range of 70-80%. Therefore, the domestic industry continues to take advantage of increase in demand in the market. However, the domestic industry has lost orders to Chinese manufacturers. The under-cutting is in the range of (-)1% to 19%. The cost of sales increased by 221% whereas sales value increased only by 156%. Consequently, the profit (PBIT) declined by 62% as compared to base year and the return on investment declined sharply by 90%. It has been noted that in 2005-06, there was sharp decline in financial performance. It has been explained that the domestic industry suffered financial losses in this period because of miscalculation of actual cost estimates in respect of hydraulic presses which was introduced for the first time in that year and the competition offered by Chinese suppliers. This factor was missing in subsequent years, therefore performance improved in 2006-07. However, as compared to base year, the financial performance of domestic industry declined significantly in POI.

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

95. The Authority has noted that on production and sales, the domestic industry has been able to show improvement in performance. However, Examination of the imports of the product and performance of domestic industry clearly shows that the imports of the product under consideration have increased in absolute terms and as also in relation to production and consumption in India. The imports are significantly undercutting the prices of the domestic industry in the market and the effect of the dumped imports was to suppress the prices of the domestic industry in the market. The prices have not increased in proportion to the increase in the cost of production. It is thus concluded that there has been a significant increase in the dumped imports both in absolute terms and relative to production or consumption in India. Further, there has been a significant price under cutting by the dumped imports as compared with the price of like product in India and the effect of such imports is prevent price increase which otherwise would have occurred to a significant degree. With regard to consequent impact of the dumped imports on the domestic industry, performance of the domestic industry deteriorated from the base year in terms of market share, profits, cash profits & return on investments. Imports are affecting the domestic prices. Even though performance of the domestic industry improved in terms of production, sales, capacity utilization, the Authority considers that these positive improvements were off-setted by negative developments in profits and return on investments. The Authority notes that the profits and return on capital employed should have improved as a result of increase in production and sales. However, the same have instead declined significantly indicating the material injury suffered by the domestic industry as can be seen from the trend from the base year.

96. The Authority notes that the Rules require examination and assessment of performance of the domestic industry over the period, by considering a number of parameters listed under the Rules. Further, while the Rules provide for examination and assessment of all listed parameters, it does not provide that the performance of the domestic industry must deteriorate in terms of each and every parameter. Further, the Rules provide for assessment of whether the performance of the domestic industry has deteriorated or declined in respect of these parameters and whether such deterioration is significant. The Rules however do not provide, for example, that the domestic industry must suffer financial losses for concluding that the domestic industry has suffered material injury. In case the performance of the domestic industry has deteriorated in respect of one or few parameters only, the Authority must conclude that the domestic industry has suffered material injury, provided that the Authority comes to a conclusion that the deterioration in these parameter more than off-sets the

improvement in other parameters. Therefore, in context of injury to the domestic industry in an anti-dumping investigation, the overall assessment of injury is required to be made on the basis of performance of the domestic industry in respect of various parameters. The domestic industry may respond to unfair practice of dumping depending upon the means available and strength of domestic industry. It is not necessary that decline should be recorded in all or majority of the lego-economic parameters. Even one or more of lego-economic parameter indicating injury may be sufficient to assess that domestic industry has suffered injury (Article 3.2 of Anti-dumping Agreement). It is further noted that it is not necessary that domestic industry may immediately approach the Authority for initiation of investigation on the commencement of dumping. The domestic industry may respond differently depending upon the strength of the domestic producers. However, when the domestic industry is unable to compete with unfair trade, then it may approach the Authority for investigation. The sign of injury in such a case would be available in the preceding years as well and the sharp decline would be missing in the period of investigation. That is why the injury analysis is conducted for more than one year whereas for the purpose of determination of dumping margin, the period is only one year.

I. Causal link and other factors

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

i) Volume and prices of imports from other sources

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

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

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

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

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

iv) Development in technology

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

v) Export performance of the domestic industry

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

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

vi) Productivity of the Domestic Industry

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

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

Causal link

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

- a. The volume of dumped import from the subject country has sharply increased at significantly lower prices during the injury investigation

period, resulting in significant price undercutting and underselling. As a direct consequence, the domestic industry could not increase its prices in line with increase in the cost of production resulting in financial losses.

- b. Increase in import volumes and suppression of domestic prices adversely affected the profits, cash flow and return on investments of the company.
- c. Significant positive price undercutting resulted in increase in market share of imports from the subject country. The domestic industry appears to have responded to decline in import prices by suppressing its prices and suffered financial losses.

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

I. Magnitude of Injury and injury margin

107. Post disclosure, M/s Luthra & Luthra submitted that the DGAD have erroneously withheld the disclosure of injury margin from interested parties. The same is particularly perplexing that the dumping margin arrived at has been provided to all interested parties. They further submitted that determination of non-injurious price has been made on some assumptive figures, details of which are not known to us.

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

	Injury Margin
All exporters from China PR	5% to 15%

J. Conclusions

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

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

- ii) The dumping margins of the subject goods imported from the subject country are substantial and above de minimis;
- iii) The domestic industry has suffered material injury and the injury has been caused to the domestic industry, both by volume and price effect of dumped imports of the subject goods originating in or exported from the subject country.

K. Indian industry's interest & other issues

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

L. Recommendations

111. The Authority notes that the investigation was initiated and notified to all interested parties and adequate opportunity was given to the exporters, importers and other interested parties to provide positive information on various aspects of dumping, injury and causal links. Having initiated and conducted investigation into dumping, injury and causal links between dumping and injury to the domestic industry, in terms of the Rules laid down, and having established positive dumping margin against the subject country, and having concluded that the domestic industry suffers material injury due to such dumped imports.

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

113. Having regard to the lesser duty rule, the Authority recommends imposition of definitive anti-dumping duty equal to the lesser of margin of dumping and margin of injury, so as to remove the injury to the domestic industry. The Authority further notes that there is a significant differentiation of the product in terms of its capacity and prices, hence, a duty in terms of reference price or fixed duty would not be appropriate in this case. Therefore, the Authority recommends imposition of the measure as an ad valorem duty, to be worked out as a percentage of the CIF value of imports of the subject goods from the subject country. Accordingly, the antidumping duty equal to the amount arrived at by applying the percentage indicated in Col 9 of the duty table is recommended to be imposed from the date of issue of this findings, on imports of all types of Tyre Curing Presses (upto 130") originating in or exported from China PR.

Duty Table

Sl. No	Tariff Item	Description of Goods	Specification	Country of Origin	Country of Export	Producer	Exporter	% of CIF Value
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1.	8477.5100	Tyre Curing Presses	All sizes upto 130"	China PR	China PR	Any	Any	10
2	8477.5100	Tyre Curing Presses	All sizes upto 130"	China PR	Any	Any	Any	10
3	8477.5100	Tyre Curing Presses	All sizes upto 130"	Any	China PR	Any	Any	10

114. Subject to the above, the Authority confirms the preliminary findings dated 5th march, 2009.

115. An appeal against the findings after its acceptance by the Central Government shall lie before the Customs, Excise and Service Tax Appellate Tribunal in accordance with the Customs Tariff Act, 1975 as amended in 1995 and Customs Tariff Rules, 1995.

(R. Gopalan)
Designated Authority